THE GENERAL STATUTES OF NORTH CAROLINA

1979 SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
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Volume 3A, Part 1

1978 Replacement

Annotated through 297 N.C. 304 and 41 N.C. App. 192. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set.

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Preface

This Supplement to Replacement Volume 3A, part 1, contains the general laws of a permanent nature enacted at the second 1977 and first 1979 Sessions of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editor's notes point out many of the chapters effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the second 1977 and first 1979 Sessions of the General Assembly affecting Chapters 106 through 112 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through volume 297, p. 304.
North Carolina Court of Appeals Reports through volume 41, p. 192.
Federal Reporter 2nd Series through volume 597, p. 283.
Federal Supplement through volume 469, p. 738.
Federal Rules Decision through volume 81, p. 262.
United States Reports through volume 438, p. 783.
Supreme Court Reporter through volume 99.
North Carolina Law Review.
Wake Forest Intramural Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

The General Statutes of North Carolina
1979 Supplement

VOLUME 3A, PART 1

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ARTICLE 1.

Department of Agriculture.

Part 3. Powers and Duties of Department and Board.

§ 106-21.1. Feed Advisory Service; fee. — The Department of Agriculture shall establish, as a pilot program, a Feed Advisory Service for the analysis of animal feeds in order to provide a feeding management service to all animal producers in North Carolina. A fee of five dollars ($5.00) shall accompany each feed sample sent to the Department for testing. (1979, c. 1026.)

Editor's Note. — Session Laws 1979, c. 1026, s. 2, makes this section effective July 1, 1979.

§ 106-22. Joint duties of Commissioner and Board. — The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

(16) State Agricultural Policies. — Establish State government policies relating to agriculture. (1901, c. 479, s. 4; Rev., ss. 3294, 3724, 3944; 1917, c. 16; C. S., s. 4688; 1939, c. 173; 1973, c. 47, s. 2; 1979, c. 344, s. 1.)

Editor's Note. — The 1979 amendment added subdivision (16).

As only the introductory language and subdivision (16) were affected by the amendment, the rest of the section is not set out.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; cooperation. — The Department of Agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of this Part. (1921, c. 201, s. 1; C. S., s. 4689(a); 1941, c. 343; 1975, c. 611, s. 1; 1979, c. 228, s. 1.)

Editor's Note. — The 1979 amendment added the second sentence, deleted "said" after "The" near the beginning of the third sentence, and substituted "this Part" for "G.S. 106-24 to 106-26.2" at the end of that sentence.

§ 106-24.1. Confidentiality of information collected and published. — All information published by the Department of Agriculture pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. (1979, c. 228, s. 3.)

§§ 106-25 to 106-26.2: Repealed by Session Laws 1979, c. 288, s. 2.

ARTICLE 8.

Sale, etc., of Agricultural Liming Material, etc.

§ 106-81. Regulation of sale, etc., of agricultural liming material, etc.

Cross Reference. — For statute covering the same subject matter as this Article, effective July 1, 1980, see §§ 106-92.1 to 106-92.16.

ARTICLE 8A.

Sale of Agricultural Liming Materials and Landplaster.

§ 106-92.1. Title of Article. — This Article shall be known as the North Carolina Agricultural Liming Materials and Landplaster Act. (1979, c. 590.)

Editor's Note. — Session Laws 1979, c. 590, s. 2, makes this Article effective July 1, 1980. Article 8 of this Chapter, covering the same subject matter, has not been repealed.

§ 106-92.2. Purpose of Article. — The purpose of this Article shall be to assure the manufacturer, distributor, and consumer of the correct quality and quantity of all agricultural liming materials and landplaster sold in this State. (1979, c. 590.)

§ 106-92.3. Definitions of terms. — For the purpose of this Article:

(1) "Agricultural liming materials" means oxides, hydroxides, silicates or carbonates of calcium and/or magnesium compounds capable of neutralizing soil acidity.

(2) "Brand" means the term, designation, trademark, product name or other specific designation truly descriptive of the product under which individual agricultural liming material is offered for sale.
(3) "Bulk" means in nonpackaged form.
(4) "Burnt lime" means a material, made from limestone which consists essentially of calcium oxide or combination of calcium oxide with magnesium oxide.
(5) "Calcitic limestone" means limestone which contains less than six percent (6%) magnesium from magnesium carbonate.
(6) "Calcium carbonate equivalent" means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate.
(7) "Dolomitic limestone" means limestone having a minimum of six percent (6%) magnesium from magnesium carbonate.
(8) "Fineness" means the percentage by weight of the material which will pass U. S. Standard sieves of specified sizes.
(9) "Hydrated lime" means a material, made from burnt lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and/or magnesium hydroxide.
(10) "Industrial by-product liming material" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.
(11) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.
(12) "Landplaster" means a material containing calcium sulfate.
(13) "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.
(14) "Marl" means a granular or loosely consolidated earth-like material composed largely of sea shell fragments and calcium carbonate.
(15) "Percent" or "percentage" which means by weight.
(16) "Person" means individual, partnership, association, firm or corporation.
(17) "Sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditional or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to bailee, borrower, lessee, or licensee.
(18) "Sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
(19) "Suspension lime" means a product made by mixing agricultural liming materials with water and a suspending agent.
(20) "Ton" means a net weight of 2,000 pounds avoirdupois.
(21) "Weight" means the weight of undried material as offered for sale. (1979, c. 590.)

§ 106-92.4. Enforcing official. — This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, or his authorized agent, hereinafter referred to as the "Commissioner." (1979, c. 590.)

§ 106-92.5. Labeling. — (a) Agricultural liming materials sold, offered for sale or distributed in the State shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or

otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

(1) The name and principal office address of the manufacturer or distributor.
(2) The brand or trade name truly descriptive of the material.
(3) The identification of the product as to the type of the agricultural liming material.
(4) The net weight of the agricultural liming material.
(5) The minimum percentages of calcium and magnesium.
(6) Calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists. Minimum calcium carbonate equivalent shall be prescribed by regulation.
(7) The minimum percent by weight passing through U. S. Standard sieves as prescribed by regulations.

(b) Landplaster sold, offered for sale or distributed in this State shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

(1) The name and address of the manufacturer or distributor guaranteeing the registration.
(2) The brand or trade name of the material.
(3) The net weight.
(4) The guaranteed analysis showing the minimum percentage of calcium sulfate. (1979, c. 590.)

§ 106-92.6. Prohibited acts.—(a) Agricultural liming material or landplaster shall not be sold or offered for sale or distributed in this State unless it complies with provisions of this law or regulations.

(b) Agricultural liming material or landplaster shall not be sold or offered for sale in this State which contains toxic materials in quantities injurious to plants or animals. (1979, c. 590.)

§ 106-92.7. Registration of brands. — (a) Each separately identified product shall be registered before being sold, offered for sale, or distributed in this State. Registration fee shall be twenty-five dollars ($25.00) for each separately identified product in packages of 10 pounds or less. For each other separately identified product registration fee shall be five dollars ($5.00). The application for registration shall be submitted to the Commissioner on forms furnished by the Commissioner and shall be accompanied by the appropriate registration fee. Upon approval by the Commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of each year.

(b) A distributor shall not be required to register any brand of agricultural liming material or landplaster which is already registered under this Article by another person, providing the label does not differ in any respect. (1979, c. 590.)

§ 106-92.8. Tonnage fees: reporting system. — For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, each manufacturer or registrant shall pay to the Department of Agriculture tonnage fees in addition to registration fees as follows: for agricultural liming material, ten cents (10¢) per ton; for landplaster, ten cents (10¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose for use in the manufacture of fertilizer or to materials when sold in packages of 10 pounds or less.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State shall make

application for a permit to report the materials sold and pay the tonnage fees as set forth in this section.

The Commissioner of Agriculture shall grant such permits on the following conditions: The applicant's agreement that he will keep such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and his agreement for the Commissioner or this authorized representative to examine such records to verify the tonnage statement. The registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before the tenth day of October, January, April, and July of each year. The report and payment shall cover the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the last day of the month in which it is due, or if the report be false, the amount due shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit and cancel the registration. (1979, c. 590.)

§ 106-92.9. Report of tonnage. — (a) Within 30 days following the expiration of registration each registrant shall submit on a form furnished or approved by the Commissioner an annual statement, setting forth by counties, the number of net tons of each agricultural liming material and landplaster sold by him for use in the State during the previous 12 month period.

(b) The Commissioner shall publish and distribute annually, to each agricultural liming material and landplaster registrant and other interested persons a composite report showing the tons of agricultural liming material and landplaster sold in each county of the State. This report shall in no way divulge the operation of any registrant. (1979, c. 590.)

§ 106-92.10. Inspection, sampling, analysis. — (a) It shall be the duty of the Commissioner to sample, inspect, make analysis of, and test agricultural liming materials and landplaster distributed within this State as he may deem necessary to determine if such materials are in compliance with the provisions of this Article. The Commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material and landplaster subject to the provisions of this Article, and regulations pertaining thereto, and to the records relating to their distribution.

(b) The methods of analysis and sampling shall be those approved by the State Chemist, and shall be guided by the Association of Official Analytical Chemists procedures.

(c) The results of official analysis of agricultural liming materials and portions of official samples may be distributed to the registrant by the Commissioner at least annually if requested. (1979, c. 590.)

§ 106-92.11. Deficiencies: refunds to consumer. — Should any of the agricultural liming and landplaster materials defined in this Article be found to be deficient in the components claimed by the manufacturer or registrant thereof, said manufacturer or registrant, upon official notification to [of] such deficiency by the Commissioner of Agriculture, shall, within 90 days, make refunds to the consumers of the deficient materials as follows:

In case of "agricultural liming material" if the deficiency is five percent (5%) of the guarantee or more, there shall be refunded an amount equal to three times the value of such deficiency and in case of "landplaster," for deficiencies in excess of one percent (1%) of the guarantee, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the

selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture, where said refund shall be held for payment to the proper consumer upon order of the Commissioner. If the consumer to whom the refund is due cannot be found within a period of one year, such refund shall revert to the Department of Agriculture for expenditure by the Commissioner in promoting the agricultural programs of the State. (1979, c. 590.)

§ 106-92.12. "Stop sale" orders. — The Commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of agricultural liming material or landplaster at a designated place when the Commissioner finds said material is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the agricultural liming materials or landplaster so withdrawn, when the requirements of the provisions of this Article have been complied with and all costs and expense incurred in connection with the withdrawal have been paid. (1979, c. 590.)

§ 106-92.13. Appeals from assessments and orders of Commissioner. — Nothing in this Article shall prevent any person from appealing to a court of competent jurisdiction from any assessment of penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1979, c. 590.)

§ 106-92.14. Penalties for violations of this Article. — Any person convicted of violating any provision of this Article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) in the discretion of the court. Nothing in this Article shall be construed as requiring the Commissioner or his authorized agent to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the Article when he believes that the public interest will best be served by a suitable written warning. (1979, c. 590.)

§ 106-92.15. Declaration of policy. — The General Assembly hereby finds and declares that it is in the public interest that the State regulate the activities of those persons engaged in the business of preparing, or manufacturing agricultural liming material and landplaster in order to insure the manufacturer, distributor, and consumer of the correct quantity and quality of all said materials sold or offered for sale in this State. It shall therefore be the policy of this State to regulate the activities of those persons engaged in the business of preparing or manufacturing agricultural liming material and landplaster. (1979, c. 590.)

§ 106-92.16. Authority of Board of Agriculture to make rules and regulations. — Because legislation with regard to agricultural liming material and landplaster sold or offered for sale in this State must be adopted (adapted) to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of the Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all agricultural liming material and landplaster sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to:

(1) Defining a standard agricultural liming material in terms of neutralizing equivalents.

(2) Fineness of agricultural liming material.
(3) Form and order of labeling.
(4) Monetary penalties for deficiencies from guarantee.
(5) Monetary penalties for materials that do not meet screen guarantee. (1979, c. 590.)

ARTICLE 12.

Food, Drugs and Cosmetics.

§ 106-134.1. Prescriptions required; label requirements; removal of certain drugs from requirements of this section.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of G.S. 106-134, except subsections (1), (9)b and c, (13) and (14), and the packaging requirements of subsections (7) and (8), if the drug bears an affixed label containing the name of the patient, the name and address of the pharmacy, the phrase "Filled by ....." or "Dispensed by ....." with the name of the practitioner who dispenses the prescription appearing in the blank, the serial number and date of the prescription or of its filling, the name of the prescriber, the directions for use, and unless otherwise directed by the prescriber of such drug, the name and strength of such drug. This exemption shall not apply to any drugs dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection (a) of this section.

Any tranquilizer or sedative dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be labelled by the pharmacist, if the prescriber so directs on the prescription, with a warning that: "The consumption of alcoholic beverages while on this medication can be harmful to your health."

(1979, c. 626.)

Editor's Note. — The 1979 amendment, effective January 1, 1980, added the second paragraph of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 17.

Marketing and Branding Farm Products.

§ 106-189.1. Apples marked as to grade; penalty.

Editor's Note. — For a survey of 1977 constitutional law, see 56 N.C. L. Rev. 943 (1978).

ARTICLE 19.

Trademark for Standardized Farm Products.

§§ 106-202.1 to 106-202.5: Reserved for future codification purposes.

ARTICLE 19A.

Records of Sales of Farm Products.

§ 106-202.6. Dated sales confirmation slips; inapplicable to consumers. — (a) In every sales transaction of farm or horticultural crops, or animal products, the buyer, broker, or authorized agent shall give to the seller a sales confirmation slip bearing the date of the sales transaction.

(b) This section shall not apply if the buyer is a natural person and/or the farm or horticultural crops, or animal products are purchased primarily for a personal, family, or household purpose. (1979, c. 363.)

§§ 106-202.7 to 106-202.11: Reserved for future codification purposes.

ARTICLE 19B.

Plant Protection and Conservation Act.

§ 106-202.12. Definitions. — As used in this Article, unless the context requires otherwise:

(1) "Board" means the North Carolina Plant Conservation Board as provided in this Article.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Conserve" and "conservation" mean to use, and the use of, all methods and procedures for the purposes of increasing the number of individuals of resident species of plants up to adequate levels to assure their continuity in their ecosystems. These methods and procedures include all activities associated with scientific resource conservation such as research, census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range. With respect to endangered and threatened species, the terms mean to use, and the use of, methods and procedures to bring any endangered or threatened species to the point at which the measures provided for the species are no longer necessary.

(4) "Endangered species" means any species or higher taxon of plant whose continued existence as a viable component of the State's flora is determined to be in jeopardy by the Board; also, any species of plant determined to be an "endangered species" pursuant to the Endangered Species Act.

(5) "Endangered Species Act" means the Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), as it may be subsequently amended.

(6) "Exotic species" means a species or higher taxon of plant not native or naturalized in North Carolina but appearing in the Federal Endangered and Threatened Species List or in the appendices to the International Treaty on Endangered and Threatened Species.

(7) "Plant" means any member of the plant kingdom, including seeds, roots and other parts or their propagules.

(8) "Protected plant" means a species or higher taxon of plant adopted by the Board to protect, conserve, and/or enhance the plant species and includes those the Board has designated as endangered, threatened, or of special concern.
(9) "Resident plant or resident species" means a native species or higher taxon of plant growing in North Carolina.
(10) "Scientific committee" means the North Carolina Plant Conservation Scientific Committee.
(11) "Special concern species" means any species of plant in North Carolina which requires monitoring but which may be collected and sold under regulations adopted under the provisions of this Article.
(12) "Threatened species" means any resident species of plant which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, or one that is designated as threatened by the Federal Fish and Wildlife Service. (1979, c. 964, s. 1.)

§ 106-202.13. Declaration of policy. — The General Assembly finds that the recreational needs of the people, the interests of science, and the economy of the State require that threatened and endangered species of plants and species of plants of special concern be protected and conserved, that their numbers should be enhanced and that propagative techniques be developed for them; however, nothing in this Article shall be construed to limit the rights of a property owner, without his consent, in the management of his lands for agriculture, forestry, development or any other lawful purpose. (1979, c. 964, s. 1.)

§ 106-202.14. Creation of Board; membership; terms; chairman; quorum; board actions; compensation. — (a) The North Carolina Plant Conservation Board is created within the Department of Agriculture.

(b) The Board shall consist of seven members who are residents of North Carolina, one of whom represents each of the following:
(1) The North Carolina Botanical Garden of The University of North Carolina at Chapel Hill;
(2) The botanical, scientific community in North Carolina;
(3) The Division of Forest Resources, Department of Natural Resources and Community Development;
(4) A North Carolina citizens conservation organization;
(5) The commercial plant production industry in North Carolina;
(6) The Department of Agriculture;
(7) The North Carolina public at large.

The Governor shall appoint the first four members enumerated above; the Commissioner shall appoint the remaining three members.

(c) Initial appointments to the Board shall be made by October 1, 1979. Of the terms of initial appointees, the representatives of the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the commercial plant production industry in North Carolina, and a North Carolina citizens conservation organization shall serve two-year terms; all other members shall serve four-year terms. All subsequent terms shall be for four-year terms.

(d) All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled for the remainder of the unexpired term. The Commissioner may at any time remove any member from the Board for cause. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the proper credentials for that vacancy and appointed by the proper appointing agency.

(e) The Board shall select its chairman from its own membership to serve for a term of two years. The chairman shall have a full vote. Any vacancy occurring in the chairmanship shall be filled by the Board for the remainder of the term. The Board may select other officers as it deems necessary.

(f) Any action of the Board shall require at least four concurring votes.

(g) Members of the Board who are not State employees shall receive per diem, subsistence and travel allowances authorized by G.S. 138-5; members who are State employees shall receive the subsistence and travel allowances authorized by G.S. 138-6; and members who are also members of the General Assembly shall receive subsistence and travel allowances authorized by G.S. 120-3.1. (1979, c. 964, s. 1.)

§ 106-202.15. Powers and duties of the Board. — The Board shall have the following powers and duties:

(1) To adopt and publish by July 1, 1980, an endangered species list, a threatened species list and a list of species of special concern, as provided for in G.S. 106-202.16, identifying each entry by the common name and scientific name and cross-referencing by family, genus, and species number as found in the current edition of "The Manual of the Vascular Flora of the Carolinas," or if not found in this edition, as identified by the American Society of Plant Taxonomists;

(2) To reconsider and revise the lists from time to time in response to public proposals and as the Board deems necessary;

(3) To conserve and to regulate the collection and shipment of those plant species or higher taxa that are of such similarity to endangered and threatened species that they cannot be easily or readily distinguished from an endangered or threatened species;

(4) To regulate within the State any exotic species, in the same manner as a resident species if the exotic species is on the Federal Endangered and Threatened Species List or it is listed in the Appendices to the International Treaty to Conserve Endangered and Threatened Species;

(5) To determine that certain plant species growing in North Carolina, whether or not they are on the endangered or threatened species list, are of special concern and to limit, regulate or forbid sale or collection of these plants;

(6) To conduct investigations to determine whether a plant should be on the protected plant lists and the requirements for survival of resident species of plants;

(7) To adopt regulations to protect, conserve and enhance resident and exotic species of plants on the lists, or to otherwise affect the intent of this Article;

(8) To develop, establish and coordinate conservation programs for endangered species and threatened species of plants, consistent with the policies of the Endangered Species Act, including the acquisition of rights to land or aquatic habitats;

(9) To enter into and administer cooperative agreements through the Commissioner of Agriculture, in concert with the North Carolina Botanical Garden and other agencies, with the U. S. Department of Interior or other federal, State or private organizations concerning endangered and threatened species of plants and their conservation and management;

(10) To cooperate or enter into formal agreements with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article;

(11) Through the Commissioner, to receive funds, donations, grants or other moneys, issue grants, enter contracts, employ personnel and purchase supplies and materials necessary to fulfill its duties;

(12) To promulgate regulations under which the Department of Agriculture may issue permits to licensed nurserymen, commercial growers, scientific supply houses and botanical gardens for the sale or distribution of plants on the protected list provided that the plants are nursery propagated and grown horticulturally from seeds or by vegetative propagation of cuttings, meristems or other similar materials and that the plants bear the grower's permit number. (1979, c. 964, s. 1.)

§ 106-202.16. Criteria and procedures for placing plants on protected plant lists. — (a) All native or resident plants which are on the current federal lists of endangered or threatened plants pursuant to the Endangered Species Act have the same status on the North Carolina Protected Plants lists.

(b) The Board, the Scientific Committee, or any resident of North Carolina may propose to the Department of Agriculture that a plant be added to or removed from a protected plant list.

(c) If the Board, with the advice of the Scientific Committee, finds that there is any substance to the proposal, it shall publish notice of the proposal in a Department of Agriculture news release.

(d) The Board shall collect relevant scientific and economic data, concerning any substantial proposal, necessary to determine:

(1) Whether or not any other State or federal agency or private entity is taking steps to protect the plant under consideration;
(2) The present or threatened destruction, modification or curtailment of its habitat;
(3) Over-utilization for commercial, scientific, educational or recreational purposes;
(4) Critical depletion from disease or predation;
(5) The inadequacy of existing regulatory mechanisms; or
(6) Other natural or man-made factors affecting its continued existence in North Carolina.

The Board, with the advice of the Scientific Committee, shall tentatively determine what action is warranted with regard to each proposal. Notice of the determination shall be given in accordance with the Administrative Procedures Act, G.S. 150A-1 et seq., and in a Department of Agriculture news release and by mail to all persons who have made an annual request to receive notification.

(e) The Board shall hold at least one public hearing on each substantive proposal, in accordance with the Administrative Procedures Act, G.S. 150A-1 et seq.

(f) If the Board determines that an emergency situation exists involving the continued existence of a plant species or higher taxon as a viable component of the State's wild flora it may add that species or taxon to the lists following emergency procedures outlined in the Administrative Procedures Act, G.S. 150A-1 et seq. (1979, c. 964, s. 1.)

§ 106-202.17. Creation of committee; membership; terms; chairman; meetings; committee action; quorum; compensation. — (a) The North Carolina Plant Conservation Scientific Committee is created within the Department of Agriculture.

(b) The Scientific Committee shall consist of the Directors of The University of North Carolina at Chapel Hill Herbarium, the North Carolina State University Herbarium, the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the North Carolina Museum of Natural History and the North Carolina Natural Heritage Program of the Department of Natural Resources and Community Development or their designees, a representative of the North Carolina Association of Nurserymen, Inc., appointed by the

Commissioner, and a representative of the Garden Club of North Carolina, Incorporated, the North Carolina Chapter of the Nature Conservancy or the North Carolina Wild Flower Preservation Society, Inc., appointed by the Commissioner. Members shall serve for three-year terms and may succeed themselves.

(c) The Board shall select a chairman of the Scientific Committee from the Scientific Committee's membership to serve for three years.

(d) The Scientific Committee may hold its meetings at the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill.

(e) Any action of the Scientific Committee shall require at least four concurring votes.

(f) Members of the Scientific Committee who are not State employees may receive per diem, subsistence and travel allowances authorized by G.S. 138-5 if they so request; members who are State employees may receive the subsistence and travel allowances authorized by G.S. 138-6 if they so request; and members who are also members of the General Assembly may receive subsistence and travel allowances authorized by G.S. 120-3.1 if they so request. (1979, c. 964, s. 1.)

§ 106-202.18. Powers and duties of the Scientific Committee. — The Scientific Committee shall have the following powers and duties:

(1) To gather and provide information and data and advise the Board with respect to all aspects of the biology and ecology of endangered and threatened plant species;

(2) To develop and present to the Board management and conservation practices for preserving endangered or threatened plant species;

(3) To recommend habitat areas for acquisition to the extent that funds are available or expected;

(4) To investigate and make recommendations to the Board as to the status of endangered, threatened plant species, or species of special concern;

(5) To make recommendations to the Board concerning regulation of the collection and shipment of endangered or threatened plant species within North Carolina;

(6) To review and comment on botanical aspects of environmental impact statements prepared by North Carolina agencies or other agencies as appropriate; and

(7) To advise the Board on matters submitted to the Scientific Committee by the Board or the Commissioner which involve technical questions and the development of pertinent rules and regulations, and make any recommendations as deemed by the Scientific Committee to be worthy of the Board's consideration. (1979, c. 964, s. 1.)

§ 106-202.19. Unlawful acts; penalties; enforcement. — (a) It is unlawful:

(1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial use;

(2) To sell, barter, trade, exchange, export, offer for sale, barter, trade, exchange or export or give away for any purpose including advertising or other promotional purpose any plant on a protected plant list, except as authorized according to the rules and regulations of the Board; including those promulgated pursuant to G.S. 106-202.4(1);

(3) To perform any act specifically prohibited by the rules and regulations of the Board promulgated pursuant to its authority under G.S. 106-202.4.

The illegal movement or distribution of each plant, pursuant to this subsection shall constitute a separate violation.

Each person convicted of violating the provisions of this Article, shall be fined not less than one hundred dollars ($100.00), upon the first conviction and not less than five hundred dollars ($500.00) upon a subsequent conviction.

(b) The Commissioner or any employee of the Department of Agriculture designated by the Commissioner to enforce the provisions of this Article, may enter any place within the State at all reasonable times where plant materials are being grown, transported or offered for sale and require the presentation for inspection of all pertinent papers and records relative to the provisions of this Article, after giving notice in writing to the owner or custodian of the premises to be entered. If he refuses to consent to the entry, the Commissioner may apply to any district court judge and the judge may order, without notice, that the owner or custodian of the place permit the Commissioner to enter the place for the purposes herein stated and failure by any person to obey the order may be punished as for contempt.

(c) The Commissioner of Agriculture is authorized to apply to the superior court for, and the court shall have jurisdiction upon hearing and, for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-202.8(a), regardless of whether there exists an adequate remedy at law. (1979, c. 964, s. 1.)

ARTICLE 28A.

Regulation of Milk Brought into North Carolina from Other States.

§§ 106-266.1 to 106-266.5: Repealed by Session Laws 1979, c. 157, s. 1.

ARTICLE 31.

North Carolina Seed Law.

§ 106-277.9. Prohibitions.

Editor's Note. — For note on strict liability for breach of warranty, see 50 N.C.L. Rev. 697 (1972).

ARTICLE 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.30. Title.

Cross References. — As to testing of animal feeds by Feed Advisory Service in Department of Agriculture, see § 106-21.1.

ARTICLE 34.

Animal Diseases.

Part 7. Rabies.

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.

Local Modification — Gaston: 1979, c. 433.

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-435. Fund for support of system; collection and investment.

Purpose of Fund. — The General Assembly, when by this section it created the State Indemnifying and Guaranty Fund to safeguard the State warehouse system and to make its receipts acceptable as collateral, did not intend that it should encourage individuals or financial institutions to engage in transactions from which they would otherwise have recoiled. On the contrary, the fund was created to protect those parties to or purchasers of warehouse receipts who, acting in good faith and without reason to know that the goods described thereon are misdescribed or nonexistent, suffer loss through their acceptance or purchase of the receipt. Branch Banking & Trust Co. v. Gill, 293 N.C. 164, 237 S.E.2d 21 (1977).

ARTICLE 49F.

Biological Residues in Animals.

§§ 106-549.89 to 106-549.93: Reserved for future recodification purposes.

ARTICLE 49G.

Production and Sale of Pen-Raised Quail.

§ 106-549.94. Regulation of pen-raised quail by Department of Agriculture; certain authority of North Carolina Wildlife Resources Commission not affected. — (a) The North Carolina Department of Agriculture is given exclusive authority to regulate the production and sale of pen-raised quail for food purposes. The Board of Agriculture shall promulgate rules and regulations for the production and sale of pen-raised quail for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling pen-raised quail for food purposes.

(b) The North Carolina Wildlife Resources Commission shall retain its authority to regulate the possession and transportation of live pen-raised quail. (1971, c. 515, ss. 1-4; c. 1114; 1973, c. 1262, s. 18; 1977, c. 905, ss. 1-2; 1979, c. 830, s. 15.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, makes this section effective July 1, 1980.

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-550. Policy as to promotion of use of, and markets for, farm products; tobacco excluded.

Editor's Note. — For note questioning the validity of this article as being an unconstitutional delegation of legislative power, see 8 N.C. Cent. L.J. 300 (1977).

ARTICLE 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.34. Alternate method for levy of assessment. — At any time when it may be found by the Board of Directors of Tobacco Associates, that it is not reasonably feasible to base the authorization of an assessment or the making of an assessment or the collection of an assessment on a "per-acre" unit, then the Board of Directors of Tobacco Associates, by an affirmative vote of not less than two thirds of its members (which vote shall include the affirmative vote of not less than two thirds of the board members who were elected by North Carolina farm organizations), may use a "tobacco poundage" unit as the basis for the authorization or making or collecting an assessment. No alternate assessment for any year through 1979 shall exceed five cents (5¢) per 100 pounds of the effective farm marketing quota of a member; no alternate assessment for any year after 1979 shall exceed ten cents (10¢) per 100 pounds of the effective farm marketing quota of a member. The amount of any alternate assessment, based upon a "tobacco poundage" unit as permitted by the provisions of this section shall not be related to or limited by the amount of the assessment which could be authorized, made or collected if it were based upon a "per-acre" unit. (1973, c. 81; 1979, c. 474, s. 1.)

Editor's Note. — The 1979 amendment substituted "the" for "such" before "board members" near the middle of the first sentence, deleted "reasonably corresponding" before " 'tobacco poundage' " and substituted "the" for "such" before "authorization" near the end of the first sentence, deleted "provided, that no assessment shall exceed five cents (5¢) per 100 pounds of the effective farm marketing quota of a member" at the end of the first sentence, and added the second and third sentences.

§ 106-568.36. Maximum levy after 1979. — The maximum amount which may be authorized in any referendum held pursuant to the provisions of this Article during 1979 or thereafter, and the maximum amount which may be assessed, collected or levied for any year after 1979 by the Board of Directors of Tobacco Associates pursuant to the provisions of this Article, is two dollars ($2.00) per acre per year on all flue-cured tobacco acreage in the State, or, under the alternate method for levy of assessment set out in G.S. 106-568.34, ten cents (10¢) per 100 pounds of the effective farm quota of a member. (1979, c. 474, s. 2.)

ARTICLE 53.

Grain Dealers.

§ 106-605. Execution, terms and form of bond; action on bond. — (a) Such bond shall be signed by the grain dealer and by a company authorized to execute surety bonds in North Carolina and shall be made payable to the State of North Carolina. The bond shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this Article, and shall be for the use and benefit of any person from whom the grain dealer has purchased grain and who has not been paid by the grain dealer. The bond shall be given for the period for which the grain dealer's license is issued.

(b) Any person claiming to be injured by nonpayment, fraud, deceit, negligence or other misconduct of a grain dealer may institute a suit or suits against said grain dealer and his sureties upon the bond in the name of the State, without any assignment thereof. (1973, c. 665, s. 5; 1979, c. 589, s. 1.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 106-610. Grounds for refusal, suspension or revocation of license. — The Commissioner may refuse to grant or renew license, may suspend or may revoke any license upon a showing by substantial and competent evidence that:

(1) The dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied; or
(2) The dealer has failed to promptly and properly account and pay for grain; or
(3) The dealer has failed to keep and maintain business records of his grain transactions as required herein; or
(4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer; or
(5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General Statutes; or
(6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude;
(7) The dealer has failed either to file the required bond or to keep such bond in force. (1973, c. 665, s. 10; 1979, c. 589, s. 2.)

Editor's Note. — The 1979 amendment added subdivision (7).

ARTICLE 57.

Nuisance Liability of Agricultural Operations.

§ 106-700. Legislative determination and declaration of policy. — It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm

improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. (1979, c. 202, § 1.)

Editor's Note. — Session Laws 1979, c. 202, ss. 2, 3, provide: "This act does not affect actions commenced prior to the effective date hereof.

If any provisions or clause of this Article or application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable."

§ 106-701. When agricultural operation, etc., not constituted nuisance by changed conditions in locality. — (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future. (1979, c. 202, s. 1.)

Chapter 108.

Social Services.

ARTICLE 1.

Administration.

Part 3. County Boards of Social Services.

§ 108-7. Creation. — Every county shall have a board of social services which shall establish county policies for the programs established by this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources. Provided, however, county policies for the program of medical assistance shall be established in conformity with the rules and regulations of the Department of

Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 6.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added the second sentence.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Cited in Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

§ 108-9. Method of appointment; residential qualifications; fee or compensation for services.

Cited in Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978); Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

§ 108-15. Duties and responsibilities. — The county board of social services shall have the following duties and responsibilities:

(5) To have such other duties and responsibilities as the General Assembly, the Department of Human Resources or the Social Services Commission or the board of county commissioners may assign to it. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 7.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "the Department of Human Resources" in subdivision (5).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5) are set out.

Applied in Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978).

§ 108-15.1. Fees. — The County Board of Social Services is authorized to enter into contracts with any governmental or private agency, or with any person, whereby the Board of Social Services agrees to render services to or for such agency or person in exchange for a fee to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received, but shall not apply where the charging of a fee for a particular service is specifically prohibited by statute or regulation. The fees to be charged under the authority of this section are to be based upon a plan recommended by the county director of social services and approved by the local board of social services and the board of county commissioners, and in no event is the fee charged to exceed the cost to the Board of Social Services. Fee policies may not conflict with rules and regulations adopted by the Social Services Commission regarding fees.

The fees collected under the authority of this subsection [section] are to be deposited to the account of the social services department so that they may be expended for social services purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged.

The county board of social services shall annually report to the county commissioners receipts received under this section. Fees collected under this

section shall not be used to replace any other funds, either State or local, for the program for which the fees were collected. (1979, c. 241, s. 1.)

Part 4. County Director of Social Services.

§ 108-17. Appointment.

Department of Human Resources Liable for Acts of County Director Negligently Placing Foster Child. — In an action alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services, the Department of Human Resources would be liable for the negligent acts of its agents, the Durham County Director of Social Services and his subordinates, since the Department of Human Resources, through the Social Services Commission has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

§ 108-18. Salary.

Cited in Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

§ 108-19. Duties and responsibilities. — The director of social services shall have the following duties and responsibilities:

(3) To administer the programs of public assistance established by this Chapter under pertinent rules and regulations.

(1977, 2nd Sess., c. 1219, s. 8.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added "under pertinent rules and regulations" at the end of subdivision (3).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3) are set out.

Department of Human Resources Liable for Acts of County Director Negligently Placing Foster Child. — In an action alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services, the Department of Human Resources would be liable for the negligent acts of its agents, the Durham County Director of Social Services and his subordinates, since the Department of Human Resources, through the Social Services Commission has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Applied in Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978).

ARTICLE 2.

Programs of Public Assistance.

§ 108-23. Creation of programs. — (a) The following programs of public assistance are hereby established, and shall be administered by the county departments of social services under rules and regulations adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

(1) Repealed by Session Laws 1979, c. 702, s. 1.

(2) Aid to families with dependent children;

(3) State-county special assistance for adults;
(4) Repealed by Session Laws 1977, 2nd Sess., c. 1219, s. 9, effective July 1, 1978.
(5) Foster home fund.

(b) The program of medical assistance is hereby established and shall be administered by the county departments of social services under rules and regulations adopted by the Department of Human Resources. (1937, c. 135, s. 1; c. 288, ss. 3, 31; 1949, c. 1038, s. 2; 1955, c. 1044, s. 1; 1957, c. 100, s. 1; 1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 92, s. 4; 1977, 2nd Sess., c. 1219, s. 9; 1979, c. 702, s. 1.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, designated the former provisions of this section as subsection (a), repealed subdivision (4) of subsection (a), which read "Medical assistance; and" and added subsection (b).

The 1979 amendment repealed subdivision (1) of subsection (a), which read "Aid to the aged and disabled."

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Applied in Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978).

Cited in Vaughn v. Durham County Dep't of Social Servs., 34 N.C. App. 416, 240 S.E.2d 456 (1977).

§ 108-24. Definitions. — As used in Article 2:

(4) "Medical assistance" is any program of medical, dental, optometric or other health-related services approved by the Department of Human Resources.
(7) "Resident" is a person who is living in North Carolina voluntarily with the intention of making his home in the State and not for a temporary purpose. A child is a resident of North Carolina if he is living in the State other than on a temporary basis. (1937, c. 288, ss. 4, 32; 1939, c. 395, s. 1; 1949, c. 1038, s. 2; 1951, c. 1098, ss. 3, 4, 5; 1957, c. 100, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 1231, s. 1; 1973, c. 476, s. 138; c. 743; 1977, c. 1127; 2nd Sess., c. 1219, s. 10; 1979, c. 496.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Department of Human Resources" for "Social Services Commission" at the end of subdivision (4).

The 1979 amendment rewrote subdivision (7), which formerly required one year's prior continuous residence before one could be considered a resident.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (4) and (7) are set out.

Part 1. Aid to the Aged and Disabled.

§§ 108-25 to 108-28: Repealed by Session Laws 1979, c. 702, s. 2.

Part 2. Aid to Families with Dependent Children.

§ 108-38. Eligibility requirements; certain contributions to be disregarded. — Assistance shall be granted to any dependent child, as defined in G.S. 108-24, who:

(1) Is a resident of the State or whose mother was a resident when the child was born;
(2) Has been deprived of parental support or care by reason of a parent's death, physical or mental incapacity, or continued absence from the home;

(3) Has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1; 1967, c. 660; 1969, c. 546, s. 1; 1973, c. 714, ss. 1-3; c. 826; 1979, c. 162, s. 1.)

Editor's Note. —
The 1979 amendment repealed subsection (b), which required an exclusion of the first $30 and one-third of the excess over that amount provided by an absent parent, whose absence made his or her children eligible for this program, in computing available income in resources, but limited application of this requirement to the extent that such payments were provided under court order or contract filed with the county department of social services, and further provided that the subsection would cease to be in effect if determined to conflict with federal law.

For article reviewing the development of protective services for children in this state, see 54 N.C.L. Rev. 743 (1976).

Cited in Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Part 3. The Administration of Aid to Families with Dependent Children.

§ 108-40. Application for assistance. — Any person who believes that he or another person is eligible to receive aid to families with dependent children may submit an application for assistance to the county department of social services in the county in which the applicant resides. It shall be made in such form and shall contain such information as the Social Services Commission may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 742; 1979, c. 702, s. 4.)

Editor's Note. — The 1979 amendment deleted "aid to the aged and disabled or" after "receive" near the beginning of the first sentence.

Session Laws 1979, c. 702, s. 3, changed the title of this Part to its present wording from "The Administration of Aid to the Aged and Disabled and to Families with Dependent Children."

§ 108-42. Granting or denial of assistance. — (a) The county director of social services shall submit his findings and recommendations on each application for aid to families with dependent children to the county board of social services at its next meeting for its approval of assistance in each case.

(b) The county board of social services may delegate authority to the director to consider and process applications for assistance in all cases that require immediate action to prevent undue hardship; in such cases, the director shall report on his actions to the board at its next meeting, and the board shall approve, reject or modify such decisions.

(c) The board of county commissioners may review any grant approved by the county board of social services. The recipient of a disputed grant shall receive notice of the time and place of such review. If the board of commissioners deems that a grant was improperly allowed under the policies of the Social Sercices Commission or the Department of Human Resources in the case of medical assistance, it may order that proper action be taken, with notice thereof given to the recipient and a copy to the county board of social services and the Secretary of Human Resources. Any modification made by the board of county commissioners shall be subject to review by the Secretary of Human Resources.

(d) All rules and regulations of the Social Services Commission or the Department of Human Resources in the case of medical assistance, which govern eligibility for public assistance from State appropriations or the amount of public assistance grants shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1937, c. 288, ss. 15, 16, 45, 46;

1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 523, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 12; 1979, c. 702, s. 5.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or the Department of Human Resources in the case of medical assistance" in the third sentence of subsection (c) and in subsection (d).

The 1979 amendment deleted "aid to the aged and disabled and" after "application for" near the middle of subsection (a), and deleted "except that the disability factor of applications for aid to the disabled shall be finally determined by the Department of Human Resources as provided in G.S. 108-26" at the end of subsection (a).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 108-43. Reconsideration of grants. — All grants of public assistance shall be considered as frequently as required by the rules of the Social Services Commission or the Department of Human Resources in the case of medical assistance. Whenever the condition of any recipient has changed to the extent that his award must be modified or terminated, the county director may make the appropriate termination or change in payment and submit it to the county board of social services for approval at its next meeting. Prompt notice of all changes shall be given to the recipient, to the Department of Human Resources, and to the board of county commissioners. (1937, c. 288, ss. 19, 49; 1969, c. 546, s. 1; 1971, c. 523, s. 2; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 13.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added at the end of the first sentence "or the Department of Human Resources in the case of medical assistance."

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 108-44. Appeals. — (a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services or the board of county commissioners granting, denying, terminating, or modifying assistance, or the failure of the county board of social services to act within a reasonable time under the rules and regulations of the Social Services Commission or the Department of Human Resources. Each applicant or recipient shall be notified in writing of his right to appeal upon denial of his application for assistance and at the time of any subsequent action on his case.

(b) In cases involving termination or modification of assistance, no action shall become effective until 10 work days after notice of this action and of the right to appeal is mailed to the recipient.

(c) The notice of action and the right to appeal shall comply with all applicable federal and State law and regulations; provided, such notice shall, at a minimum contain a clear statement of:

(1) The action which was or is to be taken;
(2) The reasons for which this action was or is to be taken;
(3) The regulations supporting this action;
(4) The applicant's or recipient's right to both a local and State level hearing on the decision to take this action and the method for obtaining these hearings;
(5) The right to be represented at the hearings by a personal representative, including an attorney obtained at the applicant's or recipient's expense;
(6) In cases involving termination or modification of assistance, the recipient's right upon timely request to continue receiving assistance at the present level pending a local appeal hearing and decision on that hearing.

An applicant or recipient may give notice of appeal by written or oral statement to the county department of social services, which shall record such notice by completing a form developed by the Department of Human Resources. Such notice of appeal must be given within 60 days from the effective date of the action. Failure to give timely notice of appeal constitutes a waiver of the right to a hearing. However, it shall not affect the right to reapply for benefits.

(d) If there is such timely appeal, in the first instance the hearing shall consist of a local appeal hearing before the county director or a designated representative of the county director, provided whoever hears the local appeal shall not have been involved directly in the initial decision giving rise to the appeal. In cases involving termination or modification of assistance, the recipient shall continue to receive assistance at the present level pending the local appeal hearing decision, provided the recipient requests a hearing on or before the effective date of the termination or modification of assistance.

(e) The local appeal hearing shall be held not more than five days after the request for it is received. The recipient may, for good cause shown as defined by rule or regulation of the Social Services Commission or the Department of Human Resources, petition the county department of social services, in writing, for a delay, but in no event shall the local appeal hearing be held more than 15 days after the receipt of the request for hearing. At the local appeal hearing:

(1) The appellant and the county department may be represented by personal representatives, including attorneys, obtained at their expense.

(2) The appellant or his personal representative and the county department shall present such sworn evidence and law or regulations as bear upon the case. The hearing need not be recorded or transcribed, but the director or his representative shall summarize in writing the substance of the hearing.

(3) The appellant or his personal representative and the county department may cross-examine witnesses and present closing arguments summarizing their views of the case and the law.

(4) Prior to and during the hearing, the appellant shall have adequate opportunity to examine the contents of his case file and all documents and records which the county department of social services intends to use at the hearing.

(f) The director or his designated representative shall make the decision based upon the evidence presented at the hearing and all applicable regulations, and shall prepare a written statement of his decision citing the regulations and evidence to support it. This written statement of the decision will be served by certified mail on the appellant within five days of the local appeal hearing. If the decision terminating or modifying the appellant's benefits is affirmed, the assistance shall be terminated or modified, not earlier than the date the decision is mailed, and any assistance received during the time of the appeal is subject to recovery.

(g) If the appellant is dissatisfied with the decision of the local appeal hearing, he may within 15 days of the mailing notification of the decision take a further appeal to the Department of Human Resources. However, assistance may not be received pending this further appeal. Failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department of Human Resources, but shall not affect the right to reapply for benefits.

(h) If there is an appeal from the local appeal hearing decision, the county director shall notify the Department of Human Resources according to its rules and regulations. The Department of Human Resources shall designate a hearing officer who shall promptly hold a de novo administrative hearing in the county after giving reasonable notice of the time and place of such hearing to the

appellant and the county department of social services. Such hearing shall be conducted according to applicable federal law and regulations and Article 3, Chapter 150A of the General Statutes of North Carolina; provided the Department shall adopt rules and regulations to ensure the following:

(1) Prior to and during the hearing, the appellant shall have adequate opportunity to examine the contents of his case file and all documents and records which the county department of social services intends to use at the hearing.

(2) At the appeal hearing, the appellant and personnel of the county department of social services may present such sworn evidence, law and regulations as bear upon the case.

(3) The appellant and county department shall have the right to be represented by the person of his choice, including an attorney obtained at his own expense.

(4) The appellant and county department shall have the right to cross-examine the other party as well as make a closing argument summarizing his view of the case and the law.

(5) The appeal hearing shall be recorded; however, no transcript will be prepared unless a petition for judicial review is filed pursuant to subsection (j) herein, in which case, the transcript will be made a part of the official record. In the absence of the filing of a petition for a judicial review, the recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed.

(6) Notwithstanding G.S. 150A-28 or any other provision of State law, discovery shall be no more extensive or formal than that required by federal law and regulations applicable to such hearings.

(i) After the administrative hearing, the hearing officer shall prepare a proposal for decision, citing pertinent law, regulations, and evidence, which shall be served upon the appellant and the county department of social services or their personal representatives. The appellant and the county department of social services shall have the opportunity to present oral and written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who is to make the final decision. The final decision shall be based on, conform to, and set forth in detail the relevant evidence, pertinent State and federal law and regulations, and matters officially noticed. The decision shall be rendered not more than 90 days from the date of request for the hearing, unless the hearing was delayed at the request of the appellant. If the hearing was delayed at the appellant's request, the decision may only be delayed for the length of time appellant requested a delay. The final decision shall be served upon the appellant and upon the county department of social services by certified mail, with a copy furnished to either party's attorney of record. In the absence of a petition for judicial review filed pursuant to subsection (j) herein, the final decision shall be binding upon the appellant, the county department of social services, the county board of social services, and the board of county commissioners.

(j) Any appellant or county board of social services who is dissatisfied with the final decision of the Department of Human Resources may file, within 30 days of the receipt of notice of such decision, a petition for judicial review in Superior Court of the county from which the case arose. The hearing shall be conducted according to the provisions of Article 4, Chapter 150A, of the North Carolina General Statutes. Notwithstanding the foregoing provisions, the court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance under federal and State law, and under the rules and regulations of the Social Services Commission. Furthermore, the court shall set the matter for hearing within 30 days after the receipt of a petition for review and after reasonable written notice to the Department of Human Resources, the county board of social services, the board of county commissioners, and the appellant.

(k) In the event of conflict between federal law or regulations and State law or regulations, the federal law or regulations shall control. (1937, c. 288, ss. 18, 48; 1939, c. 395, s. 1; 1957, c. 100, s. 1; 1969, c. 546, s. 1; cc. 735, 754; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, ss. 14-18; 1979, c. 691.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or the Department of Human Resources" near the end of the first sentence of subsection (a), inserted "pertinent" near the beginning of subsection (b) and deleted "of the Social Services Commission" following "regulations" near the beginning of subsection (b), added "or the Department of Human Resources" at the end of the first sentence of subsection (d) and at the end of the third sentence of subsection (e) and inserted "the Department of Human Resources" near the end of the first sentence of subsection (f).

The 1979 amendment, effective October 1, 1979, rewrote this section.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Session Laws 1979, c. 691, s. 2, provides: "This act shall become effective October 1, 1979, but shall not apply to cases in which notice of appeal was given prior to the effective date."

§ 108-45. Confidentiality of records. — (a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance that may be directly or indirectly derived from the records, files or communications of the Department of Human Resources or the county boards of social services, or acquired in the course of performing official duties except for purposes directly connected with the administration of the programs of public assistance in accordance with the rules and regulations of the Social Services Commission or the Department of Human Resources.

(1977, 2nd Sess., c. 1219, s. 19.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added "or the Department of Human Resources" at the end of subsection (a).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 108-48. Fraudulent misrepresentation. — (a) Any person whether provider or recipient who willfully and knowingly and with intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in the amount of not more than four hundred dollars ($400.00) is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(b) Any person whether provider or recipient who willfully and knowingly with the intent to deceive makes a false statement or representation or fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact, obtains for himself or another person, attempts to obtain for himself or another person, or continues to receive or enables another person to continue to receive public assistance in an amount of more than four hundred dollars ($400.00) is guilty of a felony, and upon conviction or plea of guilty shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment for not more than five years, or both, in the discretion of the court.

(c) As used in this section the word "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization. (1937, c. 288, ss. 27, 57; 1963, cc. 1013, 1024, 1062; 1969, c. 546, s. 1; 1977, c. 604, s. 1; 1979, c. 510, s. 2; c. 907.)

Editor's Note. —

The first 1979 amendment, effective October 1, 1979, substituted "by a fine of not more than ten thousand dollars ($10,000) or imprisonment for not more than five years, or both, in the discretion of the court" for "as in cases of larceny" at the end of subsection (b).

The second 1979 amendment, effective Jan. 1, 1980, inserted "for himself or another person" in two places near the middle of subsection (a) and in two places near the middle of subsection (b), inserted "or enables another person to continue to receive" near the middle of subsections (a) and (b), and substituted "four hundred dollars ($400.00)" for "two hundred dollars ($200.00)" near the end of subsections (a) and (b). In subsection (a) the amendment added "and" after "knowingly" near the beginning and deleted "to which he or any other person" after "public assistance" near the middle of the subsection. In subsection (b) the amendment deleted "to which he is not entitled" after "public assistance" near the middle. The amendment also added subsection (c).

§ 108-50. Protective and vendor payments. — Instead of the use of personal representatives provided for by G.S. 108-49, when necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission or the Department of Human Resources, which rules and regulations shall be subject to applicable federal laws and regulations. (1963, c. 380; 1969, c. 546, s. 1; c. 747; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 20.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or the Department of Human Resources" in the second sentence.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Part 4. Financing of Programs of Public Assistance.

§ 108-51. Acceptance of grants-in-aid.

Editor's Note. — Session Laws 1979, c. 702, s. 6, changed the title of Part 4 to its present wording from "Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children."

§ 108-54. Determination of State and county financial participation. — Before March 15 of each year the director of social services for every county shall compile and submit to the county board of social services an estimated budget of total county funds required to finance each program of public assistance, including all administrative expenses, within the county in the next fiscal year on forms furnished by the Department of Human Resources. The county board of social services shall review, modify, and approve such estimated budget and transmit it before April 1 to the board of county commissioners, which shall review, modify and approve it before April 15 for transmittal by said date to the Department of Human Resources. The Department of Human Resources shall review the estimated budget submitted by each county and shall notify the board of county commissioners by June 1 of the approval or disapproval of the county's estimated budget of total county funds necessary to support and administer adequate programs of public assistance.

If the Department of Human Resources approves the estimated budget submitted by the county, and if administrative and program expenditures for that year in the county's aid to families with dependent children, medical

assistance, State-county special assistance for adults, WIN single administrative Unit, WIN day care, and State boarding home fund for foster care programs exceed the approved estimate of administrative and program costs for said programs, or if the administrative expenditures for that year in the county's food stamp program exceed the approved estimate of administrative costs for said program, then the county shall be eligible to borrow the required additional county share from the "State Public Assistance Contingency Fund" established in G.S. 108-54.1.

If the Department of Human Resources disapproves the estimated budget of the county, it shall recommend an appropriate budget of total county funds necessary to sustain and administer adequate programs of public assistance whose acceptance by the board of county commissioners shall be a condition precedent to borrowing any moneys from the "State Public Assistance Contingency Fund" established in G.S. 108-54.1; provided that, if the board of county commissioners disputes the budget recommended by the Department of Human Resources as appropriate to sustain and administer adequate programs of public assistance within that county, the Secretary of Human Resources shall make a final determination that shall be binding upon the county.

Upon final determination of the county budget for all programs of public assistance within that county for the next fiscal year, the board of county commissioners shall levy taxes sufficient to provide for the payment of the county's share of such budget as well as for repayment of any amount borrowed from the "State Public Assistance Contingency Fund." (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1418, s. 1; 1977, c. 1089, s. 1; 1977, 2nd Sess., c. 1219, s. 21.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Department of Human Resources" for "Director of the Division of Social Services, as agent for the Department of Human Resources," in the third sentence of the first paragraph and for "Director of the Division of Social Services" near the beginning of the second paragraph and in two places in the third paragraph. The amendment also substituted "it" for "he" preceding "shall recommend" near the beginning of the third paragraph.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 108-54.1. State Public Assistance Contingency Fund.

(b) Loans shall be made to the counties at any time during the fiscal year by the Department of Human Resources, when satisfied of the county's need for such loan under this Part.

(1977, 2nd Sess., c. 1219, s. 22.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Department of Human Resources" for "Director of the Division of Social Services, as agent for the Department of Human Resources," in subsection (b).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 108-56. Counties to levy taxes. — (a) Whenever the Secretary of Human Resources or his representative assigns a portion of the nonfederal share of public assistance expenses to the counties under the rules and regulations of the Social Services Commission or the Department of Human Resources, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(1977, 2nd Sess., c. 1219, s. 23.)

Editor's Note. —
The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or the Department of Human Resources" in subsection (a).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As subsection (b) was not changed by the amendment, it is not set out.

Part 5. Medical Assistance.

§ 108-59. State fund created. — To provide for an effective medical assistance program and its administration in North Carolina, the Department of Human Resources is authorized and empowered to establish from federal, State and county appropriations a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of such fund in accordance with the provisions of this Part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State. If a portion of the nonfederal share is required from the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this Part, in an amount sufficient to cover each county's share of such assistance. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 24.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Department of Human Resources" for "Social Services Commission" in the first sentence.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Cited in Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

§ 108-60. Payments from fund. — From the fund established in G.S. 108-59, the Department of Human Resources may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments from the fund shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department of Human Resources. Payments may also be made from the fund to such fiscal intermediaries and to such prepaid health service contractors as may be authorized by the Department of Human Resources.

Provided, no payments from the fund shall be made for the care of any person in a nursing home or intermediate care home which is owned or operated in whole or in part by a member of the Social Services Commission, of any county board of social services, or of any board of county commissioners, or by an official or employee of the Department of Human Resources or of any county department of social services or by a spouse of any such person. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1971, c. 435; 1973, c. 476, s. 138; c. 644; 1975, c. 123, ss. 1, 2; 1977, 2nd Sess., c. 1219, c. 25; 1979, c. 702, s. 7.)

Editor's Note. —
The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Department of Human Resources" for "Social Services Commission" in three places.

The 1979 amendment added the second paragraph.

Session Laws 1975, c. 123, s. 4, as amended by Session Laws 1977, c. 537, s. 1, was again amended by Session Laws 1977, 2nd Sess., c. 1219, s. 5, effective July 1, 1978, so as to delete the provision for expiration of the 1975 amendment to this section on December 31, 1979.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 108-61.5. Medicaid fraud. — (a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) Any person who violates a provision of this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment for not more than five years, or both, in the discretion of the court. (1979, c. 510, s. 1.)

Editor's Note. — Sessions Laws 1979, c. 510, s. 3, makes this section effective October 1, 1979.

§ 108-61.6. Protection of patient property. — (a) It shall be unlawful for any person:

(1) To willfully commingle or cause or solicit the commingling of the personal funds or moneys of a recipient resident of a provider health care facility with the funds or moneys of such facility; or

(2) To willfully embezzle, convert, or appropriate or cause or solicit the embezzlement, conversion or appropriation of recipient personal funds or property to his own use or to the use of any provider or other person or entity.

(b) A violation of subdivision (a) (1) of this section shall be a misdemeanor punishable by a fine of not more than two thousand dollars ($2,000) or imprisonment for not more than two years, or both, in the discretion of the court. A violation of subdivision (a) (2) of this section shall be a felony punishable by a fine of not more than five thousand dollars ($5,000) or imprisonment for not more than five years, or both, in the discretion of the court.

(c) For purposes of this Part:

(1) "Health care facility" shall include skilled nursing facilities, intermediate care facilities, rest homes, or any other residential health care facility; and

(2) "Person" includes any natural person, association, consortium, corporation, body politic, partnership, or other group, entity or organization; and

(3) "Recipient" shall include current resident recipients, deceased recipients and recipients who no longer reside at such facility. (1979, c. 510, s. 1.)

Editor's Note. — Session Laws 1979, c. 510, s. 3, makes the section effective October 1, 1979.

§ 108-61.7. Financial responsibility of spouse for long-term care patient. — The income and financial resources of the spouse of a person who is admitted after June 30, 1979, as a long-term care patient in a certified public or private intermediate care or skilled nursing facility shall be counted only for 180 consecutive days in determining eligibility for that person for medical assistance under Article 2, Part 5 of Chapter 108 of the General Statutes, and Title XIX of the Social Security Act. (1979, c. 838, s. 24.)

Editor's Note. — Session Laws 1979, c. 838, s. 123, makes this section effective July 1, 1979.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

An action transmittal from the United States Department of Health, Education and Welfare provides that all states participating in the Medicaid Program under Section 1902(f) of the Social Security Act must "cease deeming income for any length of time between aged, blind, or disabled Medicaid applicants residing in institutions and their spouses." The basis for this directive is an order entered by the United States District Court for the District of Columbia in a case which is currently being appealed, this HEW Action Transmittal implementing the court order is binding and controlling as to North Carolina Medicaid policy and regulations. Therefore this § 108-61.4A may not take effect so long as the aforementioned order stands. See opinion of Attorney General to Dr. Sarah T. Morrow, Secretary of Human Resources, May 30, 1979.

§ 108-61.8. Therapeutic leave for Medicaid patients. — The Department of Human Resources shall provide by regulation that a patient at an intermediate care facility or skilled nursing facility may take up to 18 days of therapeutic leave in any 12-month period without the facility losing reimbursement under Medicaid (Title XIX of the Social Security Act). (1979, c. 925.)

Part 6. State-County Special Assistance for Adults.

§ 108-62. Purpose and eligibility. — (a) Assistance shall be granted under this Part to all persons in domiciliary care needing supplemental payments in accordance with the rules and regulations adopted by the Social Services Commission. Assistance may be granted to certain disabled persons in accordance with the rules and regulations adopted by the Social Services Commission. Nothing in this Part should be interpreted so as to preclude any individual county from operating any program of financial assistance using only county funds.

(b) Assistance shall be granted to any person who:

(1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled;

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and

(3) Is a resident of North Carolina. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 717, s. 1; 1977, 2nd Sess., c. 1252, s. 1; 1979, c. 702, s. 8.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective July 1, 1978, rewrote the first sentence and added the second sentence.

The 1979 amendment designated the former section as subsection (a) and added subsection (b).

§ 108-62.1. Determination of disability. — (a) An applicant between the ages of 18 and 65 seeking assistance under this Part must be found to be permanently and totally disabled as defined in G.S. 106-24(5) [108-24(5)] by a physician or by a medical review board in his county of residence; such physician or board must submit any findings of disability to the county department of social services for transmittal to the Department of Human Resources.

(b) All applications for assistance as a permanently and totally disabled person under this Part shall be reviewed by medical consultants employed by the Department of Human Resources. The final decision on the disability factor shall be made by such medical consultants under rules and regulations adopted by the Social Services Commission. (1979, c. 702, s. 9.)

§ 108-65. Participation. — The State-county special assistance for adults program established by this Part shall be administered by all the county departments of social services under rules and regulations adopted by the Social Services Commission and under the supervision of the Department of Human Resources. Provided that, assistance for certain disabled persons shall be provided solely at the option of the county. (1949, c. 1038, s. 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 6; 1975, c. 92, s. 3; 1977, 2nd Sess., c. 1252, s. 2.)

Editor's Note. —
The 1977, 2nd Sess., amendment, effective July 1, 1978, rewrote the first sentence and added the second sentence.

§ 108-65.1. Transfer of real property for purposes of qualifying for State-county special assistance for adults; periods of ineligibility. — Any person applying for State-county special assistance for adults who has conveyed, transferred or disposed of any real property within one year prior to the date of making application and any person applying for or receiving State-county special assistance for adults who conveys, transfers or disposes of any real property during the application process or during any period of continuing eligibility without receiving consideration equivalent to the latest tax value of said property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes, shall, unless shown to the contrary, be presumed to have made such transfer, conveyance or disposition in order to qualify or continue to qualify for State-county special assistance for adults and shall be ineligible to receive such benefits thereafter until an amount equivalent to the latest tax value of such property shall have been expended by or in behalf of such person for his maintenance need, including needs for medical care, or in accordance with the following schedule, whichever is sooner:

(1) Property tax value of ten thousand dollars ($10,000) or more — three-year period of ineligibility from date of transfer;
(2) Property tax value of less than ten thousand dollars ($10,000) but more than five thousand dollars ($5,000) — two-year period of ineligibility from date of transfer;
(3) Property tax value of five thousand dollars ($5,000) or less but more than one thousand dollars ($1,000) — one-year period of ineligibility from date of transfer.

Any State-county special assistance for adults applicant or recipient shall have a right to appeal, in accordance with the provisions of G.S. 108-44, the decision denying or terminating such assistance. (1979, c. 585, s. 1.)

Editor's Note. — Session Laws 1979, c. 585, s. 2, provides: "This act shall become effective July 1, 1979, and shall only apply to those transfers, conveyances or dispositions made on or after July 1, 1979."

§ 108-65.2. Direct payments for custodial care. — (a) The Department of Human Resources is authorized and empowered to make payments to family care homes, homes for the aged and other domiciliary facilities for persons eligible to receive assistance under this Part when such facilities are found to be essential for such persons by a county department of social services under the pertinent rules and regulations of the Social Services Commission.

(b) The Department of Human Resources is authorized and empowered to utilize funds available to the Department to increase the rates for licensed family care homes, homes for the aged or other domiciliary facilities or payments made for this purpose to persons assigned by the Department to these homes, to offset the increased costs due to any additional increases in minimum wages required by federal or State laws after April 15, 1973. (1979, c. 702, s. 10.)

§ 108-65.3. Limitations on payments. — No payment of public assistance under this Part shall be made for the care of any person in a home for the aged, family care home, or other domiciliary facility which is owned or operated in whole or in part by any of the following:

(1) A member of the Social Services Commission, of any county board of social services, or of any board of county commissioners;
(2) An official or employee of the Department of Human Resources or of any county department of social services;
(3) A spouse of a person designated in subdivisions (1) and (2). (1979, c. 702, s. 10.)

Part 7. Foster Home Fund.

§ 108-66. State Foster Home Fund.

Applied in Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978).

Stated in Vaughn v. Durham County Dep't of Social Servs., 34 N.C. App. 416, 240 S.E.2d 456 (1977); Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Cited in Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

ARTICLE 3.

Inspection and Licensing Authority.

Part 1A. Licensing of Public Solicitation.

§ 108-75.1. Short title.

Provisions of Article Held Unconstitutional. — See Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979). See notes to §§ 108-75.6, 108-75.7, 108-75.18, 108-75.20.

§ 108-75.2. Purpose.

While this Article seeks to protect the public from fraudulent practices in solicitation, less intrusive means are available. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

§ 108-75.3. Definitions.

Applied in Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

§ 108-75.5: Repealed by Session Laws 1979, c. 504, s. 16.

§ 108-75.6. Application for licensing.

Section Violates First and Fourteenth Amendments. — This section and § 108-75.18(4) act as a prior restraint on the exercise of religion and violate the First and Fourteenth Amendments of the United States Constitution. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

§ 108-75.7. Exemption from licensing.

Subdivisions (a)(1), (5), (7) and (8) of this section's exemptions are violative of the equal protection clauses of the United States and North Carolina Constitutions, because they (a) are arbitrary and irrational, (b) impermissibly infringe upon First Amendment freedoms, and (c) discriminate against preferred freedoms of nondenominational religious groups while favoring secular groups. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

The statutory exemptions provided in subdivisions (a)(1), (5), (7), and (8) of this section cannot withstand even the rational basis standard of equal protection analysis. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Subdivision (a)(1) Creates an Establishment of Religion. — Since the effect of subdivision (a)(1) of this section is to require all nondenominational ministries to obtain a license before they may solicit, while the traditional denominational church is exempted from obtaining a license, subdivision (a)(1) of this section creates an establishment of religion and denies equal protection of the laws. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Subdivisions (a)(1) and (5) Are Void for Vagueness. — Subdivisions (a)(1) and (5) of this section, by failing to define "members," forbid or require the doing of an act in terms so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application. The subdivisions are void for vagueness. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

§ 108-75.18. Denial, suspension or revocation of license.

Subdivision (6) Violates First Amendment Freedoms. — The 35 percent limitation on expenditures in subdivision (6) of this section is unduly burdensome and violative of the First Amendment freedoms protected by the United States Constitution. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Subdivisions (2), (3), and (4) of this section are invalid. To hold otherwise would allow the secretary's exercise of his determination to serve as a prior restraint on the exercise of constitutional rights. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

They Constitute an Impermissible Delegation of Legislative Power. — Subdivisions (2), (3), and (4) of this section constitute an impermissible delegation of legislative powers in violation of North Carolina Const., Art. I, § 6 and Art. II, § 1. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Subdivisions (2), (3), and (4) of this section transgress the line of demarcation with regard to the constitutional delegation of legislative power. The legislature leaves to the absolute discretion of the secretary the determination of when a license is to be issued, revoked, or suspended. No adequate guiding standards are provided to control his determinations. This the legislature may not do. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Section 108-75.6 and subdivision (4) of this section act as a prior restraint on the exercise of religion and violate the First and Fourteenth Amendments of the United States Constitution. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Since § 108-75.3(2) defines a "charitable purpose" so as to include a religious purpose, subdivision (4) of this section allows the secretary to withhold his approval of a license if he determines the purpose for which the money is expended is not a religious one. This exercise of discretion constitutes a prior restraint on the exercise of religion and violates the First and Fourteenth Amendments of the United States Constitution and North Carolina Const., Art. I, §§ 13 and 19. Heritage Village Church &

Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

§ 108-75.20. Prohibited acts.

Subdivision (h)(2) of this section serves as a prior restraint in the exercise of First Amendment rights in that a person may be inhibited from soliciting without the State ever proving a previous fraudulent solicitation. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

And Violates the Due Process Clause. — Subdivision (h)(2) of this section violates the due process clause in that it denies the opportunity to solicit on the basis of a permanent and irrebuttable presumption of unfitness when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

The prohibition of in-state solicitation of funds without affording a prior opportunity to be heard as to present fitness to solicit in subdivision (h)(2) of this section creates an irrebuttable presumption in violation of the due process clauses of the United States and North Carolina Constitutions. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

As It Creates Conclusive Presumption of Unfitness. — Subdivision (h)(2) of this section creates a conclusive presumption — that one who has previously been enjoined from soliciting is forever unfit. This presumption is incapable of being overcome by proof of the most positive character. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

The primary effect of subdivision (h)(2) of this section is to prohibit persons from soliciting within North Carolina, if they have ever been enjoined from soliciting in any other state. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Due Process Requirements. — Due process requires at the very least that any person or organization denied a permit on the basis of subdivision (h)(2) of this section be afforded the opportunity to present evidence establishing such person's or organization's fitness to solicit within the State of North Carolina. Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

§ 108-75.22. Enforcement and penalties.

Cited in Heritage Village Church & Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979).

Part 2. Licensing of Institutions.

§ 108-78. Licensing of child-caring institutions.

Editor's Note. —

For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

Quoted in Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Part 3. Local Confinement Facilities.

§ 108-79. Inspection.

Cross Reference. — As to detention of juveniles in holdover facilities inspected pursuant to this part and § 153A-222 where no juvenile detention home is available, see § 7A-576.

ARTICLE 4A.

Protection of the Abused, Neglected, or Exploited Disabled Adult Act.

§ 108-104. Definitions.

(d) The words "disabled adult" shall mean any person 18 years of age or over who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

(i) The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include but not be limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108-106.3 and in Chapter 122 of the General Statutes.

(l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.

(m) The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving the services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the State's hospitals for the mentally ill (Broughton Hospital, Dix Hospital, Cherry Hospital, and Umstead Hospital) or centers for the mentally retarded (Western Carolina Center, Murdoch Center, Caswell Center, and O'Berry Center), he is, in the opinion of the professional staff of that hospital or center, mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 33, Chapter 35, or guardian as defined in G.S. 122-36(n), and he needs medical treatment.

(1979, c. 1044, ss. 1-4.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "or autism" near the middle of subsection (d), inserted "psychological" near the middle of the first sentence of subsection (i), inserted "or mental health" near the end of the first sentence of subsection (l), substituted "or" for "and" following "mental" near the end of the first sentence of subsection (m) and added the second sentence of subsection (m).

As only subsections (d), (i), (l) and (m) were changed by the amendment, the other subsections are not set out.

§ 108-106.2. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual

or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate; for good cause shown, the court may extend the 60-day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate. No disabled adult may be committed to a mental health facility under this Article. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3; 1979, c. 1044, s. 5.)

Editor's Note. —

Subsection (c) of this section is set out to correct an error in the 1978 replacement volume.

The 1979 amendment, effective July 1, 1979, substituted everything after the first "G.S." in the third sentence of subsection (c) for "33-7 or, if applicable, Article 1A, Chapter 35."

As the rest of the section was not affected, only subsection (c) is set out.

Chapter 110.

Child Welfare.

ARTICLE 1.

Child Labor Regulations.

§§ 110-1 to 110-20: Repealed by Session Laws 1979, c. 839, s. 2.

Editor's Note. — Repealed §§ 110-1 and 110-9 were amended by Session Laws 1979, c. 657, so as to exempt from those sections minors serving or seeking employment as pages in the General Assembly.

Cross Reference. — For present provisions as to youth employment, see §§ 95-25.5, 95-25.23.

ARTICLE 2.

Juvenile Services.

§ 110-22: Repealed by Session Laws 1979, c. 815, s. 2, effective January 1, 1980.

Cross Reference. — For present provisions as to conditional release and revocation of conditional release of juveniles, see §§ 7A-655 and 7A-656, and 7A-657.

§ 110-23.1: Repealed by Session Laws 1979, c. 815, s. 2, effective January 1, 1980.

Cross Reference. — As to the North Carolina Juvenile Code, see §§ 7A-516 through 7A-732.

§ 110-24: Repealed by Session Laws 1979, c. 815, s. 2, effective January 1, 1980.

Cross Reference. — For present provisions as to the requirements for taking juveniles into custody, see §§ 7A-571 through 7A-578.

ARTICLE 5.

Interstate Compact on Juveniles.

§§ 110-58 to 110-64: Repealed by Session Laws 1979, c. 815, s. 2, effective January 1, 1980.

Cross Reference. — As to the Interstate Compact on Juveniles, see §§ 7A-684 through 7A-711.

ARTICLE 5A.

Interstate Parole and Probation Hearing Procedures for Juveniles.

§§ 110-64.6 to 110-64.9: Repealed by Session Laws 1979, c. 815, s. 2, effective January 1, 1980.

Cross Reference. — For present provisions as to interstate parole and probation hearing procedures for juveniles, see §§ 7A-706 through 7A-709.

ARTICLE 7.

Day-Care Facilities.

§ 110-86. Definitions.

Editor's Note. —
For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

§ 110-90.1. Qualification for staff in a day-care plan.

Editor's Note. — For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

§ 110-91. Mandatory standards for a license. — The following standards relating to the health and safety of children shall be complied with by all day-care facilities, except as otherwise provided in this Article. These standards shall be the only required standards for issuance of a license by the Secretary of Administration under policies and procedures of the Commission.

(7) Staff-Child Ratio. — In determining the staff-child ratio, children of the supervisor or other children under 13 years of age shall be included. The Commission shall adopt rules and regulations regarding staff-child ratio, provided, however, that such rules and regulations shall in no event require a ratio of staff members to children more stringent than the following:

a. For day-care facilities caring for less than 30 children, the ratios shall be as follows:

1. In facilities licensed for six to 10 children, inclusive, one full-time supervising adult with another person who is at least 16 years of age available for emergencies in relief.
2. In facilities licensed for 11 to 20 children, inclusive, there must be one full-time supervising adult and one full-time staff member, one of whom may have responsibility for food preparation.
3. In facilities licensed for 21 to 29 children, inclusive, there must be one full-time supervising adult and two full-time staff members, one of whom may have responsibility for food preparation.

b. For facilities caring for 30 or more children, the ratio shall be as follows:

Ages of Children	*No. of Children*	*Staff Members*
0 to 2 years	8	1
2 to 3 years	12	1
3 to 4 years	15	1
4 to 5 years	20	1
5 or more years	25	1

1. Children under two years of age in any facility must be kept separate from older children, and with a full-time adult always in attendance.
2. Staff members required to be responsible for the care of children shall not have responsibility for food preparation.

c. To provide for absenteeism and withdrawals without notice, a 20 percent (20%) tolerance shall be allowed as to groups and numbers of children specified in this section and as to the total number for which the facility is licensed, except that no more than 25 children shall be attended by one staff member.

d. Each facility may care for school age children in after-school hours up to 20 percent (20%) in excess of the number for which it is licensed. However, if there are more than 10 after-school-hour children, an additional staff member must be present to supervise them during their hours at the facility, and there shall be no more than 25 of these children in the care of any one staff member.

(8) Qualifications for Staff. — Each day-care facility shall be under the direction or supervision of a literate person at least 21 years of age. Each staff member employed in a day-care facility supervising children shall be not less than 16 years of age. No person shall be an operator of nor be employed in a day-care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally retarded or mentally ill to an extent that may be injurious to children.

(1971, c. 803, s. 1; 1973, c. 476, s. 128; 1975, c. 879, s. 15; 1977, c. 1011, s. 4; c. 1104; 1979, c. 9, ss. 1, 2.)

Editor's Note. —
The 1979 amendment substituted "who is at least 16 years of age" for "between the ages of 16 and 70 years, inclusive," in paragraph a1 of subdivision (7), and deleted "nor more than 70 years of age" at the end of the second sentence in subdivision (8).

As only subdivisions (7) and (8) were changed by the amendment, the rest of the section is not set out.

§ 110-102. Information for parents.

Editor's Note. —
For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

§ 110-104. Injunctive relief.

Editor's Note. —
For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

ARTICLE 8.

Child Abuse and Neglect.

§§ 110-115 to 110-123: Repealed by Session Laws 1979, ch. 815, s. 2, effective January 1, 1980.

Cross Reference. — For present provisions as to the screening of abuse and neglect complaints, see §§ 7A-542 through 7A-552.

ARTICLE 9.

Child Support.

§ 110-128. Purposes. — The purposes of this Article are to provide for the financial support of dependent children; to provide that public assistance paid to dependent children is a supplement to the support required to be provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support and to provide for the establishment and administration of a program of child support enforcement in North Carolina. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 1.)

Editor's Note. — The 1977, 2nd Sess., amendment substituted "dependent" for "needy" preceding "children" the second time that word appears in this section, inserted "required to be" following "support" near the beginning of the section and added at the end of the section "and to provide for the establishment and administration of a program of child support enforcement in North Carolina."

This Article Provides Statutory Basis for North Carolina Child Support Enforcement Program. — See opinion of Attorney General to Jean Prewitt Bost, Supervisor, Mecklenburg-Union Counties Child Support Enforcement Unit, 47 N.C.A.G. 45 (1977).

§ 110-129. Definitions. — As used in this Article:

(3) "Responsible parent" means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of an illegitimate child.

(4) "Program" means the Child Support Enforcement Program established and administered pursuant to the provisions of this Article and Title IV-D of the Social Security Act.

(5) "Designated representative" means any person or agency designated by a board of county commissioners or the Department of Human Resources to administer a program of child support enforcement for a county or region of the State. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 2, 3.)

Editor's Note. — The 1977, 2nd Sess., amendment deleted, at the end of subdivision (3), "if paternity has been established in a judicial proceeding or if he has acknowledged paternity in open court or by verified written statement," and added subdivisions (4) and (5).

As subdivisions (1) and (2) were not changed by the amendment, they are not set out.

§ 110-130. Action by the designated representatives of the county commissioners. — Any county interested in the paternity and/or support of a dependent child may, if the mother, custodian, or guardian of the child neglects to bring such action, institute civil or criminal proceedings against the responsible parent of the child and may take up and pursue any action commenced by the mother, custodian or guardian for the maintenance of the child, including any ancillary action to establish paternity, if she fails to prosecute to final judgment. Such action shall be undertaken by the designated representative in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 4.)

Editor's Note. — The 1977, 2nd Sess., amendment inserted "or criminal" near the middle of the first sentence and deleted "of the county commissioners" following "representative" near the beginning of the second sentence.

§ 110-132. Acknowledgment of paternity and agreement to support. — (a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a written agreement to support said child by periodic payments, which may include provision for

reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with, and approved by a judge of the district court, at any time, shall have the same force and effect, retroactively or prospectively, in accordance with the terms of said agreement, as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the district court of an acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 5, 6.)

Editor's Note. — The 1977, 2nd Sess., amendment substituted "certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made" for "clerk or assistant clerk of superior court" in the first sentence of subsection (a), and, in subsection (b), deleted the former second sentence, relating to the case of a child who upon reaching the age of eighteen years is mentally or physically incapable of self-support, and the former fourth sentence, which read "All such payments shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources."

§ 110-133. Agreements of support. — In lieu of or in conclusion of any legal proceeding instituted to obtain support for a dependent child from the responsible parent, a written agreement to support said child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 7.)

Editor's Note. — The 1977, 2nd Sess., amendment substituted "certifying officer or notary public or the equivalent or corresponding person of the state, territory or foreign country where the acknowledgment is made" for "clerk or assistant clerk of superior court" near the middle of the section, and deleted the former second sentence, which read "Payments under such agreement shall be made through the clerk of superior court and in those cases of dependent

children receiving public assistance shall be directed to the North Carolina Department of Human Resources."

The filing fee for a voluntary support agreement set up under this section is $4.00.

Opinion of Attorney General to Mr. J. Donald Chappell, Controller, Administrative Office of the Courts, Fiscal Management Division, 47 N.C.A.G. 93 (1977).

§ 110-134. Filing of affirmations, acknowledgments, agreements and orders; fees. — All affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be four dollars ($4.00). (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 8.)

Editor's Note. — The 1977, 2nd Sess., amendment rewrote this section.

§ 110-135. Debt to State created. — Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 9, 10.)

Editor's Note. — The 1977, 2nd Sess., amendment rewrote the first paragraph and inserted "or an attorney retained by the county and/or State" in the second sentence of the last paragraph.

§ 110-136. Garnishment for enforcement of child-support obligation. — (a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or in found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than forty percent (40%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension or retirement program) which remains after the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer in accordance with the provisions of G.S. 1A-1, Rules of Civil Procedure. The time period for answering or otherwise responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure, except that the alleged employer third-party garnishee shall have 10 days from the date of service of process to answer both the motion to join him as a defendant garnishee and the motion for the wage garnishment order.

(b1) In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may in an independent proceeding petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the alleged-employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based on information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(1977, 2nd Sess., c. 1186, ss. 11, 12; 1979, c. 386, ss. 1-8.)

Editor's Note. — The 1977, 2nd Sess., amendment substituted "twenty-five percent (25%)" for "twenty percent (20%)" in the first sentence of subsection (a) and in the second sentences of subsections (b) and (c) and substituted "designated representative" for "county" in the first sentence of subsection (b).

The 1979 amendment substituted "forty percent (40%)" for "25 percent (25%)" in the first sentence of subsection (a), rewrote subsections (b) and (c), and added subsection (b1).

As subsections (d) and (e) were not changed by the amendment, they are not set out.

For note on the remedy of garnishment in child support, see 56 N.C.L. Rev. 169 (1978).

Section Does Not Authorize Garnishment of Wages for Alimony. — The exception in the case of child support to the long-standing prohibition

against garnishment of wages has not been extended to allow garnishment of wages for alimony. Phillips v. Phillips, 34 N.C. App. 612, 239 S.E.2d 743 (1977).

This section does not alter the long-standing rule prohibiting the garnishment of prospective wages for the nonpayment of alimony and other debts. Elmwood v. Elmwood, 34 N.C. App. 652, 241 S.E.2d 693 (1977).

The phrase, "notwithstanding any other provision of the law," would include the exemption provision of § 1-362. Elmwood v. Elmwood, 295 N.C. 168, 244 S.E.2d 668 (1978).

Military retirement pay is the equivalent of active duty pay for purposes of garnishment, and active duty pay clearly constitutes wages not subject to garnishment for alimony under North Carolina law. Phillips v. Phillips, 34 N.C. App. 612, 239 S.E.2d 743 (1977); Elmwood v. Elmwood, 34 N.C. App. 652, 241 S.E.2d 693 (1977).

And Is Subject to Garnishment for Child Support. — Defendant's military retirement pay for future pay periods was not subject to garnishment except to the extent of 20% thereof for child support pursuant to this section. Elmwood v. Elmwood, 295 N.C. 168, 244 S.E.2d 668 (1978) (decided prior to 1977 amentment).

Subsection (c) Contemplates Continuing Order Reaching Future Earnings. — Subsection (c) seems clearly to contemplate the entry of a continuing order of garnishment to enforce a child support order reaching earnings for future pay periods, thus changing the former law of this State, with reference to the garnishment of, as yet, unaccrued wages. The liability of the garnishee under such an order would, as to future pay periods, be contingent upon the actual accrual of the defendant employee's earnings in such future pay period. Elmwood v. Elmwood, 295 N.C. 168, 244 S.E.2d 668 (1978).

§ 110-137. Acceptance of public assistance constitutes assignment of support rights to the State or county. — By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State or to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The State or county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 13.)

Editor's Note. — The 1977, 2nd Sess., amendment inserted "to the State or" near the middle of the first sentence and "State or" near the beginning of the second sentence.

§ 110-138. Duty of county to obtain support. — Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall without delay notify the designated representative who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 14.)

Editor's Note. — The 1977, 2nd Sess., amendment inserted "without delay" and deleted "of the county commissioners" following "representative" near the end of the section.

§ 110-139. Location of absent parents. — The Department of Human Resources shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or

agency in providing information necessary for the location of absent parents.

In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. All nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 15.)

Editor's Note. — The 1977, 2nd Sess., amendment inserted "nonjudicial" near the beginning of the last sentence of the second paragraph.

Public Officials to Furnish Otherwise Confidential Information Concerning Employees. — State, county, and city officials having custody of personnel records of their respective employees (both past and present) must furnish otherwise confidential locational information concerning these employees to the Department of Human Resources when, at the request of a designated local child support enforcement program representative, the Department is fulfilling its obligations under this section to locate responsible parents for purposes of establishing and enforcing their child support obligations as levied by Article 9, Chapter 110. See opinion of Attorney General to Mr. Philip Powell, Personnel Director, N.C. Department of Agriculture, Raleigh, N.C., 48 N.C.A.G. 2 (1979).

§ 110-141. Effectuation of intent of Article. — The North Carolina Department of Human Resources shall supervise the administration of this program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

In the event that a board of county commissioners does not desire to continue to administer the program it may only so notify the Department of Human Resources between July 1 and September 30 of the current fiscal year. The obligation of the Department to assume responsibility for the administration of the program in that county shall not commence prior to July 1 of the subsequent fiscal year. Until that time, it shall be the responsibility of the board of county commissioners to administer or provide for the administration of the program in the county. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 16; 1979, c. 488.)

Editor's Note. — The 1977, 2nd Sess., amendment deleted the former second sentence, which read "The Department of Human Resources and a county may negotiate alternative arrangements to the procedure as outlined in G.S. 110-130 for designating a local agency to administer the provisions of this Article in said county," and added the second paragraph.

The 1979 amendment rewrote the second paragraph.

Chapter 111.

Aid to the Blind.

Article 2.

Aid to the Needy Blind.

Sec.

ARTICLE 1.

General Duties of Department of Human Resources.

§ 111-11. Definition of visually handicapped person.

Quoted in Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

ARTICLE 2.

Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations.

Cited in Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

§ 111-18.1. Award and assistance checks payable to decedents. — (a) In the event of the death of a recipient of an award made pursuant to G.S. 111-18 during or after the first day of the month for which the award was authorized to be paid, any check or checks in payment of such award made payable to the deceased recipient and not endorsed prior to the payee's death shall be delivered to the clerk of the superior court and be by him administered under the provisions of G.S. 28A-25-6.

(b) In the event of the death of a recipient of a cash payment service, as defined by regulation of the N. C. Commission for the Blind, which service was rendered as a part of a program of public assistance for the blind or visually handicapped, any check or checks issued for the payment of such service made payable to such recipient, but not endorsed prior to his death, shall be returned to the issuing agency and made void. The issuing agency shall then issue a check payable to the provider of such service for the sum remaining due for this service, not to exceed the amount of said returned and voided check or checks. (1979, c. 762, s. 2.)

Editor's Note. — Session Laws 1979, c. 762, s. 3, makes this section effective July 1, 1979.

Chapter 112.

Confederate Homes and Pensions.

Article 1.

Confederate Woman's Home.

Sec.
112-1. Incorporation and powers of Association.

ARTICLE 1.

Confederate Woman's Home.

§ 112-1. Incorporation and powers of Association. — Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until July 1, 1984. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222; 1969, c. 116; 1979, c. 513.)

Editor's Note. — The 1979 amendment substituted "January 1, 1984" for "January 1, 1980" at the end of the second sentence of the second paragraph.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1979

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1979 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina