THE GENERAL STATUTES OF NORTH CAROLINA

1987 CUMULATIVE 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 I

Chapters 106 to 112

Annotated through 356 S.E.2d 26. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Replacement Volume 3A, Part I contains the general laws of a permanent nature enacted by the General Assembly since publication of the replacement volume through the 1987 Regular Session which are within the scope of such volume, and brings to date the annotations included therein.

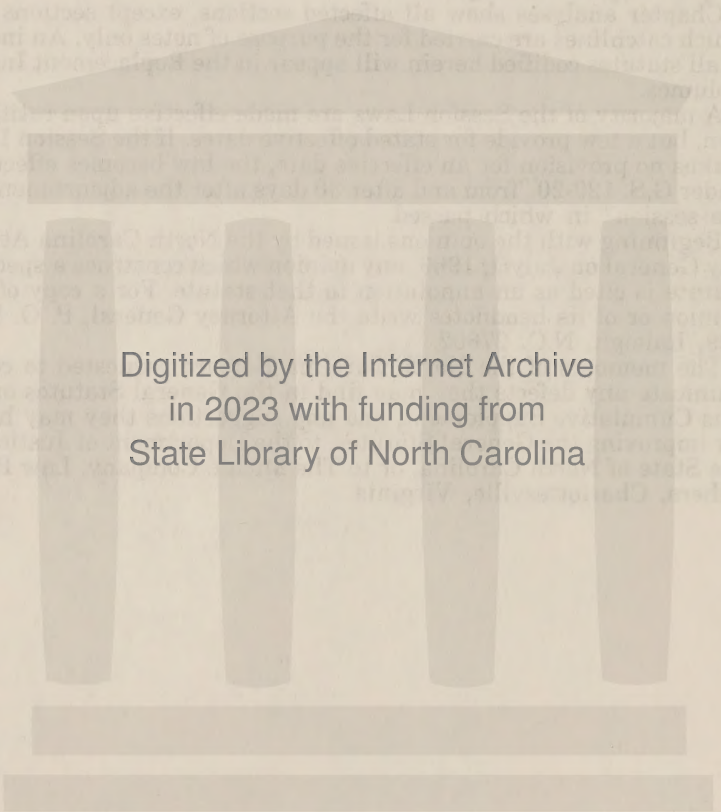
Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

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.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is 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 Cumulative 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 by the General Assembly through the 1987 Regular Session 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 319, p. 464.
North Carolina Court of Appeals Reports through Volume 85, p. 173.
South Eastern Reporter 2nd Series through Volume 356, p. 26.
Federal Reporter 2nd Series through Volume 817, p. 761.
Federal Supplement through Volume 658, p. 304.
Federal Rules Decisions through Volume 115, p. 78.
Bankruptcy Reports through Volume 72, p. 618.
Supreme Court Reporter through Volume 107, p. 2210.
North Carolina Law Review through Volume 65, p. 847.
Wake Forest Law Review through Volume 22, p. 424.
Campbell Law Review through Volume 9, p. 206.
Duke Law Journal through 1987, p. 190.
North Carolina Central Law Journal through Volume 16, p. 222.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.

The General Statutes of North Carolina
1987 Cumulative Supplement

VOLUME 3A, PART I

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Article 1.

Department of Agriculture.

Part 1. Board of Agriculture.

§ 106-6.1. Fees not to exceed actual cost.

Fees or charges established by any board or commission within the Department of Agriculture for services rendered or for duties performed shall not exceed the actual cost to the Department of rendering such service or performing such duty. As used herein, "cost" shall mean expenses incurred for mileage, subsistence, postage, computer time, salaries, materials, supplies, or other similar expenses which are incurred as a direct result of rendering the service or performing the duty. As used herein, "cost" shall not include fixed overhead expenses such as buildings, equipment, machinery, or other similar expenses which are indirectly related to a particular service or duty. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture. (1981, c. 495, s. 10; 1987, c. 827, s. 25.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, added the last sentence.

Part 2. Commissioner of Agriculture.

§ 106-11. Salary of Commissioner of Agriculture.

The salary of the Commissioner of Agriculture shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4; 1967, c. 1130; c. 1237, s. 4; 1969, c. 1214, s. 4; 1971, c. 912, s. 4; 1973, c. 778, s. 4; 1975, 2nd Sess., c. 983, s. 19; 1977, c. 802, s. 42.10; 1983, c. 761, s. 208; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

Editor's Note. —

Session Laws 1987, c. 738, which added the second sentence, provides in s. 32(d): "This section shall only effect [sic] longevity payments on and after July 1, 1987."

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Session Laws 1983, c. 761, s. 259 and Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 contain severability clauses.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, deleted "the same as for superior court judges as" following "shall be."

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted

reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

The 1987 amendment, effective July 1, 1987, added the second sentence.

Part 3. Powers and Duties of Department and Board.

§ 106-20: Repealed by Session Laws 1987, c. 244, s. 1(a), effective June 2, 1987.

§ 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.

§ 106-21.2. Food Bank information and referral service.

The Department of Agriculture may maintain an information and referral service for persons and organizations that have notified the department of their desire to donate food to a nonprofit organization or a nonprofit corporation. (1979, 2nd Sess., c. 1188, s. 2.)

§ 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.

(17) Agronomic Testing. — Provide agronomic testing services and charge reasonable fees for plant analysis and nematode testing. (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; 1981, c. 495, s. 9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1979 amendment added subdivision (16).

The 1981 amendment added subdivision (17).

Legal Periodicals. — For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

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.)

Effect of Amendments. — 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 1B.

State Farm Operations Commission.

§ 106-26.13. Recreation of State Farm Operations Commission.

There is hereby recreated a State Farm Operations Commission within the Department of Agriculture. The Commission shall consist of two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate in accordance with G.S. 120-121, and the following ex officio members or their designees: a member of the Board of Agriculture appointed by the Commissioner of Agriculture; the Dean of the School of Agriculture and Life Sciences of North Carolina State University; the Dean of the School of Forest Resources of North Carolina State University; the Secretary of Human Resources; and the Secretary of Correction. The two members appointed by the

General Assembly shall be farmers whose principal residence is on a farm, whose principal occupation is farming or farm operations, and whose principal source of income is from farming or farm operations. The initial members appointed to the Commission by the General Assembly shall serve for terms expiring June 30, 1983; thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. (1977, c. 1122, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 47.)

Effect of Amendments. — The 1981 (Reg. Sess., 1982) amendment (the Separation of Powers Act of 1982) rewrote this section to the extent that a detailed comparison is not possible.

§ 106-26.20. Use of products.

The Department of Human Resources shall have priority on those food products and services produced by the State farm operations program which are deemed essential to their institutional needs. The value of such food products and services provided by the State farm operations program shall be based on mutually negotiated agreements between the Commission and the respective agencies. To the extent food products are available from the State farm operations program, the Department of Human Resources and other State agencies shall use such products, unless provided by other state-owned farm operations. In event of a dispute between departments, the Governor shall determine the forms of such agreement and method of payment, either by cash or book transfer. Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission. (1977, c. 1122, s. 8; 1983, c. 717, s. 21; 1985 (Reg. Sess., 1986), c. 955, ss. 9, 10.)

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Section 1 of the Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "This act may be cited as the Separation of Powers Act of 1986."

Section 127 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "If any part of this act shall be declared invalid by any court, this shall not affect any other part of this act."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, substituted "after consultation with the Advisory Budget Commission" for "and Advisory Budget Commission" in the last sentence.

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted "after consultation with the Advisory Budget Commission" following "Governor" in the next-to-last sentence and added the last sentence.

Article 3.

Fertilizer Laboratories.

§ 106-51: Repealed by Session Laws 1987, c. 244, s. 1(b), effective June 2, 1987.

Article 4C.

Structural Pest Control Act.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-65.23. Structural Pest Control Division of Department of Agriculture recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.

There is hereby recreated, within the North Carolina Department of Agriculture, a Division thereof, to be known as the Structural Pest Control Division of said Department. The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of five members. The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice from the entomology faculty of said University to serve on said Committee at the pleasure of the dean. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A mem-

ber of the Committee appointed by the Governor shall not succeed himself.

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Three members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without three votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that three members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

All members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1057, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1; 1975, c. 570, ss. 1, 2; 1977, c. 231, s. 2; 1987, c. 827, s. 26.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the third paragraph.

§ 106-65.28. Revocation or suspension of license or identification card.

(a) Any license or certified applicator's identification card or operator's identification card may be denied, revoked or suspended by a majority vote of the Committee for any one or more of the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.

(2) Failure of the licensee or certified applicator to give the Committee, the Commissioner, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.

(3) Failure of the license holder [or] certified applicator to make registrations herein required or failure to pay the registration fees.

(4) Any misrepresentation in the application for a license or certified applicator's identification card or operator's identification card.
(5) Willful violation of any rule or regulation adopted pursuant to this Article.
(6) Aiding or abetting a licensed or unlicensed person or a certified applicator or a noncertified person to evade the provisions of this Article, combining or conspiring with such a licensed or unlicensed person or a certified applicator or noncertified person to evade the provisions of this Article, or allowing one's license or certified applicator's identification card or operator's identification card to be used by an unlicensed or noncertified person.
(7) Impersonating any State, county or city inspector or official.
(8) Storing or disposing of containers or pesticides by means other than those prescribed on the label or adopted regulations.
(9) Using any registered pesticide in a manner inconsistent with its labeling.
(10) Payment, or the offer to pay, by any licensee to any party to a real estate transaction of any commission, bonus, rebate, or other thing of value as compensation or inducement for the referral to such licensee of structural pest control work arising out of such transaction.
(11) Falsification of records required to be kept by this Article or the rules and regulations of the Committee.

(1955, c. 1017; 1967, c. 1184, s. 7; 1973, c. 556, ss. 7, 8; 1975, c. 19, s. 30; c. 570, ss. 8-13; 1977, c. 231, ss. 7-9; 1987, c. 827, s. 27.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "after notice and hearing as provided in G.S. 106-65.32" following "the Committee" in the introductory language of subsection (a).

§ 106-65.29. Rules and regulations.

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee is hereby authorized and empowered to make rules and regulations with respect to:

(1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for an operator's identification card.
(2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.
(3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.
(4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.
(5) The business records to be made and maintained by licensees and certified applicators under this Article neces-

sary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.

(6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.

(7) Safety methods and procedures for structural pest control work.

(8) Fees for reinspection following a finding of a discrepancy, as defined by the Committee.

(9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund. (1955, c. 1017; 1967, c. 1184, s. 8; 1975, c. 570, s. 14; 1977, c. 231, s. 9; 1981, c. 495, s. 3; 1987, c. 368, s. 2; c. 827, s. 28.)

Effect of Amendments. — The 1981 amendment added subdivision (8).

Session Laws 1987, c. 368, s. 2, effective July 1, 1987, added "and the amount and kind of training required of an applicant for an operator's identification card" at the end of subdivision (1), and added new subdivision (9).

Session Laws 1987, c. 827, s. 28, effective August 13, 1987, deleted the last sentence, which read "Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees and certified applicators."

§ 106-65.31. Annual certified applicator card and license fee; registration of servicemen, salesmen, solicitors, and estimators; identification cards.

(a) Certified Applicator's Card. — The fee for issuance or renewal of a certified applicator's identification card for any one phase or more of structural pest control, as the same is defined in G.S. 106-65.25, shall be thirty dollars ($30.00). Certified applicator's identification cards shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their certified applicator's identification card issued under the provisions of this Article on or before June 30 of each year in which they hold a valid certified applicator's identification card but make application before October 1 of that year shall be renewed without the applicant having to be reexamined unless under the provisions of this Article the applicant is scheduled for periodic reexamination (G.S. 106-65.27(e)(2) [106-65.27(d)(3)]). All applicants submitting applications for the renewal of their certified applicator's identification cards after June 30 and before October 1 of that year shall (i) not use or supervise the use of any restricted use pesticides after June 30 of that year until he has been issued a valid certified applicator's identification card and (ii) pay, in addition to the annual certification fee, the sum of five dollars ($5.00) for each phase of structural pest control in which he is applying for certification before his certified applicator's identification card is renewed. Any certified applicator whose employment is terminated with a licensee or agent prior to the end of said license year may at any

time prior to the end of said license year be reissued a certified applicator's identification card for the remainder of the license year as an employee of another licensee or agency or as an individual for a fee of five dollars ($5.00).

Any certified applicator whose identification card is lost or destroyed may secure a duplicate identification card for a fee of five dollars ($5.00).

The fees for a certified applicator's identification shall not apply to agents or agencies of the federal, State, or local governments.

(c) Notwithstanding any other provision of this law, the Committee may adopt rules to provide for the issuance of licenses, certified applicator's cards, and operator's identification cards with staggered expiration dates and may prorate renewal fees on a monthly basis to implement such rules. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10; 1973, c. 47, s. 2; c. 556, s. 10; 1975, c. 570, s. 16; 1981, c. 495, s. 2; 1987, c. 368, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1981 amendment added the last sentence of the first paragraph of subsection (a).

The 1987 amendment, effective July 1, 1987, added subsection (c).

§ 106-65.32. Administrative Procedure Act applicable.

A denial, suspension, or revocation of a license, certified applicator card, or identification card under this Article shall be made in accordance with Chapter 150B of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11; 1973, c. 556, s. 11; 1975, c. 570, s. 17; 1987, c. 827, s. 29.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote this section.

§ 106-65.39. Judicial enforcement.

The commissioner may apply to either the superior or district court for an injunction to prevent and restrain violations of this Article and the rules and regulations adopted under this Article, provided however, that the district court shall have original jurisdiction to hear and determine alleged misdemeanor violations of the Article and the rules and regulations of the committee. (1977, c. 231, s. 13; 1981, c. 836.)

Effect of Amendments. — The 1981 amendment substituted the present provisions for the former section which read: "The superior court is vested with jurisdiction specifically to enforce and to prevent and restrain violations of this Article and shall have jurisdiction in all other cases arising under this Article."

§ 106-65.40. City privilege license tax prohibited.

A city, as defined in G.S. 160A-1(2), may not levy a privilege license tax on persons engaged in a business licensed under this Article. (1983, c. 193.)

Editor's Note. — Session Laws 1983, c. 193, s. 2, makes this section effective July 1, 1983.

§ 106-65.41. Civil penalties.

A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (11). In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt. (1987, c. 368, s. 1.)

Editor's Note. — Session Laws 1987, c. 368, s. 4 makes this section effective October 1, 1987.

Article 4F.

Uniform Boll Weevil Eradication Act.

§§ 106-65.79 to 106-65.83: Reserved for future codification purposes.

Article 4G.

Official Cotton Growers' Organization.

§ 106-65.84. Findings and purpose.

The General Assembly of North Carolina finds that due to the interstate nature of boll weevil infestation, it is necessary to secure the cooperation of cotton growers, other State governments and agencies of the federal government, in order to carry out a program of boll weevil suppression and eradication. The purpose of this Article is to provide for the certification of a cotton growers' organization to cooperate with State and federal agencies in the administration of cost-sharing programs for the eradication and suppression of the boll weevil (Anthonomus grandis Boheman) and other cotton pests. (1983, c. 136, s. 1.)

Editor's Note. — Session Laws 1983, c. 136, s. 9, makes this Article effective upon ratification. The act was ratified on Apr. 4, 1983.

§ 106-65.85. Definitions.

As used in this Article:

(1) "Board" means the North Carolina Board of Agriculture.

(2) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(3) "Cotton grower" means any person who is engaged in and has an economic risk in the business of producing or causing to be produced, for market, cotton.

(4) "Department" means the North Carolina Department of Agriculture. (1983, c. 136, s. 2.)

§ 106-65.86. Certification by Board; requirements.

(a) The Board may certify a cotton growers' organization for the purpose of entering into agreements with the State of North Carolina, other states, the federal government and other parties as may be necessary to carry out the purposes of this Article.

(b) In order to be eligible for certification by the Board, the cotton growers' organization must demonstrate to the satisfaction of the Board that:

(1) It is a nonprofit organization and could qualify as a tax-exempt organization under section 501(a) of the Internal Revenue Code of 1954 (26 USC 501(a));

(2) Membership in the organization shall be open to all cotton growers in this State;

(3) The organization shall have only one class of members with each member entitled to only one vote;

(4) The organization's board of directors shall be composed of:

a. Two cotton growers from this State being appointed by the Commissioner, with the consent of the Board; and

b. One representative of State government from this State, appointed by the Commissioner, with the consent of the Board.

(5) All books and records of account and minutes of proceedings of the organization shall be available for inspection or audit by the Commissioner or his representative at any reasonable time; and

(6) Employees or agents of the growers' organization who handle funds of the organization shall be adequately bonded. (1983, c. 136, s. 3.)

§ 106-65.87. Certification; revocation.

(a) Upon determination by the Board that the organization meets the requirements of the preceding section, the Board shall certify the organization as the official cotton growers' organization. Such certification shall be for the purposes of this Article only, and shall not affect other organizations or associations of cotton growers established for other purposes.

(b) The Board shall certify only one such organization; provided, that the Board may revoke the certification of the organization if at

any time the organization shall fail to meet the requirements of this Article. (1983, c. 136, s. 4.)

§ 106-65.88. Referendum; assessments.

(a) At the request of the certified organization, the Board shall authorize a referendum among cotton growers upon the question of whether an assessment shall be levied upon cotton growers in the State to offset, in whole or in part, the cost of boll weevil or other cotton pest eradication and suppression programs authorized by this Article or by any other law of this State.

(b) The assessment levied under this Article shall be based upon the number of acres of cotton planted. The amount of the assessment, the period of time for which it shall be levied, and the geographical area to be covered by the assessment shall be determined by the Board.

(c) All affected cotton growers shall be entitled to vote in any such referendum and the Board shall determine any questions of eligibility to vote.

(d) If at least two-thirds of those voting vote in favor of the assessment, then the assessment shall be collected by the Department from the affected cotton growers.

(e) The assessments collected by the Department under this Article shall be promptly remitted to the certified organization under such terms and conditions as the Commissioner shall deem necessary to ensure that such assessments are used in a sound program of eradication or suppression of the boll weevil or other cotton pests.

(f) The certified organization shall provide to the Department an annual audit of its accounts performed by a certified public accountant.

(g) For the purposes of the Executive Budget Act, G.S. 143-1 et seq., the assessments collected by the Department under this Article shall not be "State funds." (1983, c. 136, s. 5.)

§ 106-65.89. Agreements.

The Board may authorize the Department to enter into agreements with the certified organization, other state governments, the federal government and individual cotton growers as may be necessary to carry out the purposes of this Article. (1983, c. 136, s. 6.)

§ 106-65.90. Failure to pay assessments.

(a) A cotton grower who fails to pay, when due and upon reasonable notice, any assessment levied under this Article, shall be subject to a penalty of not more than twenty-five dollars ($25.00) per acre, as established in the Board's regulations.

(b) A cotton grower who fails to pay all assessments, including penalties, within 30 days of notice of penalty, shall destroy any cotton plants growing on his acreage which is subject to the assessment. Any such cotton plants which are not destroyed shall be deemed to be a public nuisance. The Commissioner may apply to a court of competent jurisdiction to abate and prevent such nuisance. Upon judgment and order of the court, such nuisance shall be condemned and destroyed in the manner directed by the court. The

grower shall be liable for all court costs and fees, and other proper expenses incurred in the enforcement of this section.

(c) In addition to any other remedies for the collection of assessments, including penalties, the Department of Agriculture has a lien upon cotton subject to such assessments. Provided, that any buyer of cotton shall take free of such lien if he has not received written notice of the lien from the Department or if he has paid for such cotton by a check in which the Department is named as joint payee. In any action to enforce the lien, the burden shall be upon the Department to prove that the buyer of cotton received written notice of the lien. A buyer of cotton other than a person buying cotton from the grower takes free of the lien created herein. (1983, c. 136, s. 7; 1987, c. 293.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, added subsection (c).

§ 106-65.91. Regulations.

The Board of Agriculture may adopt such regulations as are necessary to carry out the purposes of this Article. (1983, c. 136, s. 8.)

Article 5.

Seed Cotton and Peanuts.

§§ 106-66, 106-67: Repealed by Session Laws 1987, c. 244, s. 1(c), effective June 2, 1987.

Article 5A.

Marketing of Farmers Stock Peanuts.

§§ 106-67.1 to 106-67.8: Repealed by Session Laws 1983, c. 248, s. 1, effective April 28, 1983.

Editor's Note. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, and referred to in the bound volume, was itself repealed by Session Laws 1981, c. 932, s. 1.

Article 6.

Cottonseed Meal.

§§ 106-68 to 106-78: Repealed by Session Laws 1987, c. 244, s. 1(d), effective June 2, 1987.

Article 7.

Pulverized Limestone and Marl.

§§ 106-79, 106-80: Repealed by Session Laws 1987, c. 244, s. 1(e), effective June 2, 1987.

Article 8.

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

§§ 106-81 to 106-92: Repealed by Session Laws 1981, c. 284.

Cross References. — For present provisions as to the regulation of the sale of agricultural liming materials, etc., see §§ 106-92.1 to 106-92.17.

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.

§ 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.

(1a) "Agricultural liming material and fertilizer mixture" means any agricultural liming material combined with a single fertilizer element or single plant nutrient.

(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; 1981, c. 449, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subdivision (1a).

§ 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.)

§ 106-92.17. Lime and fertilizer mixtures.

The provisions of this Article shall apply to mixtures of agricultural liming material and fertilizer, except as follows:

(1) Such mixtures shall meet the labeling requirements of G.S. 106-92.5(a) in addition to providing information including, but not limited to, a guaranteed analysis of the fertilizer element or plant nutrient;
(2) The tonnage fee for such mixtures under G.S. 106-92.8 shall be twenty-five cents (25¢) per ton; and,
(3) The Board of Agriculture shall establish the allowable deficiency percentage and refund rate for such mixtures under G.S. 106-92.11. (1981, c. 449, s. 1.)

Editor's Note. — Session Laws 1981, c. 449, s. 3 makes this section effective July 1, 1981.

Article 10.

Mixed Feed Oats.

§ 106-111: Repealed by Session Laws 1987, c. 244, s. 1(f), effective June 2, 1987.

Article 12.

Food, Drugs and Cosmetics.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-121. Definitions and general consideration.

For the purpose of this Article:

(11a) (Effective July 1, 1988) The term "manufacturer" means a person who prepares, derives, or produces a prescription drug. Pharmacists are specifically excluded from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

(12a) (Effective July 1, 1988) The term "prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription."

(14e) (Effective July 1, 1988) The term "repackager" means a person who repacks, relabels, or manipulates a prescription drug which was in a unit packaged and sealed by a manufacturer. Pharmacies are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

(14f) (Effective July 1, 1988) The term "wholesaler" means a person acting, as a jobber, wholesale merchant, salvager, or broker, or agent thereof, who sells or distributes for resale a prescription drug. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it. (1939, c. 320, s. 2; 1975, c. 614, ss. 1, 2; 1987, c. 737, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective July 1, 1988, added subdivisions (11a), (12a), (14e) and (14f).

§ 106-129. Foods deemed to be adulterated.

A food shall be deemed to be adulterated:

(1) a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

b. 1. If it bears or contains any added poisonous or added deleterious substance, other than one which is

Subdivisions (11a), (12a), (14e) and (14f) of § 106-121 have delayed effective dates. See notes for date.

I. A pesticide chemical in or on a raw agricultural commodity;
II. A food additive; or
III. A color additive, which is unsafe within the meaning of G.S. 106-132; or

2. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of G.S. 106-132; or
3. If it is or it bears or contains any food additive which is unsafe within the meaning of G.S. 106-132;

provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under G.S. 106-132 of this Article, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of G.S. 106-132 and clause 3 of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

c. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or
d. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or
e. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or
f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to G.S. 106-132 of this Article; or
h. If a retail or wholesale establishment has added sulfiting agents, including sulfur dioxide, sodium sulfite, sodium or potassium bisulfite, and sodium or potassium metabisulfite, separately or in combination, to fresh fruits and fresh vegetables intended for retail sale as fresh food products.

(1939, c. 320, s. 10; 1975, c. 614, ss. 13-16; 1985, c. 399.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985

amendment, effective Oct. 1, 1985, inserted "or" at the end of paragraph (1)g and added paragraph (1)h.

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

(a) A drug intended for use by man which:

(1) Is a habit-forming drug to which G.S. 106-134(4) applies; or

(2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug in the course of his normal practice; or

(3) Is limited by an approved application under section 505 of the federal act to use under the professional supervision of a practitioner licensed by law to administer such drug; or

(4) Is a drug the label of which bears the statement "Caution: Federal law prohibits dispensing without a prescription," shall be dispensed only

a. Upon a written prescription of a practitioner licensed by law to administer such drug, or authorized to issue orders pursuant to G.S. 90-87(23)(a), provided that the written prescription must bear the printed or stamped name, address, telephone number and DEA number of the prescriber in addition to his legal signature, or

b. Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or

c. By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. If any prescription for such drug does not indicate the times it may be refilled, if any, such prescription may not be refilled unless the pharmacist is subsequently authorized to do so by the practitioner.

The act of dispensing a drug contrary to the provisions of this subdivision shall be deemed to be an act which results in a drug being misbranded while held for sale.

(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."

(1975, c. 614, s. 29; 1977, c. 421; 1979, c. 626; 1981, c. 75, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1979 amendment, effective January 1, 1980, added the second paragraph of subsection (b).

The 1981 amendment inserted "or authorized to issue orders pursuant to G.S. 90-87(23)(a)" in paragraph a of subdivision (a)(4).

§ 106-139. Regulations by Board of Agriculture.

(d) Hearings authorized or required by G.S. 106-131 or G.S. 106-135 shall be conducted in accordance with Chapter 150B of the General Statutes.

(e) Repealed by Session Laws 1987, c. 827, s. 30, effective August 13, 1987. (1939, c. 320, s. 20; 1973, c. 476, s. 128; 1975, c. 614, s. 36; 1987, c. 827, s. 30.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote subsection (d), and deleted subsection (e), pertaining to notice, effective date of regulations, and amendment and repeal of regulations.

§ 106-140.1. (Effective July 1, 1988) Registration of producers of prescription drugs and devices.

(a) On or before December 31 of each year, every person doing business in North Carolina and operating as a wholesaler as defined in G.S. 106-121(14f) or manufacturer as defined in G.S. 106-121(11a) or repackager as defined in G.S. 106-121(14e) shall register with the Commissioner his name and business location(s) in North Carolina. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(b) Every person, upon first operating as a wholesaler, manufacturer or repackager in North Carolina shall immediately register with the Commissioner his name, place of business, and such establishment. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(c) Every person duly registered in accordance with subsections (a) and (b) of this section shall register with the Commissioner any additional establishment that he owns or operates in the State of North Carolina prior to doing business as a manufacturer, wholesaler or repackager.

(d) The Commissioner may assign a registration number to any person or any establishment registered in accordance with this section.

§ 106-140.1 has a delayed effective date. See notes for date.

(e) The Commissioner shall make available for inspection to any person so requesting any registration filed pursuant to this section.

(f) The foregoing subsections of this section shall not apply:

(1) To pharmacists as defined in G.S. 90-85.3(q) holding a valid permit as defined in G.S. 90-85.3(m).

(2) To practitioners licensed or registered by law to prescribe or administer drugs and who manufacture, prepare, compound, or process drugs or devices solely for use in the course of their professional practice;

(3) To persons who manufacture, prepare, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale; or

(4) To such other classes of persons as the Commissioner may by regulation exempt from the application of this section upon a finding that registration by these classes of persons in accordance with this section is not necessary for the protection of the public health.

(g) Every establishment in the State of North Carolina registered with the Commissioner pursuant to this section shall be subject to inspection pursuant to G.S. 106-140.

(h) The Commissioner shall issue regulations to implement the registration requirements of this section. These regulations may provide for an annual registration fee of up to one hundred dollars ($100.00) for companies operating as manufacturers, wholesalers, or repackagers. The Department of Agriculture shall use these funds for the implementation of the North Carolina Food, Drug and Cosmetic Act.

(i) For the purposes of this act, name means the name of the partnership if a partnership and the name of the corporation if a corporation. (1987, c. 737, s. 2.)

Editor's Note. — Session Laws 1987, c. 737, s. 3 makes this section effective July 1, 1988.

§ 106-141. Examinations and investigations.

(c) The Commissioner of Agriculture is authorized to delegate embargo authority concerning food and drink pursuant to G.S. 106-125 to the Secretary of Human Resources and to local health directors. (1939, c. 320, s. 22; 1975, c. 614, s. 39; 1983, c. 891, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1983, c. 891, s. 16, provides: "This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted."

Effect of Amendments. — The 1983 amendment, effective Jan. 1, 1984, added subsection (c).

§ 106-140.1 has a delayed effective date. See notes for date.

§ 106-141.1. Inspections of donated food.

(a) The Department of Agriculture is authorized to inspect for compliance with the provisions of Article 12 of Chapter 106 of the North Carolina General Statutes, food items donated for use or distribution by nonprofit organizations or nonprofit corporations, and may establish procedures for the handling of the food items, including reporting procedures concerning the donation of food.

(b) The Department of Agriculture may apply to Superior Court for injunctive relief restraining the violation of this section.

(c) Nothing in this section shall limit the duties or responsibilities of the Commission for Health Services or the local boards of health. (1979, 2nd Sess., c. 1188, s. 3.)

Article 14.

State Inspection of Slaughterhouses.

§§ 106-159 to 106-168: Repealed by Session Laws 1981, c. 284.

Article 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Article 15.

Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. Inspection; meat stamped as approved or condemned.

Editor's Note. — By virtue of Session Laws 1987, c. 205, s. 4, the local modification under this section should be deleted.

Article 15A.

Meat Grading Law.

§§ 106-173.1 to 106-173.16: Repealed by Session Laws 1983, c. 248, s. 2, effective April 28, 1983.

Editor's Note. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, and referred to in the bound volume, was itself repealed by Session Laws 1981, c. 932, s. 1.

Article 17.

Marketing and Branding Farm Products.

Repeal of Article. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-189.1: Repealed by Session Laws 1983, c. 248, s. 3, effective April 28, 1983.

§ 106-189.2. Sale of immature apples.

(a) Notwithstanding any other provision of law, the Board of Agriculture shall adopt requirements for apple grade standards. The apple grade standards shall include the requirements for maturity of the United States standards for grades of apples and may employ the use of the refractometer to determine the sugar content and maturity of apples and the pressure test to determine the maturity of apples. All apples sold, offered for sale, or shipped into this State shall meet these requirements.
(1973, c. 973; 1985, c. 585.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, rewrote subsection (a), which read "All apples sold, offered for sale, or shipped into this State shall meet the requirements for maturity of the United States standards for grades of apples."

Article 19.

Trademark for Standardized Farm Products.

§§ 106-198 to 106-202: Repealed by Session Laws 1987, c. 244, s. 1(g), effective June 2, 1987.

§§ 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.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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.

If the Board, with the advice of the Scientific Committee, finds that the plant should be added to or removed from a protected plant list the Board shall instigate rule-making procedures to add or remove the plant from the list.

(e), (f) Repealed by Session Laws 1987, c. 827, s. 31, effective August 13, 1987. (1979, c. 964, s. 1; 1987, c. 827, s. 31.)

Editor's Note. — Session Laws 1985, c. 461, s. 1 provided: "Notwithstanding G.S. 106-202.16 the Venus Fly Trap is considered an endangered species and is added to the North Carolina Protected Plants lists." Session Laws 1985, c. 461, s. 2, as amended by Session Laws 1985, c. 791, s. 27 made s. 1 of c. 461 effective Aug. 1, 1986.

However, Session Laws 1985, c. 461, was repealed by Session Laws 1985 (Reg. Sess., 1986), c. 864, effective July 1, 1986.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the last two sentences of subsection (d) and repealed subsections (e) and (f).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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. 106-202.15(1);

(3) To perform any act specifically prohibited by the rules and regulations of the Board promulgated pursuant to its authority under G.S. 106-202.15.

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. 106-202.19(a), regardless of whether there exists an adequate remedy at law. (1979, c. 964, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

Article 25B.

Egg Promotion Tax.

§ 106-245.30. Legislative findings; purpose of Article.

The General Assembly finds and declares that eggs are important to the prosperity of this State and are a major source of income to a large segment of the State's population. Additional research, education, publicity, advertising and other means of promoting the sale and use of eggs are required to enhance the economical production and marketing of eggs and will be beneficial to the State as a whole. (1987, c. 815, s. 1.)

Editor's Note. — Session Laws 1987, c. 815, s. 4 makes this Article effective October 1, 1987.

§ 106-245.31. Definitions.

As used in this Article:

(1) "Board" means the North Carolina Board of Agriculture.

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

(3) "Department" means the North Carolina Department of Agriculture. (1987, c. 815, s. 1.)

§ 106-245.32. Levy of tax; rules and regulations.

There is hereby levied on each 30-dozen case of eggs sold for use in North Carolina an excise tax of five cents (5¢) per case; provided, however, such tax shall be levied only once. "Use" means consumption by the consumer. The Board may promulgate rules and regulations as are necessary for the interpretation, administration and enforcement of this tax. (1987, c. 815, s. 1.)

§ 106-245.33. Handler to remit tax to Department of Agriculture; report and payment of tax by handler; definition and functions of handler.

(a) For the purpose of carrying out the provisions of this Article, the handler of eggs on which a tax has been levied in accordance with the provisions of this Article shall remit such tax or assessment to the Department in the manner and at the time hereinafter provided. Reports to the Department shall be on forms prescribed and furnished by the Commissioner and shall be a statement of gross volume of eggs subject to the tax which have been packed, processed or handled by the handler in the previous month and shall be filed with the Department by the 20th day of each month.

The tax levied on eggs shall be due and payable by the handler on the same day that the report is due. Such tax shall be paid to the Department and shall be deposited with the State Treasurer to the credit of the North Carolina Egg Fund.

(b) The term "handler" means any person who operates a grading station in North Carolina, a packer, huckster or distributor who handles eggs in North Carolina or a farmer who packs, processes or otherwise performs the functions of a handler in North Carolina. The term "handler" includes any person in North Carolina who purchases eggs for sale or distribution or any farmer in North Carolina who sells or distributes eggs to anyone other than a registered handler.

For purposes of this Article, the functions of a handler of eggs include the sale, distribution or other disposition of eggs in North Carolina regardless of where the eggs were produced or purchased.

The term "registered handler" means any person who has registered with the Department to receive monthly return forms for reporting the tax levied herein.

Every person, whether inside or outside the State, who engages in business in North Carolina as a handler is required to register and to collect and pay the tax on all eggs sold or delivered for storage, use or consumption in this State. Such handlers shall maintain a certificate of registration, file returns and perform all other duties required of handlers. (1987, c. 815, s. 1.)

§ 106-245.34. Exemptions.

The eggs of any person selling less than 500 cases per year shall be exempt from the tax levied by this Article. The Board shall establish a procedure for returning taxes paid by exempt persons. (1987, c. 815, s. 1.)

§ 106-245.34A. Additional exemption.

The tax provided for herein shall not be levied upon any eggs which are assessed under the Agricultural Marketing Agreement Act of 1937 (7 USC 601 et seq.). (1987, c. 815, s. 2.)

§ 106-245.35. Records to be kept by handler.

The handler shall keep a complete record of the eggs subject to the provisions of this Article which have been packed, processed or handled by him and shall preserve such records for a period of not less than two years from the time such eggs were packed, processed or handled. Such records shall be open for inspection by the Commissioner or his duly authorized agents and shall be established and maintained as required by the Commissioner. (1987, c. 815, s. 1.)

§ 106-245.36. Interest on tax; collection of delinquent tax.

The tax imposed under the provisions of this Article and unpaid on the date on which the tax was due and payable shall bear interest at the rate determined in accordance with G.S. 105-241.1(i) from and after such due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the State and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commissioner, shall institute such action in the proper court for the collection of the amount of any tax past due under this Article including interest thereon. (1987, c. 815, s. 1.)

§ 106-245.37. North Carolina Egg Fund.

All moneys levied and collected under the provisions of this Article shall be deposited with the State Treasurer to a fund to be known as the "North Carolina Egg Fund". All moneys credited to the "North Carolina Egg Fund" are hereby appropriated to the North Carolina Egg Association, a North Carolina nonprofit corporation, for research, education, publicity, advertising, and other promotional activities for the benefit of producers of eggs sold in North Carolina. Moneys in the North Carolina Egg Fund are held in trust for the benefit of producers of eggs sold in North Carolina and such moneys shall not be or become part of the General Fund. (1987, c. 738, s. 138(a); c. 815, s. 1.)

Editor's Note. — Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Effect of Amendments. — Session Laws 1987, c. 738, s. 138(a), effective July 1, 1987, amended this section, which was enacted by Session Laws 1987, c. 815, s. 1, effective October 1, 1987, by adding the present second sentence.

§ 106-245.38. Violations.

(a) It shall be a misdemeanor for any handler knowingly to report falsely to the Department the quantity of eggs handled by him during any period or to falsify the records of the eggs handled by him, or to fail to keep a complete record of the eggs handled by him, or to fail to preserve such records for a period of not less than two years from the time such eggs are handled.

(b) It shall be a violation of the North Carolina Egg Law for a handler to fail to register as required herein, and any eggs transported, sold or offered for sale by such handler shall be subject to the stop-sale and penalty provisions of the North Carolina Egg Law (G.S. 106-245.13 et seq.). (1987, c. 815, s. 1.)

§ 106-245.39. Effect on Article 50 of Chapter 106.

After October 1, 1987, no egg assessment shall be collected under Article 50 of Chapter 106 of the General Statutes. (1987, c. 815, s. 3.)

Article 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-253. Standards of purity and sanitation; regulating trade or brand names of frozen or semifrozen desserts.

The Board of Agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this Article, as shall be necessary to make provisions of this Article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this Article. The Board is authorized to require the posting of inspection certificates. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen or semifrozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the Board of Agriculture. (1921, c. 169, s. 8; C.S., s. 7251(h); 1933, c. 431, s. 3; 1945, c. 846; 1959, c. 707, s. 3; 1981 (Reg. Sess., 1982), c. 1359, s. 1.)

Effect of Amendments. — The 1981 (Reg. Sess., 1982) amendment added the present second sentence.

Article 27.

Records of Purchases of Milk Products.

§§ 106-256 to 106-259: Repealed by Session Laws 1987, c. 244, s. 1(h), effective June 2, 1987.

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 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-266.6. Definitions.

CASE NOTES

Applied in Flav-O-Rich, Inc. v. North Carolina Milk Comm'n, 593 F. Supp. 13 (E.D.N.C. 1983).

§ 106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office.

(a) There is hereby continued a Milk Commission of the Department of Commerce, consisting of 10 members, three of whom shall be appointed by the Governor, four of whom shall be appointed by the General Assembly in accordance with G.S. 120-121 (two upon the recommendation of the President of the Senate and two upon the recommendation of the Speaker of the House of Representatives) and three of whom shall be appointed by the Commissioner of Agriculture. Appointments by the General Assembly shall be in accordance with G.S. 120-121.

The three members appointed by the Governor shall be two public members and a person who operates a store or other establishment for the sale of fluid milk at retail for consumption off the premises. The two members appointed by the General Assembly upon the recommendation of the President of the Senate shall be a Grade A producer, who primarily markets with a cooperative plant and whose primary interest is operating a dairy farm, and a public member. The two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be a dairy processor-distributor or an employee of a dairy processor-distributor, who primarily operates a proprietary plant, and a public member. The three members appointed by the Commissioner of Agriculture shall be a dairy processor-distributor or an employee of a dairy processor-distributor who primarily operates a cooperative plant and a Grade A producer who primarily markets with a proprietary plant and whose primary interest is operating a dairy farm, and a public member.

The public members appointed pursuant to this subsection shall have no financial interest in, or be directly or indirectly involved in,

the production, processing or distribution of milk or products derived therefrom.

Of the Commission members appointed following March 27, 1975, the Commissioner of Agriculture shall appoint three for a term ending June 30, 1976, the Governor shall appoint three for a term ending June 30, 1977, the General Assembly shall appoint upon the recommendation of the Speaker of the House of Representatives one for a term ending June 30, 1984 and one for a term ending June 30, 1985, and the General Assembly shall appoint upon the recommendation of the President of the Senate one for a term ending June 30, 1986, and one for a term ending June 30, 1987. Thereafter appointments of Commission members shall be made by the same appointing authorities for terms of four years, ending on June 30 of the appropriate year: provided that subsequent appointments by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years, ending on June 30 of the appropriate year. Provided, however, that all members appointed pursuant to this subsection shall serve until either they are reappointed and requalified or their successors are appointed and qualified. Any member of the Milk Commission may be removed for physical or mental incapacity, or for misfeasance or nonfeasance. In cases of removal from the Commission, the removal must be initiated by the person holding the office that originally made the appointment of such member, and subsequent appointments to fill such vacancies will be made in the normally prescribed manner for the remainder of the unexpired term by the person holding the office that originally made the appointment. If the office that originally made the appointment is vacant, the successor to such office shall fill such vacancy. In case of death, resignation, disqualification, or other physical or mental incapacity which prevents a Commission member from performing his official duties prior to the expiration of his term of office, his successor shall be appointed as provided in this subsection to fill out the unexpired term. Notwithstanding the above, persons appointed by the General Assembly may be removed by the General Assembly, and vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(d) Members of the Commission shall receive per diem and allowances as provided in G.S. 138-5.

(1953, c. 1338, s. 2; 1955, c. 406, ss. 2, 3; c. 1287, s. 1; 1965, c. 213; 1971, c. 779, s. 1; 1975, c. 78, ss. 1, 1.5, 2; 1983, c. 717, ss. 22, 93-98.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, substituted "four of whom shall be appointed by the General Assembly in accordance with G.S. 120-121 (two upon the recommendation of the President of the Senate and two upon the recommendation of the Speaker of the House of Representatives)" for "two of whom shall be appointed by the Lieutenant Governor, two of whom shall be appointed by the Speaker of the House" in the first sentence of the first paragraph of subsection (a); added the last sentence of the first paragraph of subsection (a); in the second paragraph of subsection (a), substituted "General Assembly upon the recommendation of the President of the Senate" for "Lieutenant Governor" in the second sentence and "General Assembly upon the recommendation of the Speaker of the House of Representatives" for "Speaker of the House" in the

third sentence; in the fourth paragraph of subsection (a), substituted "the General Assembly shall appoint upon the recommendation of the Speaker of the House of Representatives one for a term ending June 30, 1984 and one for a term ending June 30, 1985, and the General Assembly shall appoint upon the recommendation of the President of the Senate one for a term ending June 30, 1986, and one for a term ending June 30, 1987" for "the Speaker of the House shall appoint one for a term ending June 30, 1978 and one for a term ending June 30, 1979, and the Lieutenant Governor shall appoint one for a term ending June 30, 1978 and one for a term ending June 30, 1979" in the first sentence, inserted the proviso in the second sentence, and added the last sentence. The amendment also rewrote subsection (d), which formerly read "The compensation for members of the Commission shall be set by the Governor with the approval of the Advisory Budget Commission. Members of the Commission shall also be reimbursed for actual and necessary expenses incurred in the performance of their duties."

CASE NOTES

Applied in Flav-O-Rich, Inc. v. North Carolina Milk Comm'n, 593 F. Supp. 13 (E.D.N.C. 1983).

§ 106-266.8. Powers of Commission.

The Commission is hereby declared to be an instrumentality of the State of North Carolina, vested with power:

(7) To make, adopt, and enforce all rules, regulations and orders necessary to carry out the purposes of this Article. Every rule, regulation and order of the Commission shall be posted for inspection in the main office of the Commission. A certified copy of all general administrative rules and regulations or rules of practice and procedure shall be filed as required by Chapter 150B of the General Statutes, and a certified copy thereof shall likewise be mailed in a sealed envelope, with postage prepaid, to all licensed distributors and associations of producers in the State. Such filing and mailing shall constitute due and sufficient notice to all persons affected by such rule, regulation or order. A order which applies only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected thereby, or in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served.

(10) a. The Commission may fix prices to be paid producers and/or associations of producers by distributors in any market or markets, and may also fix different prices for different grades or classes of milk. Notwithstanding the provisions of G.S. 150B-59(a), such rules shall become effective when approved by the Commission. The Commission shall file any rule with the Director of the Office of Administrative Hearings within two working days of its adoption by the Commission.

b. The Commission, after investigation and public hearing and finding as a fact that it is in the public interest, may fix the maximum and minimum wholesale and

retail prices to be charged for milk in any market area by any person subject to this section and may fix different prices for different grades or classes of milk. The Commission may take into consideration the type of service rendered, the quantity delivered and the cost of the container.

c. Prices fixed under this subdivision (10) shall not become effective until 10 days after the mailing of notice of the action of the Commission. Prices fixed under b above shall remain in effect for at least 30 days and until the Commission finds it is in the public interest to remove said prices.

d. In determining the reasonableness of prices to be paid or charged in any market, the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public. The Commission may adopt a formula incorporating such of these economic factors as well as other pertinent economic factors relevant to the production of milk which will determine automatically the prices to be paid producers or associations of producers by distributors in any market or markets, and then provide for the periodic automatic readjustment of such prices according to the result obtained by the use of this formula. Public hearings shall be held for adoption, or amendment of the formula itself, but shall not be required for price adjustments which are made based upon use of the formula.

e. In establishing producer prices for milk moving into other states, the Commission shall consider prevailing producer prices established by state or federal authority in such states.

(1953, c. 1338, s. 3; 1955, c. 1287, s. 2; 1959, c. 1292; 1963, c. 797, ss. 1-3; 1965, c. 936, s. 1; 1971, c. 779, s. 1; 1973, c. 811; c. 1331, s. 3; 1975, c. 69, s. 4; 1977, c. 426, ss. 2, 3; c. 629; 1987, c. 285, s. 18; c. 827, s. 23.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Session Laws 1987, c. 285, s. 18, effective on the first day of the fourth calendar month after ratification, deleted "after investigation and public hearing" following "The Commission" at the beginning of the first sentence of paragraph (10)a, and added the last two sentences of paragraph (10)a. The act was ratified June 4, 1987.

Session Laws 1987, c. 827, s. 23, effective August 13, 1987, substituted "as required by Chapter 150B" for "with the Attorney General as required by Chapter 150A" in the third sentence of subsection (7).

Legal Periodicals. — For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

CASE NOTES

Constitutionality. — That part of subdivision (3) conferring upon the commission power to require a distributor of milk, reconstituted from milk powder produced in another state, to make "equalization" payments for the benefit of North Carolina milk producers, with whom it has no dealings, violates Art. I, § 19, of the Constitution of North Carolina, and the commerce clause of the U.S. Constitution. In re Arcadia Dairy Farms, Inc., 43 N.C. App. 459, 259 S.E.2d 368 (1979), appeal dismissed, 299 N.C. 328, 265 S.E.2d 393 (1980).

Applied in State ex rel. North Carolina Milk Comm'n v. Pet, Inc., 68 N.C. App. 701, 315 S.E.2d 529 (1984); Flav-O-Rich, Inc. v. North Carolina Milk Comm'n, 593 F. Supp. 13 (E.D.N.C. 1983).

§ 106-266.11. Annual budget of Commission; collection of monthly assessments.

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the distributors in the form of monthly assessments. The assessment so levied shall be fixed at a rate per hundredweight on the volume of all milk handled. The rate set shall not exceed one-half of one percent (1/2%) of the Statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as computed by the North Carolina Milk Commission. One half of any such assessment shall be deducted from funds owed to a producer or any association of producers. (1953, c. 1338, s. 6; 1971, c. 779, s. 1; 1983 (Reg. Sess., 1984), c. 1062, s. 4.)

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted the present second and third sentences for a former second sentence, which read "The assessments so levied shall not exceed four cents (4¢) per 100 pounds of milk handled."

§ 106-266.14. Penalties.

CASE NOTES

Stated in State v. Felts, 79 N.C. App. 205, 339 S.E.2d 99 (1986).

§ 106-266.15. Judicial review.

Judicial review of the following may be had under Chapter 150B of the General Statutes:

(1) A rule, order, or regulation adopted by the Commission under this Article.

(2) A decision of the Commission under this Article to deny, suspend, revoke, or refuse to transfer or reissue a license.

(3) An order of the Commission under this Article to fix or amend the price or terms upon which milk may be bought or sold. (1953, c. 1338, s. 12; 1969, c. 44, s. 67; 1971, c. 779, s. 1; 1973, c. 1331, s. 3; 1987, c. 827, s. 24.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote this section.

CASE NOTES

Applied in State ex rel. North Carolina Milk Comm'n v. Pet, Inc., 68 N.C. App. 701, 315 S.E.2d 529 (1984).

§ 106-266.19. Sale below cost to injure or destroy competition prohibited.

Legal Periodicals. — For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

CASE NOTES

Applied in Flav-O-Rich, Inc. v. North Carolina Milk Comm'n, 593 F. Supp. 13 (E.D.N.C. 1983).

Cited in Coble Dairy Prods. Coop. v. State ex rel. North Carolina Milk Comm'n, 58 N.C. App. 213, 292 S.E.2d 750 (1982).

Article 29.

Inspection, Grading and Testing Milk and Dairy Products.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-267. Inspection, grading and testing dairy products; authority of State Board of Agriculture.

The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, to require processors of fortified milk and milk products to pay all costs for assays of vitamin-fortified products, to provide for the issuance of permits upon compliance with this Article and the rules and regulations promulgated thereunder and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1; 1981, c. 338; c. 495, s. 5.)

Effect of Amendments. — The first 1981 amendment inserted "to provide for the issuance of permits upon compliance with this Article and the rules and regulations promulgated thereunder" near the end of the section.

The second 1981 amendment inserted "to require processors of fortified milk and milk products to pay all costs for assays of vitamin-fortified products," near the end of the section.

Article 30.

Board of Crop Seed Improvement.

§ 106-272. Cooperation of other departments with Board; rules and regulations.

Insofar as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively cooperate with the said Board in carrying out the purposes of this Article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, for certification necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this Article. (1929, c. 325, s. 4; 1983, c. 800, ss. 1, 2.)

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, deleted "including rules and regulations fixing fees" following "rules and regulations" and deleted "and fixing the market price of certified seed" following "for certification" in the second sentence.

§ 106-274. Certification of crop seeds.

For the purposes of this Article the certification of seed, tubers, plants, or plant parts hereunder shall be defined as being produced, conditioned, and distributed under the rules and regulations for certification. (1929, c. 325, s. 6; 1983, c. 800, s. 3.)

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, rewrote this section.

Article 31.

North Carolina Seed Law.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-277. Purpose.

Legal Periodicals. — For article, "Damages and Problems of Proof with Planted Nonconforming Seeds," see 9 Campbell L. Rev. 63 (1986).

§ 106-277.7. Labels of vegetable seeds in containers of more than one pound.

CASE NOTES

Stated in Central Carolina Farmers, Inc. v. Hilliard, 54 N.C. App. 418, 283 S.E.2d 558 (1981).

§ 106-277.8. Responsibility for presence of labels.

CASE NOTES

Stated in Central Carolina Farmers, Inc. v. Hilliard, 54 N.C. App. 418, 283 S.E.2d 558 (1981).

§ 106-277.9. Prohibitions.

Legal Periodicals. — For note on strict liability for breach of warranty, see 50 N.C.L. Rev. 697 (1972).

§ 106-277.15. Rules, regulations and standards.

The Commissioner of Agriculture, jointly with the Board of Agriculture, after public hearing immediately following 10 days' public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this Article, which shall have the force and effect of law. The Commissioner and Board of Agriculture shall adopt rules, regulations and standards as follows:

(9) Establishing fees and charges for agricultural and vegetable seed testing and analysis. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182; 1981, c. 495, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1981 amendment added subdivision (9).

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 33.

Adulterated Turpentine.

§ 106-303: Repealed by Session Laws 1987, c. 244, s. 1(i), effective June 2, 1987.

Article 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases.

Cross References. — For North Carolina Biologics Law of 1981, see §§ 106-707 through 106-714.

Part 4. Compensation for Killing Diseased Animals.

§ 106-335. State Veterinarian to carry out provisions of Article; how moneys paid out.

The State Veterinarian is authorized, himself or by his representative, to do all things specified in this Article. All moneys authorized to be paid shall be paid from the State treasury and the State Treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C.S., s. 4894; 1983, c. 913, s. 13.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted "on warrants approved by the auditor" following "State treasury" in the second sentence.

Part 7. Rabies.

§§ 106-364 to 106-387: Repealed by Session Laws 1983, c. 891, s. 8, effective January 1, 1984.

Cross References. —As to the regulation of rabies, see now § 130A-184 et seq.

Editor's Note. — Session Laws 1983, c. 891, s. 16, provides: "This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted."

Part 8. Brucellosis (Bang's Disease).

§ 106-396. Authority to promulgate and enforce rules and regulations.

The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of G.S. 106-388 to 106-398, and for the effective control and eradication of brucellosis, including the establishment of fees and charges for the collection of blood samples. (1937, c. 175, s. 10; 1967, c. 511; 1981, c. 495, s. 8.)

Effect of Amendments. — The 1981 amendment added "including the establishment of fees and charges for the collection of blood samples" at the end of the section.

Part 9. Control of Livestock Diseases.

§ 106-400.1. Swine disease testing.

In order to control or prevent the spread of swine diseases, the Board of Agriculture may adopt rules authorizing the State Veterinarian or his representative to enter, at reasonable times, the premises where swine are kept and to examine the swine and obtain blood or tissue samples for testing purposes. The State Veterinarian shall also have the authority to quarantine swine which have not been properly tested. (1987, c. 793, s. 1.)

Editor's Note. — Session Laws 1987, c. 793, s. 3 makes this section effective upon ratification. The act was ratified August 12, 1987.

Section 2 of Session Laws 1987, c. 106 provides that the Department of Agriculture shall implement the act with funds available to the Department.

Part 10. Feeding Garbage to Swine.

Repeal of Part. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-405.2. Permit for feeding garbage to swine.

(d) This Part shall not apply to any person who holds a valid federal permit under the Swine Health Protection Act, P.L. 96-468. (1953, c. 720, s. 2; 1971, c. 566, s. 1; 1981, c. 392.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1981 amendment added subsection (d).

Part 11. Equine Infectious Anemia.

§ 106-405.17. Authority to promulgate and enforce rules and regulations.

The State Board of Agriculture shall have full power to promulgate and enforce such rules and regulations as it deems necessary for the control and eradication of equine infectious anemia. This authority shall include, but not be limited to, the power to make regulations requiring the testing of horses, ponies, mules and asses for equine infectious anemia prior to sale, exhibition or assembly at public stables or other public places, and authority to require the owner, operator or person in charge of shows, sales, public stables and other public places to require proof of freedom from equine infectious anemia before any animal is permitted to remain on the premises. The Board shall also have the authority to set fees for such tests as necessary to recover the costs to the North Carolina Department of Agriculture. (1973, c. 1198, s. 3; 1981, c. 495, s. 7.)

Effect of Amendments. — The 1981 amendment added the third sentence.

Article 35.

Public Livestock Markets.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.

Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this Article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

(1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and

(2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of two hundred fifty dollars ($250.00), two hundred dollars ($200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars ($100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied. There shall be an annual renewal fee of one hundred dollars ($100.00) for each year of operation thereafter.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall issue a license or fix the date of a hearing on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the Public Livestock Market Advisory Board of the time and place of said hearing, at least 10 days before the date [on] which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the North Carolina Public Livestock Market Advisory Board finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, it shall recommend to the Commissioner that a permit be issued to the applicant. If the Commissioner denies the

application, the applicant may commence a contested case under G.S. 150B-23 by filing a petition within 10 days after receiving notice of the denial. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee. (1941, c. 263, s. 1; 1943, c. 724, s. 1; 1967, c. 894, s. 1; 1971, c. 739, s. 1; 1973, c. 1331, s. 3; 1975, c. 69, s. 4; 1977, c. 132, ss. 1-3; 1987, c. 827, s. 32.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted the present third sentence of the last paragraph for the former third and fourth sentences thereof, pertaining to appeal from the denial of the application.

§ 106-407. Bonds required of operators; exemption of certain market operations.

CASE NOTES

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.

There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before August 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. The Board may meet once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards. Compensation, subsistence and travel allowances authorized for the Board members shall be paid from fees collected pursuant to this Article. (1967, c. 894, s. 3; 1977, c. 132, s. 4; 1981, c. 337.)

Effect of Amendments. — The 1981 amendment substituted "The Board may meet once each year" for "It shall also be the duty of the members of the Board to meet at least once each year" at the beginning of the second sentence of the second paragraph.

§ 106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.

The Board of Agriculture may revoke a permit authorizing the operation of a public livestock market for a violation of this Article or a rule adopted under this Article.

If any person, firm or corporation shall operate a public livestock market in violation of the provisions of this Article, or the rules and regulations promulgated by the North Carolina Board of Agriculture, or shall fail to comply with the provisions of this Article, or rules and regulations promulgated thereunder, a temporary or permanent restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, or his authorized representative, and the judge of the superior court shall have the same power and authority as in any other injunction proceeding, and the defendant shall have the same rights including the right of appeal, as in any other injunction proceeding heard before the superior court. (1967, c. 894, s. 4; 1973, c. 1331, s. 3; 1987, c. 827, s. 33.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the first paragraph.

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.

All public livestock markets operating under this Article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom

sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M.; provided, however, the Commissioner of Agriculture shall have authority to authorize a sale to begin at late as 4:00 P.M. when the sale (i) consists solely of the sale of pigs weighing no more than 150 pounds and sold as feeder pigs, (ii) continues without interruption, and (iii) lasts no later than 5:00 P.M., or when the sale consists solely of slaughter hogs sold by teleconference. The sale of livestock shall be continuous until all are sold.

Each public livestock market operator operating under this Article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State Veterinarian in writing at least two weeks in advance of the date of change. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1; 1967, c. 894, s. 5; 1969, c. 983; 1971, c. 739, s. 2; 1987, c. 436.)

Effect of Amendments. — The 1987 amendment, effective June 19, 1987, substituted "(iii) lasts no later than 5:00 P.M., or when the sale consists solely of slaughter hogs sold by teleconference" for "(iii) last later than 5:00 P.M." at the end of the first sentence of the second paragraph.

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State.

CASE NOTES

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

Article 35B.

Livestock Dealer Licensing Act.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-418.8. Definitions.

CASE NOTES

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

Article 38.

Marketing Cotton and Other Agricultural Commodities.

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

CASE NOTES

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 38A.

Cotton Warehouse Act.

§ 106-451.6. Short title.

The provisions of this Article may be known and designated as the "North Carolina Cotton Warehouse Act". (1987, c. 840, s. 1.)

Editor's Note. — Session Laws 1987, c. 840, s. 2 makes this Article effective October 1, 1987.

§ 106-451.7. Definitions.

As used in the Article, unless the context otherwise requires:

(1) "Board" means the North Carolina Board of Agriculture.
(2) "Commissioner" means the North Carolina Commissioner of Agriculture.
(3) "Person" means an individual, partnership, firm, corporation, association, or two or more people having a joint or common interest.
(4) "Producer" means a farmer or grower of cotton.
(5) "Receipt" means a warehouse receipt issued pursuant to this Article.

(6) "Warehouse" means any building, structure or other protected enclosure in which cotton is or may be stored for hire.
(7) "Warehouseman" means a person licensed by North Carolina Department of Agriculture to engage in the business of storing cotton for hire. (1987, c. 840, s. 1.)

§ 106-451.8. Board of Agriculture makes rules.

The Board is empowered to make and enforce such rules and regulations as may be necessary to make effective the provisions of this Article, including fees for inspection of warehouses. (1987, c. 840, s. 1.)

§ 106-451.9. Commissioner of Agriculture to administer and enforce Article.

The Commissioner of Agriculture shall have the following powers and duties under this Article:
(1) To administer and enforce the provisions of this Article.
(2) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more divisions within the Department of Agriculture.
(3) To delegate to any division head and other officer or employee of the Department of Agriculture any of the powers and duties given to the Department by statute or by rules promulgated pursuant to this Article.
(4) To investigate and determine upon application, whether the warehouse is suitable for the proper storage of cotton.
(5) To conduct investigations of the daily operations of every State licensed warehouse.
(6) To prescribe, within the limits of this Article, the duties of the warehousemen with respect to their care of and responsibility for cotton stored in licensed warehouses.
(7) To issue licenses for the operation of warehouses under this Article.
(8) To cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of administering or enforcing any of the provisions of this Article. (1987, c. 840, s. 1.)

§ 106-451.10. Licensing of warehousemen.

(a) The Commissioner, or his designated representative, is authorized, upon application to him, to issue to any person a license for the conduct of a cotton warehouse in accordance with this Article and such rules and regulations as may be made hereunder: Provided, that each such warehouse be found suitable for the proper storage of cotton, and that such person agree, as a condition to the granting of the license, to comply with and abide by all terms of this Article and the rules and regulations prescribed hereunder. All licenses issued pursuant to this Article shall expire on December 31 of each year. Any warehouseman may renew his license by filing a renewal application with the Commissioner on or before January 1 of each year.

(b) Each license application and license renewal application must include:

(1) A current financial statement prepared by a certified public accountant;
(2) Proof of the bond required by G.S. 106-451.11;
(3) A license fee of one hundred dollars ($100.00); and
(4) A certificate of insurance if insurance is required. (1987, c. 840, s. 1.)

§ 106-451.11. Bond required.

(a) Any person applying for a license to conduct a warehouse pursuant to this Article shall, as a condition to the granting thereof, execute and file with the Commissioner a good and sufficient bond to the State to secure the faithful performance of his obligations as a warehouseman. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State and shall contain such terms and conditions as the Commissioner may prescribe to carry out the purposes of this Article. Whenever the Commissioner, or his designated representative, shall determine that a previously approved bond is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

(b) The Board may require as a condition to the granting of a license that the warehouseman maintain casualty insurance on the cotton stored in a warehouse licensed under this Article. (1987, c. 840, s. 1.)

§ 106-451.12. Action on bond by person injured.

Any person injured by the breach of any obligation to secure which a bond is given, under the provisions of this Article, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach. (1987, c. 840, s. 1.)

§ 106-451.13. Suspension and revocation of license.

The Commissioner, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Article, for any violation of or failure to comply with any provision of this Article or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. (1987, c. 840, s. 1.)

§ 106-451.14. License to classify, grade and weigh cotton stored.

The Commissioner or his designated representative, may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample, or classify any cotton stored or to be stored in a warehouse licensed under this Article, according to condition, grade, or otherwise and to certificate the condition, grade, or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample, or classify and weigh the same and to certificate the condition, grade, or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Article and of the rules and regulations prescribed hereunder. (1987, c. 840, s. 1.)

§ 106-451.15. Suspension and revocation of license to classify, grade or weigh.

Any license issued to any person to inspect, sample, or classify, or to weigh cotton under this Article may be suspended or revoked by the Commissioner or his designated representative, whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify, or to weigh the cotton correctly, or has violated any of the provisions of this Article or of the rules and regulations prescribed hereunder or that he has used his license or allowed it to be used for any improper purpose whatever. (1987, c. 840, s. 1.)

§ 106-451.16. Delivery to warehouse presumed for storage.

Any cotton delivered to a warehouse under this Article shall be presumed to be delivered for storage. (1987, c. 840, s. 1.)

§ 106-451.17. Deposit of cotton deemed subject to Article.

Any producer who deposits cotton for storage in a warehouse licensed under this Article shall be deemed to have deposited the same subject to the provisions of this Article and the rules and regulations prescribed hereunder. (1987, c. 840, s. 1.)

§ 106-451.18. Receipts for cotton stored.

For all cotton stored in a warehouse licensed under this Article original receipts shall be issued by the warehouseman conducting the same, but no receipt shall be issued except for cotton actually stored in the warehouse at the time of the issuance thereof. (1987, c. 840, s. 1.)

§ 106-451.19. Contents of receipts.

Every receipt issued for cotton stored in a warehouse licensed under this Article shall embody within its written or printed terms:

(1) The location of the warehouse in which the cotton is stored;
(2) The date of issue of the receipt;
(3) The consecutive number of the receipt;
(4) A statement whether the cotton received will be delivered to the bearer, to a specified person, or to a specified person or his order;
(5) The rate of storage charges;
(6) A description of the cotton received, showing the quantity thereof and a description of each bale by mark, number, or other means of identification and the weight of each bale;
(7) The grade or other classification of the cotton received and the standard or description in accordance with which such classification has been made;
(8) A statement that the receipt is issued subject to this Article and the rules and regulations prescribed hereunder;
(9) If the receipt be issued for cotton of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership;
(10) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien; and
(11) Signature of the warehouseman, which may be made by his authorized agent. (1987, c. 840, s. 1.)

§ 106-451.20. Issuance of further receipt with original outstanding.

While an original receipt issued under this Article is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the cotton covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued. (1987, c. 840, s. 1.)

§ 106-451.21. Delivery of products stored on demand; conditions to delivery.

A warehouseman conducting a warehouse licensed under this Article, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the cotton stored therein upon a demand made either by the holder of a receipt for such cotton or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the cotton is delivered, an acknowledgment that it has been delivered if such signature is requested by the warehouseman. (1987, c. 840, s. 1.)

§ 106-451.22. Cancellation of receipt on delivery of cotton stored.

A warehouseman conducting a warehouse licensed under this Article shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the cotton for which the receipt is issued. (1987, c. 840, s. 1.)

§ 106-451.23. Records; report to Commissioner; compliance with provisions of Article, rules, and regulations.

Every warehouseman conducting a warehouse licensed under this Article shall keep in a place of safety complete and correct records of all cotton stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Commissioner concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Article and the rules and regulations made hereunder. (1987, c. 840, s. 1.)

§ 106-451.24. Examination of books, records, etc., of warehousemen.

The Commissioner is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses and all cotton stored in warehouses licensed under this Article and of the warehousemen conducting such warehouse relating thereof. (1987, c. 840, s. 1.)

§ 106-451.25. Inspectors to be bonded.

Each inspector employed by the Commissioner for the inspection and examination of warehouses licensed under this Article shall be bonded in an amount not less than five thousand dollars ($5,000), or in such greater amount as the Commissioner deems necessary, for the faithful performance of his duties and for the proper accounting of all funds coming into his hands. The cost of the bond shall be paid by the Department of Agriculture. (1987, c. 840, s. 1.)

§ 106-451.26. Liability of officials and employees.

No action may be brought in any court of this State against any State official or State employee on account of any act or omission in connection with the administration of this Article unless it be shown that such official or employee acted in bad faith and with corrupt intent. (1987, c. 840, s. 1.)

§ 106-451.27. Use of income from Warehouse Fund to administer.

Income from the Warehouse Fund established under G.S. 106-435 may be used for the administration of this Article. (1987, c. 840, s. 1.)

§ 106-451.28. Violation a misdemeanor; fraudulent or deceptive acts.

Any person who shall violate any provision of this Article or who shall engage in any fraudulent or deceptive practice in the operation of a warehouse licensed under this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than ten thousand dollars ($10,000) or double the value of the cotton involved, whichever is more, or imprisoned for not more than two years, or both, in the discretion of the court. (1987, c. 840, s. 1.)

Article 44.

Unfair Practices by Handlers of Fruits and Vegetables.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-496. Protection against unfair trade practices.

Legal Periodicals. — For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

Article 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-503. Board of Agriculture to operate fair.

The State fair and other projects provided for in G.S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G.S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State fair and shall operate said State fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State fair.

The Board of Agriculture may adopt regulations establishing fees or charges for admission to the State Fairgrounds and for services provided incidental to the use of the State Fairgrounds.

The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a schedule of rental rates for fair properties and specifications for the issuance of premiums so as to provide a State fair and other projects. (1931, c. 360, s. 3; 1959, c. 1186, s. 2; 1981, c. 495, s. 4; 1981 (Reg. Sess., 1982), c. 1359, s. 2; 1987, c. 827, s. 34.)

Effect of Amendments. — The 1981 amendment added the second paragraph.

The 1981 (Reg. Sess., 1982) amendment added the last paragraph.

The 1987 amendment, effective August 13, 1987, rewrote the last paragraph.

Article 46.

Erosion Equipment.

§§ 106-521 to 106-527: Repealed by Session Laws 1987, c. 244, s. 1(j), effective June 2, 1987.

Article 48.

Relief of Potato Farmers.

§§ 106-535 to 106-538: Repealed by Session Laws 1987, c. 244, c. 1(k), effective June 2, 1987.

Article 49.

Poultry; Hatcheries; Chick Dealers.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-539. National poultry improvement plan.

In order to promote the poultry industry of the State, the North Carolina Department of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the operation of the national poultry improvement plan. (1945, c. 616, s. 1; 1969, c. 464; 1983, c. 290, s. 1.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "improvement plan" for "and turkey improvement plans" at the end of the section.

§ 106-540. Rules and regulations.

The North Carolina Board of Agriculture is hereby authorized to adopt such regulations as may be necessary to:

(1) Carry out the provisions of the national poultry improvement plan.

(6) Establish fee schedules for pullorum and other disease testing, and the performance of services such as culling and selecting by Department personnel.

(7) Provide for compulsory testing of poultry for pullorum disease and fowl typhoid. (1945, c. 616, s. 2; 1969, c. 464; 1983, c. 290, ss. 2, 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, in the introductory paragraph deleted "After public hearing following 30 days' public notice" at the beginning thereof, substituted "to adopt" for "to make," and deleted "accomplish the following" at the end thereof; in subdivision (1), deleted "and turkey" following "poultry," and added subdivisions (6) and (7).

§ 106-542. Hatcheries, chick dealers and others to obtain license to operate.

(a) It shall be unlawful for any person, firm or corporation to operate a hatchery within this State without first obtaining a hatchery license from the Department of Agriculture for a fee of twenty-five dollars ($25.00) per year.

(b) It shall be unlawful for any person, firm or corporation to operate as a hatching egg dealer, chick dealer or jobber within this State without first obtaining a license from the Department of Agriculture for a fee of ten dollars ($10.00) per year.

(c) The Department of Agriculture may deny, suspend, revoke or refuse to renew the license of any person, firm or corporation for violation of this Article or any rule or regulation promulgated thereunder. (1945, c. 616, s. 4; 1969, c. 464; 1983, c. 290, s. 4.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote this section.

§ 106-543. Requirements of national poultry improvement plan must be met.

All baby chicks, turkey poults and hatching eggs produced, sold or offered for sale shall originate in flocks that meet the requirements of the national poultry improvement plan as administered by the North Carolina Department of Agriculture and the regulations issued by authority of this Article for the control of pullorum disease and other infectious diseases provided that nothing in this Article shall require any hatchery to adopt the national poultry improvement plan. (1945, c. 616, s. 5; 1969, c. 464; 1983, c. 290, s. 5.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "improvement plan" for "turkey improvement plans" preceding "as administered" and deleted "or national turkey improvement plan" at the end of the section.

§ 106-548. Quarantine.

When the State Veterinarian receives information or has reason to believe that pullorum disease or fowl typhoid exists in any poultry or that they have been exposed to one of these diseases, he shall promptly cause said poultry to be quarantined on the premises where located. Said poultry or hatching eggs shall not be removed from the premises where quarantined until quarantine has been released by the State Veterinarian or his authorized representative. A permit to move such infected or exposed poultry to immediate slaughter, or to another premise under quarantine, may be issued by the State Veterinarian or his authorized representative. (1945, c. 616, s. 10; 1969, c. 464; 1983, c. 290, s. 6.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, deleted the former first three sentences, relating to fees, and the former last sentence, relating to regulations for compulsory testing of poultry for pullorum disease or fowl typhoid.

Article 49A.

Voluntary Inspection of Poultry.

§§ 106-549.1 to 106-549.14: Repealed by Session Laws 1981, c. 284.

Article 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.17. Inspection of animals before slaughter; humane methods of slaughtering.

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination

and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

(1) In the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering. (1969, c. 893, s. 3; 1981, c. 376, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the former section as subsection (a) and added subsections (b) and (c).

§ 106-549.21. Stamping container or covering; regulation of container.

(e) If the Commissioner or his authorized representative has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner or his authorized representative, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. A person who uses or proposes to use the marking, labeling, or container and who does not accept

the determination of the Commissioner may commence a contested case under G.S. 150B-23. If directed by the Commissioner, the marking, labeling, or container may not be used pending a final decision. (1969, c. 893, s. 7; 1973, c. 1331, s. 3; 1987, c. 827, s. 35.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the last two sentences of subsection (e).

§ 106-549.23. Prohibited slaughter, sale and transportation.

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;

(2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or

b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or

(4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded. (1969, c. 893, s. 9; 1981, c. 376, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added present subdivision (2), designated former subdivisions (2)a and b as present subdivision (3), and designated former subdivision (2)c, without its introductory language, as present subdivision (4). The amendment substituted "any of these" for "any such" in subdivisions (1), (3)a, and (4); in subdivision (1), inserted "any" preceding "such articles" and deleted a comma following "intrastate commerce"; in subdivision (3)a, deleted "such" preceding "sale, transportation"; and in subdivision (4), substituted "the articles to be adulterated" for "such articles to be adulterated."

Article 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

§ 106-549.29. North Carolina Department of Agriculture responsible for cooperation.

(b) In such cooperative efforts, the North Carolina Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(1969, c. 893, s. 15; 1985 (Reg. Sess., 1986), c. 1014, s. 155(a).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, and also applicable to the state budget for fiscal year 1985-86, deleted the last sentence of subsection (b), which authorized payment of part of the estimated total cost of the cooperative program.

Article 49D.

Poultry Products Inspection Act.

§ 106-549.52. State and federal cooperation.

(b) In such cooperative efforts, the Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(1971, c. 677, s. 5; 1985 (Reg. Sess., 1986), c. 1014, s. 155(b).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, and also applicable to the state budget for fiscal year 1985-86, deleted the last sentence of subsection (b), relating to payment of part of the estimated total cost of the cooperative program.

§ 106-549.55. Labeling standards; false and misleading labels.

(d) If the Commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this Article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such

manner as he may prescribe so that it will not be false or misleading. A person who uses or proposes to use the marking, labeling, or container and who does not accept the determination of the Commissioner may commence a contested case under G.S. 150B-23. If directed by the Commissioner, the marking, labeling, or container may not be used pending a final decision. (1971, c. 677, s. 8; 1973, c. 1331, s. 3; 1987, c. 827, s. 36.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the last two sentences of subsection (d).

§ 106-549.64. Refusal of inspection services; hearing; appeal.

(a) The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Article) refuse to provide, or withdraw, inspection service under this Article with respect to any establishment if he determines that such applicant or recipient is unfit to engage in any business requiring inspection upon this Article because the applicant or recipient or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or State court, within the previous 10 years of

(1) Any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food; or

(2) Any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health. For the purpose of this subsection a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity.

(b) Proceedings concerning the refusal or withdrawal of inspection services shall be conducted in accordance with Chapter 150B of the General Statutes. A refusal or withdrawal of inspection services by the Commissioner shall continue in effect pending a final decision in a contested case unless the Commissioner orders otherwise.

(c) Repealed by Session Laws 1987, c. 827, s. 37, effective August 13, 1987. (1971, c. 677, s. 17; 1973, c. 1331, s. 3; 1987, c. 827, s. 37.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "after opportunity for a hearing is accorded to the applicant for, or recipient of, such service" following "if he determines" in the introductory language of subsection (a), rewrote subsection (b), and deleted subsection (c), pertaining to finality and conclusiveness of the determination and order of the Commissioner and judicial review thereof.

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.

Cross Reference. — As to the egg promotion tax, see § 106-245.30 et seq. For provision that after October 1, 1987, no egg assessment shall be collected under Article 50 of Chapter 106, see § 106-245.39.

Legal Periodicals. — 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).

CASE NOTES

Applied in Baucom's Nursery Co. v. Mecklenburg County, 62 N.C. App. 396, 303 S.E.2d 236 (1983).

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (1/2 of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as computed by the North Carolina Milk Commission. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268; 1981, c. 216, s. 1; 1983, c. 246, s. 1.)

Effect of Amendments. — The 1981 amendment substituted the language beginning "the volume of milk sold not to exceed one percent (1%)" for "volume not to exceed six cents (6¢) per hundredweight of milk sold" at the end of the second sentence.

The 1983 amendment, effective April 28, 1983, added the second proviso.

§ 106-559.1. Basis of vote on milk product assessment.

Notwithstanding any other provision of this Article, any milk product assessment referendum shall be conducted on the basis of one vote per base holder. (1981, c. 216, s. 2.)

§ 106-562. Regulations as to referendum; notice to farm organizations and county agents.

The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least 30 days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied — which assessment in any event shall not exceed one half of one percent (1/2 of 1%) of the value of the year's production of such agricultural commodity or such other assessment as shall be authorized by law, grown by any farmer, producer or grower included in the group to which such referendum is submitted — and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this Article. (1947, c. 1018, s. 13; 1967, c. 774, s. 2; 1983, c. 246, s. 2.)

Effect of Amendments. — The 1983 amendment, effective April 28, 1983, inserted "or such other assessment as shall be authorized by law" in the second sentence.

§ 106-563.1. Supervision of referendum on milk product assessment.

Notwithstanding any other provision of this Article, any milk product assessment referendum shall be conducted under the supervision of the County Extension Chairman in each county in which the referendum is held. (1981, c. 216, s. 3.)

§ 106-564.1. Alternate method for collection of assessments.

As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the first day of June of each year following such deduction or at regular intervals during the year following such deductions, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents.

For the purposes of this Article the Commissioner may designate the duly certified agency of the producers as his agent to conduct inspections or audits of the books of the purchaser of such agricultural products. If it is discovered, as the result of such inspection or audit, that such purchaser has willfully failed to remit assessments when due, then such purchaser shall be liable to the duly certified producers agency for the reasonable costs of such inspection or audit. Such costs may be recovered by the agency by an action against the purchaser in a court of competent jurisdiction. The agency shall also be entitled to recover from such purchaser a penalty of five percent (5%) of the amount due for each month it remains unpaid, not to exceed twenty percent (20%) of the total amount due.

Any packer, processor or other purchaser who originally purchases from the grower, apples grown in North Carolina, shall collect from the grower thereof any marketing assessment due under the provisions of Article 50 of Chapter 106 and shall remit the same to the North Carolina Department of Agriculture. Upon failure of said packer, processor or other purchaser to collect and remit said assessment then the amount of the assessment shall become the obligation of the packer, processor or other purchaser who originally purchased the apples from the grower and he shall become liable therefor to the North Carolina Department of Agriculture. Failure of the packer, processor or other purchaser to comply with the provisions of this section shall constitute a bar to engaging in said business in this State upon proper notice from the Board of Agriculture. The Board of Agriculture shall have authority to promulgate such rules and regulations as shall be necessary to carry out the purpose and intent of this section. (1953, c. 917; 1969, c. 605, s. 3; 1975, c. 708, s. 2; 1983, c. 395.)

Effect of Amendments. — The 1983 amendment, effective May 26, 1983, inserted the present second paragraph.

§ 106-567.1. Refund of milk product assessments.

Notwithstanding any other provision of this Article, on and after January 1, 1982, a milk producer shall be entitled to receive a monthly refund of assessments paid by him by making written demand in the first month of each calendar quarter upon the association receiving such assessment. (1981, c. 216, s. 4.)

Article 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.2. Policy as to referendum and assessment.

It is further declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of ten cents (10¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts. (1951, c. 827, s. 2; 1981, c. 181, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "ten cents (10¢) per ton" for "five cents (5¢) per ton" near the middle of the section.

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.

In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said ten cents (10¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the

receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of ten cents (10¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture as provided for in G.S. 106-284.40(c). (1951, c. 827, s. 8; 1967, c. 631, s. 1; 1975, c. 646; 1981, c. 181, s. 1.)

Editor's Note. —

Sections 106-50.6 and 106-99, referred to at the end of the third sentence of the first paragraph, have been repealed.

Effect of Amendments. —

The 1981 amendment substituted "ten cents (10¢) per ton" for "five cents (5¢) per ton" in the fourth sentence of the first paragraph, and near the beginning of the second paragraph.

Article 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.20. Referendum on assessment for next three years.

During the year 1988 or 1989 upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this Article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco in which referendum said farmers shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years 1989, 1990 and 1991, such amount as may have been theretofore or as may be thereafter determined by the Board of Directors of Tobacco Associates, Inc., but not more than two dollars ($2.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. Those farmers entitled to share in the crop of flue-cured tobacco or in the proceeds of such crop because of sharing in the risk of production shall be deemed to be engaged in the production of such tobacco. (1959, c. 309, s. 3; 1987, c. 294, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, rewrote this section.

§ 106-568.21. Effect of more than one-third vote against assessment in referendum.

If in such referendum more than one-third of the tobacco farmers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then no assessment shall be levied or collected pursuant to that referendum. (1959, c. 309, s. 4; 1987, c. 294, s. 2.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "1961" preceding "referendum" in the catchline to this section.

§ 106-568.22. Effect of two-thirds vote for assessment in referendum.

If in such referendum two-thirds or more of the eligible tobacco farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than two dollars ($2.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5; 1987, c. 294, s. 3.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "1961" preceding "referendum" in the catchline to this section, and substituted "two dollars ($2.00)" for "one dollar ($1.00)" near the end of the section.

§ 106-568.23. Regulations as to referendum; notice to farm organizations and county agents.

The exact date, on which such referendum shall be held and the hours, voting places, and rules and regulations under which such referendum shall be conducted, shall be established and determined by the board of directors of the North Carolina corporation known and designated as Tobacco Associates, Incorporated, established under the leadership of farm organizations in the State of North Carolina for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and the use of tobacco everywhere; the said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published through the medium of the public press in the State of North Carolina by said board of directors at least 15 days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which flue-cured tobacco is grown. (1959, c. 309, s. 6; 1987, c. 294, s. 4.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "1961" preceding "referendum" in the catchline, deleted "in the said year 1961" following "The exact date" at the beginning of the section, and substituted "15 days" for "30 days" near the end of the section.

§ 106-568.24. Distribution of ballots; arrangements for holding referendum; declaration of results.

The said board of directors of Tobacco Associates, Incorporated, shall likewise prepare and distribute in advance of said referendum all necessary ballots for the purpose thereof, and shall under the rules and regulations promulgated by said board arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within 10 days thereafter the said board of directors shall canvass and publicly declare the results of such referendum. (1959, c. 309, s. 7; 1987, c. 294, s. 5.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "1961" preceding "referendum" in the catchline.

§ 106-568.25. Question at referendum.

Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment upon themselves for the period of three years, 1989, 1990 and 1991, in an amount in each of said years as determined by or to be determined by the board of directors of Tobacco Associates, Incorporated but not more than two dollars ($2.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8; 1987, c. 294, s. 6.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "1961" preceding "referendum" in the catchline, substituted "assessment upon themselves for the period of three years, 1989, 1990 and 1991" for "assessment for the period of three years, 1962, 1963 and 1964," and substituted "two dollars ($2.00)" for "one dollar ($1.00)".

§ 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.

In the event any referendum authorized by this Article is carried in the affirmative by such two-thirds vote and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the board of directors of Tobacco Associates, Incorporated, any farmer or tobacco producer upon whom and against whom any such annual assessment shall have been levied and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said Tobacco Associates, Incorporated, a refund of such annual assessment so collected from such farmer or

producer of tobacco, provided such demand for refund is made in writing within 30 days from the last date on which such assessment is collected from such farmer or producer or deducted from the proceeds of the sale of tobacco of such farmer or producer. (1959, c. 309, s. 11; 1987, c. 294, s. 7.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "last date on which such assessment" for "date on which said assessment" near the end of the section.

§ 106-568.30. Referendum as to continuance of assessments approved at prior referendum.

In the event any referendum, held at any time under the provisions of this Article, is carried by the vote of two-thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are being levied annually, then the board of directors of Tobacco Associates, Incorporated shall, in its discretion, have full power and authority to call and conduct another referendum in which the farmers and producers of flue-cured tobacco shall vote upon the question of whether or not assessments under this Article shall be continued for the next three tobacco marketing years. If the referendum is carried as provided in this Article, then assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 13; 1987, c. 294, s. 8.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "during the last year of such period" following "have full power and authority to call and conduct" near the middle of the first sentence and substituted "next three tobacco marketing years" for "next ensuing three years" at the end of the first sentence.

§ 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.

The treasurer of Tobacco Associates, Incorporated shall, within 60 days after the end of any fiscal year, file with the State Auditor a financial statement as of the end of the fiscal year and a detailed statement of operations for the year ended. Further a condensed statement of the financial condition and operating expenses for said fiscal year shall be published in a newspaper of general circulation, if one exists, in each county from which assessments are collected. (1959, c. 309, s. 14; 1987, c. 294, s. 9.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "60 days" for "30 days" in the first sentence.

§ 106-568.32: Repealed by Session Laws 1987, c. 294, s. 11, effective June 8, 1987.

§ 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 alternative assessment for any year after 1979 shall exceed ten cents (10¢) per 100 pounds of the flue-cured tobacco marketed by each farmer. 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; 1987, c. 294, s. 10.)

Effect of Amendments. — 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.

The 1987 amendment, effective June 8, 1987, rewrote the second sentence, which read "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."

§ 106-568.35. Alternate provision for referendum voting by mail.

(b) In the event that the board of directors shall decide to conduct the referendum by mail vote, the board shall prescribe the rules and regulations under which such mail referendum shall be conducted; shall provide the necessary ballots and cause them to be mailed to the farmers of North Carolina who are engaged in the production of flue-cured tobacco; shall provide envelopes for the return of such ballots by individual voters; shall cause to be published through the medium of the public press in the State of North Carolina notice of the holding of such referendum at least 15 days before the mailing out of the ballots; shall give direct written notice of such proposed mail referendum to all statewide farm organizations within the State of North Carolina and to each county agent in each county in which flue-cured tobacco is grown; shall provide a closing date for the return of the ballots; shall provide for the receipt and safeguarding of such ballots; and, within 30 days of the date set as the latest date for the return of such ballots, shall can-

vass the ballots and publish and declare the results of such referendum. (1975, c. 125; 1987, c. 294, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "are engaged in the production of" for "produce," and substituted "at least 15 days before the mailing" for "at least 30 days before the mailing."

§ 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 flue-cured tobacco marketed by each farmer. (1979, c. 474, s. 2; 1987, c. 294, s. 13.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "flue-cured tobacco marketed by each farmer" for "effective farm quota of a member" at the end of the section.

Article 51A.

North Carolina Antifreeze Law of 1975.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-579.6. Misbranding.

CASE NOTES

Failure to Label Properly Constitutes Misbranding and Deceptive Practice. — The failure to label drums of antifreeze properly is statutorily deemed to be a misbranding, which is deceptive as a matter of law. State ex rel. Edmisten v. Zim Chem. Co., 45 N.C. App. 604, 263 S.E.2d 849 (1980).

Defendant's failure properly to label drums of antifreeze constituted a misbranding under former § 106-571(2), and such misbranding was a deceptive practice within the meaning of § 75-1.1 as a matter of law. State ex rel. Edmisten v. Zim Chem. Co., 45 N.C. App. 604, 263 S.E.2d 849 (1980).

Article 52.

Agricultural Development.

§ 106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service.

CASE NOTES

Applied in Baucom's Nursery Co. v. Mecklenburg County, 62 N.C. App. 396, 303 S.E.2d 236 (1983).

Article 53.

Grain Dealers.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 106-602. License required.

CASE NOTES

Cited in In re Watson Seafood & Poultry Co., 66 Bankr. 635 (Bankr. E.D.N.C. 1986).

§ 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.)

Effect of Amendments. — The 1979 amendment rewrote this section.

§ 106-609. Records to be kept by dealers; uniform scale ticket.

It shall be the duty of every person doing business as a grain dealer in this State to keep records of grain transactions for reasonable periods of time and in accordance with good business practices.

The Board of Agriculture may, by regulation, require the use of, and prescribe the form of a uniform scale ticket by all grain dealers. (1973, c. 665, s. 9; 1983, c. 482.)

Effect of Amendments. — The 1983 amendment, effective June 9, 1983, added the second paragraph.

§ 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.)

Effect of Amendments. — The 1979 amendment added subdivision (7).

§ 106-611. Procedure for denial, suspension, or revocation of license; effect of revocation.

(a) A denial, suspension, or revocation of a license under this Article shall be made in accordance with Chapter 150B of the General Statutes.

(b) A license may not be suspended for more than one year. A person whose license is revoked may not obtain another license under this Article until at least two years have elapsed from the date of the final decision revoking the license or, if the decision is

appealed, from the date of the final judgment sustaining the revocation. (1973, c. 611, s. 11; c. 1331, s. 3; 1987, c. 827, s. 38.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote this section.

Article 54.

Adulteration of Grains.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Article 55.

North Carolina Bee and Honey Act of 1977.

§ 106-634. Declaration of policy.

Cross References. — As to the aerial application of pesticides which are toxic to bees, see § 143-443.

§ 106-638. Authority of Board to adopt regulations, standards, etc.

Cross References. — As to the aerial application of pesticides which are toxic to bees, see § 143-443.

Article 56.

North Carolina Commercial Fertilizer Law.

§ 106-657. Definitions.

When used in this Article:

(1) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale, and may include a trademark, but shall not include any numeral other than the grade of the fertilizer.

(9) The term "grade" means the percentage of total nitrogen, available phosphoric acid (as P_2O_5) and soluble potash (as K_2O) only stated in the order given in this subdivision, and, when applied to mixed fertilizers, shall be in whole numbers only for all packages larger than 16 ounces.

(10) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, artificially drying, grinding and other means.

In "manipulated manures" the minimum percentages of total nitrogen, available phosphoric acid (as P_2O_5) and soluble potash (as K_2O) are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages. Additions of plant food shall be limited to one-half (.50) percent each of nitrogen, phosphorus and potash.

(11) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers or the person whose name appears on the label as being responsible for the guarantee. The term "manufacture" means preparing, mixing, or combining fertilizer materials chemically or physically, including the simultaneous application of two or more fertilizer materials, by a manufacturer or contract applicator.

(22) The term "specialty fertilizer" means any fertilizer distributed primarily for use on noncommercial crops such as gardens, lawns, shrubs, flowers, golf courses, cemeteries and nurseries.

(27) The term "fertilizer coated seed" means seed which has been coated with commercial fertilizer. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2; 1977, c. 303, s. 3; 1981, c. 448, ss. 1-4; 1983, c. 146, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Subdivision (10) is set out to correct a typographical error in the bound volume.

Effect of Amendments. — The 1981 amendment, substituted "trademark, but shall not include any numeral other than the grade of the fertilizer" for "number, trademark, or other designation" at the end of subdivision (1), inserted "only," following "(as K_2O)" in subdivision (9), and deleted "etc., and may include fertilizers used for research or experimental purposes" from the end of subdivision (22). The amendment rewrote the definitions in subdivision (11) as two sentences, adding "or the person whose name appears on the label as being responsible for the guarantee" to the definition of "manufacturer," and adding "including the simultaneous application of two or more fertilizer materials, by a manufacturer or contract applicator" at the end of the definition of "manufacture."

The 1983 amendment, effective July 1, 1983, added subdivision (27).

§ 106-659. Minimum plant food content.

Superphosphate containing less than eighteen percent (18%) available phosphoric acid, or any mixed fertilizer in which the guarantees for the nitrogen, available phosphoric acid, or soluble potash are in fractional percentages may not be offered for sale, sold, or distributed in this State; provided, however, packages of 16 fluid ounces or less when in liquid form, or 16 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but such packages are not exempt from any other requirements of this Article. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7; 1973, c. 611, s. 6; 1975, c. 126; 1977, c. 303, s. 5; 1983, c. 146, s. 4; 1987, c. 292, s. 1.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, inserted "or to fertilizer coated seed" following "ten pounds or less" in the proviso at the end of the first sentence.

The 1987 amendment, effective July 1, 1987, rewrote this section.

§ 106-660. Registration of brands; licensing of manufacturers and distributors; fluid fertilizers.

(a) Each brand of commercial fertilizer for tobacco, specialty fertilizer, fertilizer materials, manipulated manure and fortified mulch shall be registered by the person whose name appears upon the label before being offered for sale, sold or distributed in this State, except those brands expressly produced for experimental and demonstration purposes only. Other fertilizers may be manufactured and sold without registration after obtaining a license as required in G.S. 106-661(a). The application for registration shall be submitted in duplicate to the Commissioner for his approval on forms furnished by the Commissioner, and shall include a fee of two dollars ($2.00) per brand and grade for all packages greater than five pounds. The registration fee for packages of five pounds or less shall be twenty-five dollars ($25.00). All approved registrations expire on June 30 of each year. The application shall include such information as deemed necessary by the Board of Agriculture.

(d) Any person desiring to manufacture or distribute fertilizers not required to be registered shall first secure a license. Application for said license shall be made on forms provided by the Commissioner and shall be accompanied by a reasonable fee to be determined by the Board of Agriculture. Said license shall be renewable annually on the first day of July. Said license may be suspended, revoked or terminated for a violation of this Article or any rule promulgated thereunder.

(f) Repealed by Session Laws 1983, c. 146, s. 2, effective July 1, 1983.

(g) Before any anhydrous ammonia installation shall be built in this State, a general layout of such installation shall be submitted in duplicate and approved by the Commissioner. In order that such a layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, distribution and/or application adopted by the Board of Agriculture. All storage tanks, transfer or transport containers, applicator containers, and attached equipment shall conform to the minimum standards adopted by the Board of Agriculture. It shall be the duty of the contractors referred to in G.S. 106-657(4) to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any and all equipment which he may use in the application of anhydrous ammonia. It shall be the duty of the Commissioner to inspect and ascertain whether or not the provisions of this section are complied with. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5; 1961, c. 66, ss. 3, 4; 1973, c. 611, ss. 1-4; 1977, c. 303, s. 6; 1981, c. 448, ss. 5, 6; 1983, c. 146, ss. 2, 3; 1987, c. 292, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1981 amendment rewrote subsections (a) and (d).

The 1983 amendment, effective July 1, 1983, deleted subsection (f), relating to registration of persons engaged in the business of handling, storing or distributing fluid fertilizer; in subsection (g), substituted "anhydrous ammonia installation" for "wholesale or retail fluid fertilizer distributing plant" and "installa-

tion" for "plant" in the first sentence and substituted "anhydrous ammonia" for "fluid fertilizer" in the fourth sentence.

The 1987 amendment, effective July 1, 1987, deleted a former proviso from the end of the second sentence of subsection (a), which read "provided, that such fertilizers contain a minimum of twenty percent (20%) primary plant nutrients, nitrogen (N), available phosphoric acid (P_2O_5), and soluble potash (K_2O)."

§ 106-661. Labeling.

(d) All labels and registrations shall carry identical guarantees for each fertilizer product requiring registration. (1947, c. 1086, s. 5; 1949, c. 637, s. 2; 1955, c. 354, s. 2; 1975, c. 127; 1977, c. 303, s. 7; 1981, c. 448, s. 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1981 amendment deleted "commercial fertilizer" preceding "labels and registrations" in subsection (d) and substituted "fertilizer product requiring registration" for "product" at the end of subsection (d).

§ 106-662. Sampling, inspection and testing.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner and for comparison with the guarantee supplied to the Commissioner in accordance with G.S. 106-660 and 106-661, the Commissioner, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. Portions shall be taken from containers as shown in the following table:

5 to 10 containers	all containers
11 to 20 containers	10 containers
21 to 40 containers	15 containers
above 40 containers	20 containers

Ten cores from bulk lots or as specified by the Association of Official Analytical Chemists (A.O.A.C.).

(2) A core sampler shall be used that removes a core from a bag or other container in a horizontal position from a corner to the diagonal corner at the other end of the package, and the cores taken shall be mixed, and if necessary, shall be reduced after thoroughly mixing, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provisions of this subdivision shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.

(3) The Board of Agriculture may modify the provisions of this subsection to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Analytical Chemists or by the Association of American Plant Food Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this Article in lieu of

those prescribed in subdivisions (1) and (2) of this subsection.

(4) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise; provided, that any commercial fertilizer offered for sale, sold or distributed in bulk may be sampled in a manner approved by the Commissioner.

(5) The Commissioner shall refuse to analyze all samples except those taken under the provisions of this section and no sample, unless so taken, shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this Article.

(6) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture, setting forth the analysis made by the chemist of the Department of Agriculture, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence.

(1947, c. 1086, s. 7; 1955, c. 354, s. 3; 1973, c. 1304, s. 1; 1977, c. 303, s. 8; 1981, c. 448, s. 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1981 amendment added the proviso in subdivision (b)(4).

CASE NOTES

Applied in L. Harvey & Son Co. v. Jarman, 76 N.C. App. 191, 333 S.E.2d 47 (1985).

§ 106-663. False or misleading statements.

It shall be unlawful to make, in any manner whatsoever, any false or misleading statement or representation with regard to any commercial fertilizer offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The Commissioner is authorized to refuse, suspend, revoke or terminate the license of any manufacturer or to refuse, suspend, revoke or terminate the registration of such commercial fertilizer for any violations of this section. (1947, c. 1086, s. 12; 1977, c. 303, s. 9; 1981, c. 448, s. 9.)

Effect of Amendments. — The 1981 amendment substituted the present second sentence for the former second sentence, which read: "The Commissioner is hereby authorized to refuse the registration of any commercial fertilizer with respect to which this section is violated."

§ 106-665. Plant food deficiency.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) For total nitrogen, available phosphoric acid, or available potash: A penalty of three times the value of the deficiency if such deficiency is in excess of the following investigational allowances.

Guarantee Percentage	*Total Nitrogen*	*Available Phosphoric Acid*	*Soluble Potash Percentage*
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation will be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation will be allowed.

(2) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (5%) (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, shall be assessed and paid as is prescribed in subsection (c) of this section.

(3) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of

the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(4) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.15 of one percent on goods guaranteed up to and including five-tenths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.

(5) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.20 of one percent for goods guaranteed up to and including five-tenths percent; 0.25 of one percent for goods guaranteed from five-tenths to one percent; 0.30 of one percent for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent up to four percent. Tolerances for goods guaranteed above four percent shall be the same as for total nitrogen.

(6) Total magnesium: If the magnesium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof.

(7) Total calcium: If the calcium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof.

(8) Sulfur: If the sulfur content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of one dollar ($1.00) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(9) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-660 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner in fertilizer regulations.

(10) For micro-nutrients as are not specifically covered in this Article, a tolerance of twenty-five percent (25%) of the guarantee will be allowed for each element, not to exceed 1/2 unit (.5%) on guarantees up to 15 units or percent and not to exceed one unit (1%) on guarantees above 15 units or percent.

(1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11; 1983, c. 146, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, added the paragraph following the table at the end of subdivision (1) of subsection (b).

§ 106-669. Effect of violations on license and registration.

The Commissioner is authorized to suspend, revoke or terminate the license of any manufacturer or to refuse, suspend, revoke or terminate the registration of any commercial fertilizer upon proof that the manufacturer has been guilty of fraudulent or deceptive practices, or in the evasion or attempted evasion of this Article or any rule promulgated thereunder. (1947, c. 1086, s. 17; 1977, c. 303, s. 15; 1981, c. 448, s. 10.)

Effect of Amendments. — The 1981 amendment substituted "to suspend, revoke or terminate the license of any manufacturer or to refuse, suspend, revoke or terminate the registration of any" for "and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of," substituted "manufacturer has been guilty" for "registrant has been guilty," deleted "the provisions of" preceding "this Article," and substituted "rule promulgated thereunder" for "rules or regulations promulgated thereunder." The 1981 amendment deleted the former second sentence, which read: "No registration shall be cancelled until the registrant has been given an opportunity for a hearing pursuant to the provisions of Article 3 of Chapter 150A of the General Statutes."

§ 106-677. Grade-tonnage reports.

Each person registering commercial fertilizers under this Article shall furnish the Commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this State. This information shall be held in confidence by the Commissioner. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may suspend, revoke or terminate the registration of said commercial fertilizer and suspend, revoke or terminate the license of any person failing to comply with this section within 30 days of the close of each period. All information published by the Department of Agriculture pursuant to this section shall be classified so as to prevent the identification of information received from individual registrants. All information received pursuant to this section shall be held confidential by the Department and its employees. (1947, c. 1086, s. 13; 1977, c. 303, s. 23; 1981, c. 448, s. 11.)

Effect of Amendments. — The 1981 amendment rewrote the last three sentences.

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, s. 1.)

Editor's Note. — Session Laws 1979, c. 202, s. 2, provides: "This act does not affect actions commenced prior to the effective date hereof [March 26, 1979]."

Session Laws 1979, c. 202, s. 3, contains a severability clause.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Applied in Baucom's Nursery Co. v. Mecklenburg County, 62 N.C. App. 396, 303 S.E.2d 236 (1983).

Cited in Mayes v. Tabor, 77 N.C. App. 197, 334 S.E.2d 489 (1985).

§ 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.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Applied in Mayes v. Tabor, 77 N.C. App. 197, 334 S.E.2d 489 (1985).

Article 58.

North Carolina Biologics Law of 1981.

§ 106-707. Short title and purpose.

This Article shall be known as "The North Carolina Biologics Law of 1981." The purpose of the law is to provide for the production and sale of biologics for the prevention or treatment of disease in animals other than man and to establish controls for the sale and use of biologics in North Carolina. (1981, c. 552, s. 1.)

Cross References. — For purchase and resale by Department of Agriculture of products for control of animal diseases, see § 106-307.1.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 106-708. Definitions.

For purposes of this Article, the following words, terms and phrases are defined as follows:

(1) "Animal" means all birds and mammals, other than man, to which biologics may be administered.

(2) "Biologics" means preparations made from living organisms and their products, including serums, vaccines, antigens and antitoxins which are used for the treatment or prevention of diseases in animals other than humans, or in the diagnosis of diseases.

(3) "Board" means the North Carolina Board of Agriculture.

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

(5) "Department" means the Department of Agriculture. (1981, c. 552, s. 1.)

§ 106-709. Rules and regulations.

The Board of Agriculture shall adopt rules and regulations necessary for the implementation and administration of this Article. (1981, c. 552, s. 1.)

§ 106-710. Biologics production license.

(a) No person shall engage in the production of biologics except in:

(1) An establishment licensed by the Department;

(2) An establishment licensed by the United States Department of Agriculture; or

(3) An establishment producing biologics only for use by the owner or operator of the establishment for animals owned by him, if the biologics are registered with the Commissioner.

(b) Any establishment applying for a license to produce biologics shall be inspected by the Commissioner. Approval shall be based on compliance with the rules and regulations adopted by the board.

(c) Application for a license to produce biologics shall be made on forms provided by the Commissioner and shall be accompanied by a reasonable fee as established by the board.

(d) Upon approval, a license shall be granted upon payment of the annual license fee of one hundred dollars ($100.00) for each establishment licensed, and an additional fee of fifty dollars ($50.00) for each product produced at any time during the year. This license shall be renewed annually. The annual renewal fee shall be paid on or before the first day of July of each year. (1981, c. 552, s. 1.)

§ 106-711. License revocation or suspension.

The Commissioner, upon a finding that a licensed establishment producing biologics is not in compliance with this Article or any rules or regulations promulgated thereunder, may revoke or suspend the license in accordance with Chapter 150B of the General Statutes. (1981, c. 552, s. 1; 1987, c. 827, s. 1.)

Effect of Amendments. — The 1987 amendment substituted reference to Chapter 150B for reference to Chapter 150A in this section.

§ 106-712. Registration of biologics.

(a) No person shall offer for sale or use any biologic in North Carolina unless it is registered with the Commissioner. The registration shall be made on forms provided by the Commissioner. The forms shall require the applicant to provide information showing that the biologic:

(1) Is produced under procedures approved by the Commissioner;

(2) Is safe and noninjurious to animals when used as directed;

(3) Is labeled for proper handling, use and contents;

(4) Is produced in an establishment licensed under this Article; and

(5) Is not in violation of this Article or any rule or regulation promulgated thereunder.

(b) The application for registration shall also include a protocol of methods of production in detail which is followed in the production of the biologic, a sample of the label to be placed on the biologic, and any other information prescribed by the board as necessary for the implementation of this Article. (1981, c. 552, s. 1.)

§ 106-713. Revocation or suspension of registration.

The Commissioner, upon a finding that a registered biologic is being produced, sold or distributed in violation of this Article or any rules or regulations promulgated thereunder, may revoke or suspend the regulation in accordance with Chapter 150B of the General Statutes. (1981, c. 552, s. 1; 1987, c. 827, s. 1.)

Effect of Amendments. — The 1987 amendment substituted reference to Chapter 150B for reference to Chapter 150A in this section.

§ 106-714. Penalties for violation.

(a) Any person adjudged to have violated any provision of this Article or the rules and regulations promulgated thereunder is guilty of a misdemeanor punishable by a fine of no less than one hundred dollars ($100.00) per violation and no more than one thousand dollars ($1,000), or imprisonment for no less than 60 days and no more than six months, or both. The Attorney General or his representative has concurrent jurisdiction with the district attorneys of this State to prosecute violations under this section.

(b) The Commissioner may apply to the Superior Court for an injunction to restrain and prevent violations of this Article or the rules and regulations promulgated thereunder irrespective of whether there exists an adequate remedy elsewhere at law. (1981, c. 552, s. 1.)

§§ 106-715 to 106-718: Reserved for future codification purposes.

Article 59.

Northeastern North Carolina Farmers Market Commission.

§ 106-719. Purpose.

The purpose of this Article is to establish a farmers market in northeastern North Carolina that will facilitate the sale and marketing of agricultural commodities produced in northeastern North Carolina, encourage increased production and sale of these agricultural commodities, and encourage the cultivation and diversification of agricultural commodities in northeastern North Carolina. (1985 (Reg. Sess., 1986), c. 1014, s. 158(a).)

Editor's Note. — Section 244 of Session Laws 1985 (Reg. Sess., 1986), c. 1014, makes this Article effective July 1, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

§ 106-720. Northeastern Farmers Market Commission established; membership.

(a) There is established the Northeastern North Carolina Farmers Market Commission. The Commission shall be located administratively in the Department of Agriculture but shall exercise its exclusive powers and functions, herein granted, independently of the Commissioner of Agriculture and the Board of Agriculture.

(b) The Commission shall consist of nine members, as follows:

(1) The Commissioner of Agriculture;

(2) Four members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121; and

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section.

(c) Members of the Commission appointed by the General Assembly shall serve for staggered four-year terms. To achieve staggered terms, the initial terms of two members appointed by the General Assembly upon the recommendation of the President of the Senate and two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for two years.

(d) The person designated by the General Assembly as chairman pursuant to subsection (b)(3) of this section shall call the organizational meeting of the Commission and shall serve as chairman until the Commission elects its own chairman. Thereafter, the Commission shall elect its own chairman who shall serve at the pleasure of the Commission.

(e) The Commission shall meet on a quarterly basis and otherwise upon the call of the chairman.

(f) Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6. (1985 (Reg. Sess., 1986), c. 1014, s. 158(a).)

§ 106-721. Powers and duties of the Commission; powers and duties of the Commissioner of Agriculture and the Board of Agriculture.

(a) The Commission shall:

(1) Select the site for the Northeastern North Carolina Farmers Market;

(2) Make all programming decisions on the construction of the Farmers Market; and

(3) Advise the Commissioner of Agriculture on the operation of the Farmers Market.

(b) The Commissioner shall:

(1) Appoint an advisory board consisting of one member from each of the counties the Commissioner determines will be served by the Northeastern North Carolina Farmers Market. This advisory board shall advise the Northeastern North Carolina Farmers Market Commission.

(2) Operate the Northeastern North Carolina Farmers Market. (1985 (Reg. Sess., 1986), c. 1014, s. 158(a).)

§§ 106-722 to 106-725: Reserved for future codification purposes.

Article 60.

Southeastern North Carolina Farmers Market Commission.

§ 106-726. Purpose.

The purpose of this Article is to establish a farmers market in southeastern North Carolina that will facilitate the sale and marketing of agricultural commodities produced in southeastern North Carolina, encourage increased production and sale of these agricultural commodities, and encourage the cultivation and diversification of agricultural commodities in southeastern North Carolina. (1985 (Reg. Sess., 1986), c. 1014, s. 159(a).)

Editor's Note. — Section 244 of Session Laws 1985 (Reg. Sess., 1986), c. 1014, makes this Article effective July 1, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

§ 106-727. Southeastern Farmers Market Commission established; membership.

(a) There is established the Southeastern North Carolina Farmers Market Commission. The Commission shall be located administratively in the Department of Agriculture but shall exercise its exclusive powers and functions, herein granted, independently of the Commissioner of Agriculture and the Board of Agriculture.

(b) The Commission shall consist of nine members, as follows:

(1) The Commissioner of Agriculture;

(2) Four members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section; and

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(c) Members of the Commission appointed by the General Assembly shall serve for staggered four-year terms. To achieve staggered

terms, the initial terms of two members appointed by the General Assembly upon the recommendation of the President of the Senate and two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for two years.

(d) The person designated by the General Assembly as chairman pursuant to subsection (b)(2) of this section shall call the organizational meeting of the Commission and shall serve as chairman until the Commission elects its own chairman. Thereafter, the Commission shall elect its own chairman who shall serve at the pleasure of the Commission.

(e) The Commission shall meet on a quarterly basis and otherwise upon the call of the chairman.

(f) Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6. (1985 (Reg. Sess., 1986), c. 1014. s. 159(a).)

§ 106-728. Powers and duties of the Commission; powers and duties of the Commissioner of Agriculture and the Board of Agriculture.

(a) The Commission shall:

(1) Select the site for the Southeastern North Carolina Farmers Market;

(2) Make all programming decisions on the construction of the Farmers Market; and

(3) Advise the Commissioner of Agriculture on the operation of the Farmers Market.

(b) The Commissioner shall:

(1) Appoint an advisory board consisting of one member from each of the counties the Commissioner determines will be served by the Southeastern North Carolina Farmers Market. This advisory board shall advise the Southeastern North Carolina Farmers Market Commission.

(2) Operate the Southeastern North Carolina Farmers Market. (1985 (Reg. Sess., 1986), c. 1014, s. 159(a).)

§§ 106-729 to 106-734: Reserved for future codification purposes.

Article 61.

Preservation of Farmland.

§ 106-735. Short title and purpose.

(a) This article shall be known as "The Farmland Preservation Enabling Act."

(b) The purpose of this Article is to authorize counties to undertake a series of programs to encourage the preservation of farmland as defined herein. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1025, s. 2, makes this Article effective July 16, 1986.

§ 106-736. Farmland preservation programs authorized.

A county may by ordinance establish a farmland preservation program under this Article. The ordinance may authorize qualifying farms, as defined in G.S. 106-737, to take advantage of one or more of the benefits authorized by the remaining sections of this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-737. Qualifying farmland.

In order for farmland to qualify under this Article, it must be real property that:

(1) Is participating in the farm present-use-value taxation program established by G.S. 105-277.2 through 105-277.7 or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3;

(2) Is certified by the Soil Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that (i) are best suited for providing food, seed, fiber, forage, timber, and oil seed crops, (ii) have good soil qualities, (iii) are favorable for all major crops common to the county where the land is located, (iv) have a favorable growing season, and (v) receive the available moisture needed to produce high yields an average of eight out of 10 years; or on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in G.S. 105-277.2(1), (2), and (3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies;

(3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodable land; and

(4) Is the subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least 10 years, except for the creation

of not more than three lots that meet applicable county zoning and subdivision regulations. (1985 (Reg. Sess., 1986), c. 1025. s. 1.)

§ 106-737.1. Revocation of conservation agreement.

By written notice to the county, the landowner may revoke this conservation agreement. Such revocation shall result in loss of qualifying farm status. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-738. Voluntary agricultural districts.

(a) An ordinance adopted under this Article shall provide:

(1) For the establishment of voluntary agricultural districts consisting initially of at least the number of contiguous acres of qualifying farmland or the number of qualifying farms deemed appropriate by the board of county commissioners;

(2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district;

(3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official;

(4) That each such district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms. The county may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-739. Agricultural advisory board.

An ordinance adopted under this Article shall provide for the establishment of an agricultural advisory board, organized and appointed as the county shall deem appropriate. The county may confer upon this advisory board authority to:

(1) Review and make recommendations concerning the establishment and modification of agricultural districts;

(2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Article;

(3) Hold public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;

(4) Advise the board of county commissioners on projects, programs, or issues affecting the agricultural economy or way of life within the county;

(5) Perform other related tasks or duties assigned by the board of county commissioners. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-740. Public hearings on condemnation of farmland.

An ordinance adopted under this Article may provide that no State or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency has requested the local agricultural advisory board established under G.S. 106-739 to hold a public hearing on the proposed condemnation.

(1) Following a public hearing held pursuant to this section, the board shall prepare and submit written findings and a recommendation to the decision-making body of the agency proposing acquisition.

(2) The board designated to hold the hearing shall have 30 days after receiving a request under this section to hold the public hearing and submit its findings and recommendations to the agency.

(3) The agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-741. Record notice of proximity to farmlands.

(a) Any county that has a computerized land records system may require that such records include some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a poultry, swine, or dairy qualifying farm or within 600 feet of any other qualifying farm or within one-half mile of a voluntary agricultural district.

(b) In no event shall the county or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by any ordinance adopted under subsection (a).

(c) In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-742. Waiver of water and sewer assessments.

(a) A county may provide by ordinance that its water and sewer assessments be held in abeyance, with or without interest, for farms, whether inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(d) If an ordinance is adopted under this section, then the assessment procedures followed under Article 9 of Chapter 153A shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties to hold assessments in abeyance under G.S. 153A-201. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§ 106-743. County ordinances.

A county adopting an ordinance under this Article may consult with the North Carolina Commissioner of Agriculture or his staff before adoption, and shall record the ordinance with the Commissioner's office after adoption. Thereafter, the county shall submit to the Commissioner at least once a year, a written report including the status, progress and activities of the county's farmland preservation program under this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1.)

§§ 106-744 to 106-749: Reserved for future codification purposes.

Article 62.

Grape Growers Council.

§ 106-750. North Carolina Grape Growers Council — Creation; powers and duties.

There is created the North Carolina Grape Growers Council of the Department of Agriculture. The North Carolina Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;
(2) To assure orderly growth and development of North Carolina's grape and wine industry;
(3) To achieve public awareness of the quality of North Carolina grapes and wine;
(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;
(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;
(9) To contract for research services to improve viticultural and enological practices in North Carolina;

(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;
(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;
(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and
(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry. (1985 (Reg. Sess., 1986), c. 974, s. 1.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 974, s. 2 makes this Article effective upon ratification, except subsection (b) of § 106-751 is made effective only upon adequate funds being appropriated or otherwise made available for that purpose.

§ 106-751. North Carolina Grape Growers Council — Composition; terms; reimbursement.

(a) The North Carolina Grape Growers Council shall consist of 11 members appointed by the Commissioner of Agriculture in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The Commissioner shall appoint, within 30 days of the effective date of this act, four members for three-year terms, four members for two-year terms, and three members for one-year terms. Thereafter, members shall be appointed for four-year terms and shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the Commissioner for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of Agriculture.

(d) The Commissioner of Agriculture shall appoint a chairman who shall serve at the pleasure of the Commissioner.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the chairman or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business. (1985 (Reg. Sess., 1986), c. 974, s. 1.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 974, s. 2 makes this Article effective upon ratification, except subsection (b) of this section was made effective only upon adequate funds being appropriated or otherwise made available for that purpose. Such an appropriation was made by Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 8.

Chapter 108.

Social Services.

Article 1.

Administration.

Part 3. County Boards of Social Services.

§§ 108-7 to 108-16: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 4. County Director of Social Services.

§§ 108-17 to 108-19.1: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 5. Special County Attorneys for Social Service Matters.

§§ 108-20 to 108-22: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Article 2.

Programs of Public Assistance.

§§ 108-23 to 108-24.1: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full

force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 1. Aid to the Aged and Disabled.

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

§§ 108-29 to 108-37.1: Repealed by Session Laws 1973, c. 204, s. 1.

CASE NOTES

Effect of Repeal on Liens under Former § 108-29. — By enacting S.L. 1973, c. 204, as amended by S.L. 1975, c. 48, abolishing all liens under former § 108-29 except those actually collected, the legislature intended to render null and void all rights existing in favor of a county as a result of payment of Old Age Assistance funds upon which no moneys had actually been received in satisfaction thereof. Swain County v. Sheppard, 35 N.C. App. 391, 241 S.E.2d 525 (1978).

County's lien under former § 108-29, although reduced to judgment, was voided by S.L. 1975, c. 48. Swain County v. Sheppard, 35 N.C. App. 391, 241 S.E.2d 525 (1978).

Part 2. Aid to Families with Dependent Children.

§§ 108-38 to 108-39.1: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

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

§§ 108-40 to 108-50: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 4. Financing of Programs of Public Assistance.

§§ 108-51 to 108-54.1: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

§§ 108-56 to 108-58: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 5. Medical Assistance.

§§ 108-59 to 108-61: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

§§ 108-61.2 to 108-61.8: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 6. State-County Special Assistance for Adults.

§§ 108-62 to 108-65.3: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 7. Foster Home Fund.

§ 108-66: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Article 3.

Inspection and Licensing Authority.

Part 1A. Licensing of Public Solicitation.

§§ 108-75.1 to 108-75.25: Recodified as §§ 131C-1 to 131C-22 by Session Laws 1981, c. 275, s. 2, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 2. Licensing of Institutions.

§§ 108-76 to 108-78: Recodified as §§ 131D-1 to 131D-5 pursuant to Session Laws 1981, c. 275, s. 2, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Part 3. Local Confinement Facilities.

§§ 108-79 to 108-81: Recodified as §§ 131D-11 to 131D-13 pursuant to Session Laws 1981, c. 275, s. 2, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Article 4A.

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

§§ 108-102 to 108-106.8: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Article 5.

Family Food Assistance Program.

§§ 108-107 to 108-110: Repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Cross References. — For present provisions as to social services, see Chapter 108A.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Article 6.

Economic Opportunity Agencies.

§§ 108-116 to 108-123: Recodified as §§ 143B-344.3 to 143B-344.10 by Session Laws 1981, c. 275, s. 3, effective October 1, 1981.

Editor's Note. — Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Chapter 108A.

Social Services.

Article 1.

County Administration.

Part 1. County Boards of Social Services.

Part 2. County Director of Social Services.

Part 3. Special County Attorneys for Social Service Matters.

Article 2.

Programs of Public Assistance.

Part 1. In General.

Part 2. Aid to Families with Dependent Children.

Part 3. State-County Special Assistance for Adults.

Part 4. Foster Care and Adoption Assistance Payments.

Editor's Note. — Session Laws 1981, c. 275, repealed former Chapter 108, Social Services, and enacted present Chapter 108A in its place. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the new Chapter. Most of the cases and opinions of the Attorney General cited under the various sections below were decided under the corresponding sections of former Chapter 108.

Article 1.

County Administration.

Part 1. County Boards of Social Services.

§ 108A-1. 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; 1981, c. 275, s. 1.)

Cross References. — As to the Social Services Commission, see § 143B-153 et seq. As to certain financial assistance and in-kind goods not being considered in determining assistance paid under Chapter 108A and 111, see § 108A-26.

Editor's Note. — Session Laws 1981, c. 275, s. 11, makes this Chapter effective Oct. 1, 1981. Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Stated in Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

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

§ 108A-2. Size.

The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to 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; 1981, c. 275, s. 1.)

Local Modification. — Mecklenburg: 1981, c. 625.

§ 108A-3. Method of appointment; residential qualifications; fee or compensation for services.

(a) Three-Member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the Social Services Commission shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-Member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth member. If the four are unable to agree upon the fifth member, the senior regular superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the Social Services Commission and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Department of Human Resources directly or indirectly only the fees and compensation as provided by G.S. 108A-8. (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; 1971, c. 369; 1973, c. 476, s. 138; 1981, c. 275, s. 1.)

CASE NOTES

Stated in Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

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).

§ 108A-4. Term of appointment.

Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms. Notwithstanding the previous sentence, the limitation on consecutive terms does not apply if the member of the social services board was a member of the board of county commissioners at any time during the first two consecutive terms, and is a member of the board of county commissioners at the time of reappointment. (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; 1981, c. 275, s. 1; c. 770.)

Effect of Amendments. — The 1981 amendment added the third sentence. The amendatory act, which was ratified July 2, 1981, and made effective on ratification, also made the same amendment to former § 108-10, corresponding to this section.

§ 108A-5. Order of appointment.

(a) Three-Member Board: The term of the member appointed by the Social Services Commission shall expire on June 30, 1981, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1983, and every three years thereafter; and the term of the third member shall expire on June 30, 1982, and every three years thereafter.

(b) Five-Member Board: Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the Social Services Commission shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the Social Services Commission. The change to a five-member board shall become effective at the time when the additional members shall have been appointed by both the county board of commissioners and the Social Services Commission. Thereafter all appointments shall be for three-year terms.

(c) Change from Five-Member to Three-Member Board: The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

(1) The seat held by the member appointed by the Social Services Commission whose term would have expired on June 30, 1983, or triennially thereafter; and

(2) The seat held by the member appointed by the board of commissioners whose term would have expired June 30, 1981, or triennially thereafter. (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. 1986; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 724, s. 1; 1981, c. 275, s. 1.)

§ 108A-6. Vacancies.

Appointments to fill vacancies shall be made in the manner set out in G.S. 108A-3. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108A-4. (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; 1981, c. 275, s. 1.)

§ 108A-7. Meetings.

The board of social services of each county shall meet at least once per month, or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C.S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-8. Compensation of members.

Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C.S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 124; 1981, c. 275, s. 1; 1985, c. 418, s. 3.)

Effect of Amendments. — The 1985 amendment, effective June 18, 1985, rewrote this section, which formerly read "Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners."

§ 108A-9. Duties and responsibilities.

The county board of social services shall have the following duties and responsibilities:

(1) To select the county director of social services according to the merit system rules of the State Personnel Commission;

(2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community;

(3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services;

(4) To transmit or present the budgets of the county department of social services for public assistance, social services, and administration to the board of county commissioners;

(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; 1981, c. 275, s. 1.)

CASE NOTES

The county department of social services is merely an extension of the county. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

And Has No Sovereign Immunity. — Because the Brunswick County Department of Social Services and the Brunswick County Board of Social Services are extensions of Brunswick County which does not enjoy sovereign immunity, neither do they have sovereign immunity. Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

The sole involvement of the county board of social services in personnel matters is to select the county director of social services. And the director derives his authority to appoint personnel directly from the General Assembly, not from the board. Thus the local board does not become the "local appointing authority" pursuant to G.S. 126-37 in the absence of a permanent full-time director. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

Extent of Authority Exercised by County over Director. — It is apparent that the county is at most only equal to the State in the authority it can exert over the director of social services. Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

In an action by eligibility supervisor of county department of social services alleging that her constitutional rights had been violated when her employment was terminated by the director of social services, the county could not be held liable to the plaintiff since the director was not acting for the county, but rather for the State, and since the county board of social services did not have the authority to dismiss the eligibility supervisor. Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

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

§ 108A-10. 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. 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 or Department of Human Resources regarding fees.

The fees collected under the authority of this 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 Article 3 of Chapter 159, 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. (1981, c. 275, s. 1.)

§ 108A-11. Inspection of records by members.

Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and provision of public assistance and social services authorized by this Chapter. No member shall disclose or make public any information which he may acquire by examining such records. (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; 1981, c. 275, s. 1.)

CASE NOTES

Stated in Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

Part 2. County Director of Social Services.

§ 108A-12. Appointment.

(a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Commission. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards and such boards may also combine any other functions or activities as authorized by Part 1 of Article 20 of Chapter 160A. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C.S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

CASE NOTES

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).

§ 108A-13. Salary.

The board of social services of every county, with the approval of the board of county commissioners, shall determine the salary of the director in accordance with the classification plan of the State Personnel Commission, and such salary shall be paid by the county from the federal, State and county funds available for this purpose. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C.S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

CASE NOTES

Stated in Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

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

§ 108A-14. Duties and responsibilities.

The director of social services shall have the following duties and responsibilities:

(1) To serve as executive officer of the board of social services and act as its secretary;

(2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Commission;

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

(4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services;

(5) To act as agent of the Social Services Commission and Department of Human Resources in relation to work required by the Social Services Commission and Department of Human Resources in the county;

(6) To investigate cases for adoption and to supervise adoptive placements;

(7) To issue employment certificates to children under the regulations of the State Department of Labor;

(8) To supervise domiciliary homes for aged or disabled persons under the rules and regulations of the Social Services Commission.

(9) To assist and cooperate with the Department of Correction and their representatives;

(10) To act in conformity with the provisions of Article 7, Chapter 35 of the General Statutes with regard to sterilization of mentally ill and mentally retarded persons;

(11) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A;

(12) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care; and

(13) To respond by investigation and action to a request for written consent to the plan of separation of a child under six months of age from its custodial parent, pursuant to G.S. 14-320.

(14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C.S., s. 5017; 1941, c. 270, s. 5; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 710, s. 5; 1973, c. 476, ss. 133.3, 138; c. 1262, s. 109; c. 1339, s. 2; 1977, 2nd Sess., c. 1219, s. 8; 1981, c. 275, s. 1; 1983, c. 293; 1985, c. 203, ss. 1, 2.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, deleted "and" at the end of subdivision (11), inserted "and" at the end of subdivision (12), and added subdivision (13).

The 1985 amendment, effective May 17, 1985, substituted "domiciliary homes for aged or disabled persons" for "boarding homes, rest homes, and convalescent homes for aged or infirm persons" in subdivision (8) and added subdivision (14).

CASE NOTES

The sole involvement of the county board of social services in personnel matters is to select the county director of social services. And the director derives his authority to appoint personnel directly from the General Assembly, not from the board. Thus the local board does not become the "local appointing authority" pursuant to G.S. 126-37 in the absence of a permanent full-time director. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

Director Has Exclusive Power to Hire and Fire Department Personnel. — Subdivision (2) of this section gives the director of a county department of social services the exclusive power to hire and fire the department's personnel; the statute makes no distinction between "acting" and "permanent" directors. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

Chapter 126 establishes and provides for the administration of the state personnel system. Yow v. Alexander County Dep't of Social Servs., 70 N.C. App. 174, 319 S.E.2d 626, cert. denied, 312 N.C. 625, 323 S.E.2d 927 (1984).

Authority Exercised by County Over Director. — It is apparent that the county is at most only equal to the State in the authority it can exert over the director of social services. Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

Trainee Has No Property Interest in Continued Employment. — An employee who is subject to the State Personnel Act and who holds a "trainee" appointment as defined by the North Carolina Administrative Code does not have a property interest in her continued employment which is protected by the due process clause of the Fourteenth Amendment. Yow v. Alexander County Dep't of Social Servs., 70 N.C. App. 174, 319 S.E.2d 626, cert. denied, 312 N.C. 625, 323 S.E.2d 927 (1984).

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).

§ 108A-15. Social services officials and employees as public guardians.

The director and assistant directors of social services of each county may serve as guardians for adults adjudicated incompetent under the provisions of Chapter 35A, and they shall do so if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a guardianship proceeding brought under either Article. (1977, c. 725, s. 6; 1981, c. 275, s. 1; 1985, c. 361, s. 3; 1987, c. 550, s. 23.)

Cross References. — As to public guardians, see also § 122C-122.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, substituted "may serve" for "are authorized to serve," substituted "Articles 1A and 2" for "Article 1A," deleted "the" preceding "superior court," and substituted "either Article" for "that Article."

The 1987 amendment, effective October 1, 1987, substituted "Chapter 35A" for "Chapter 35, Articles 1A and 2."

Part 3. Special County Attorneys for Social Service Matters.

§ 108A-16. Appointment.

With the approval of the board of social services, the board of commissioners of any county may appoint a licensed attorney to serve as a special county attorney for social service matters, or designate the county attorney as special county attorney for social service matters. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-17. Compensation.

The special county attorney for social service matters shall receive compensation for the performance of his duties and for his expenses in such amount as the board of commissioners may provide. His compensation shall be a proper item in the annual budget of the county department of social services. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-18. Duties and responsibilities.

(a) The special county attorney shall have the following duties and responsibilities:

(1) To serve as legal advisor to the county director, the county board of social services, and the board of county commissioners on social service matters;

(2) To represent the county, the plaintiff, or the obligee in all proceedings brought under Chapter 52A, the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act;

(3) To represent the county board of social services in appeal proceedings and in any litigation relating to appeals;

(4) To assist the district attorney with the preparation and prosecution of criminal cases under Article 40 of Chapter 14, entitled "Protection of the Family";
(5) To assist the district attorney with the preparation and prosecution of proceedings authorized by Chapter 49, entitled "Bastardy";
(6) To perform such other duties as may be assigned to him by the board of county commissioners, the board of social services, or the director of social services.

(b) In performing any of the duties and responsibilities set out in this section, the special county attorney is authorized to call upon any director of social services or the Department of Human Resources for any information as he may require to perform his duties, and such director and Department are directed to assist him in performing such duties. (1959, c. 1124, ss. 2, 3; 1969, c. 546, s. 1; 1973, c. 47, s. 2; c. 476, s. 138; 1981, c. 275, s. 1.)

§§ 108A-19 to 108A-23: Reserved for future codification purposes.

Article 2.

Programs of Public Assistance.

Part 1. In General.

§ 108A-24. Definitions.

As used in Chapter 108A:
(1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.
(2) "Department" is the Department of Human Resources, unless the context clearly indicates otherwise.
(3) "Dependent child" is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support or care; it shall also include a minor who has been eligible for AFDC who is now living in a foster-care facility or child-caring institution; it shall also include a dependent child in school under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act.
(4) Repealed by Session Laws 1983, c. 14, s. 3, effective July 1, 1983.
(5) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this Article.
(6) "Resident," unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.
(7) "Secretary" is the Secretary of Human Resources, unless the context clearly indicates otherwise. (1981, c. 275, s. 1; 1983, c. 14, s. 3.)

Cross References. — As to who is a permanently and totally disabled person, see § 108A-42.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, repealed subdivision (4) which defined "permanently and totally disabled."

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

OPINIONS OF ATTORNEY GENERAL

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

§ 108A-25. Creation of programs.

(a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services or the Department of Human Resources under federal regulations or under rules and regulations adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

(1) Aid to families with dependent children;
(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program.

(b) The program of medical assistance is hereby established as a program of public assistance and shall be administered by the county departments of social services under rules and regulations adopted by the Department of Human Resources.

(c) The Department of Human Resources is hereby authorized to accept all grants-in-aid for programs of public assistance which may be available to the State by the federal government. The provisions of this Article shall be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. (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; 1981, c. 275, s. 1.)

Cross References. — As to the AFDC Emergency Assistance Program, see § 108A-39.1. As to the Community Work Experience Program, see § 108A-39.2.

CASE NOTES

State Participation Is Voluntary. — Participation by the State in aid to families with dependent children is not required, but is voluntary; implementation is left to the states. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 39, 34 L. Ed. 2d 66 (1972).

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).

§ 108A-26. Certain financial assistance and in-kind goods not considered in determining assistance paid under Chapters 108A and 111.

Financial assistance and in-kind goods or services received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid any person under Chapters 108A and 111 of the General Statutes provided that such financial assistance and in-kind goods and services are incorporated in the rehabilitation plan of such person being assisted by the Division of Vocational Rehabilitation Services or the Division of Services for the Blind of the Department of Human Resources, except where such goods and services are required to be considered by federal law or regulations. (1973, c. 716; 1981, c. 275, s. 1.)

Part 2. Aid to Families with Dependent Children.

§ 108A-27. Authorization of Aid to Families with Dependent Children Program.

The Department is authorized to establish and supervise an Aid to Families with Dependent Children Program. This program is to be administered by county departments of social services under federal regulations and rules and regulations of the Social Services Commission. (1981, c. 275, s. 1.)

CASE NOTES

Compliance with Federal Standards. — It is true that the state must administer its public assistance program in accordance with federal regulations. However, a state plan need not strictly follow the language of 42 U.S.C. § 602(a)(26)(A) in order to satisfy federal requirements but may substitute an assignment by operation of law which is "substantially identical" to that described by the federal act. North Carolina's public assistance plan has been duly approved. State ex rel. Crews v. Parker, — N.C. —, 354 S.E.2d 501 (1987).

§ 108A-28. (Effective until July 1, 1987 contingent on appropriation) Eligibility requirements; certain contributions to be disregarded.

(a) Assistance shall be granted to any dependent child, as defined in G.S. 108A-24(3), 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.

(b) Assistance shall be granted to a parent or relative, as specified in G.S. 108A-24(3), with whom a dependent child lives who:

§ 108A-28 is set out twice. See headings for effective dates.

(1) Is assuming responsibility for the child's ongoing care;
(2) Is a resident of the State;
(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; 1981, c. 275, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 1987, and until State and federal funds are appropriated. For this section as amended effective July 1, 1987, contingent on the appropriation of State and federal funds, see the following section, also numbered 108A-28.

Legal Periodicals. — For note on illegitimacy in North Carolina, see 46 N.C.L. Rev. 813 (1968).

For note on the "man in the house" or "substitute parent" rule in determining eligibility for aid to dependent children, see 47 N.C.L. Rev. 228 (1968).

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

CASE NOTES

Constitutionality of Denying Eligibility for Unborn Children. — The policy of this State not to recognize aid to families with dependent children and Medicaid eligibility for needy women with unborn children, while the State does recognize aid to families with dependent children and Medicaid eligibility for needy women with born children, does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Taylor v. Hill, 420 F. Supp. 1020 (W.D.N.C. 1976), aff'd, 430 U.S. 961, 97 S. Ct. 1639, 52 L. Ed. 2d 352 (1977).

Infringement upon Right to Subsistence as Deprivation of Personal Liberty. — Children have a right to subsistence, and infringement upon that right is a deprivation of personal liberty, which gives rise to a cause of action under 42 U.S.C. § 1983, with jurisdiction in the district court under 28 U.S.C. § 1343. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 39, 34 L. Ed. 2d 66 (1972).

Deeming of Support Payments to Child's Siblings Held Unlawful. — Action of state agency, acting under a rational interpretation of pertinent recent federal statutes and regulations, in "deeming" support payments from absent fathers to be income available to all the dependent children in the house, and cutting off or reducing Aid to Families with Dependent Children (AFDC) payments accordingly, constituted an unlawful "taking" of the child's income from an absent father, and unlawfully deprived the other children in the family of AFDC benefits by destroying or reducing their entitlement because one of the mother's children, who had income of his or her own, exercised his or her right to live in the mother's family unit. Gilliard v. Kirk, 633 F. Supp. 1529 (W.D.N.C. 1986).

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

OPINIONS OF ATTORNEY GENERAL

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 40 N.C.A.G. 652 (1970).

§ 108A-28 is set out twice. See headings for effective dates.

§ 108A-28. (Effective July 1, 1987 contingent on appropriation) Eligibility requirements; certain contributions to be disregarded.

(a) Assistance shall be granted to any dependent child, as defined in G.S. 108A-24(3), 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, continued absence from the home, or unemployment under the eligibility requirements set forth in G.S. 108A-28(b);

(3) Has no adequate means of support.

(b) Assistance shall be granted to a parent or relative, as specified in G.S. 108A-24(3), with whom a dependent child lives who:

(1) Is assuming responsibility for the child's ongoing care;

(2) Is a resident of the State;

(3) Has no adequate means of support.

Assistance shall also be granted to two parents, whether natural, adoptive, or stepparents, with whom a dependent child lives, who meet the eligibility criteria set out in subdivisions (1), (2), and (3) of this subsection, and in applicable federal rules and regulations, and who are married to each other. (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; 1981, c. 275, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 229 (a).)

Section Set Out Twice. — The section above is effective July 1, 1987, contingent on the appropriation of State and federal funds. For this section as in effect until July 1, 1987, and until State and federal funds are appropriated, see the preceding section, also numbered 108A-28.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Session Laws 1987, c. 738, s. 79(a) amends Session Laws 1985 (Reg. Sess. 1986), c. 1014, s. 229 by adding a new section (d), which is also a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1987, provided State and federal funds are appropriated to implement it, rewrote subdivision (a)(2) and added the last paragraph of subsection (b).

§ 108A-29. Limitations on eligibility.

(a) The Social Services Commission shall adopt such administrative rules concerning work requirements as conditions of eligibility for Aid to Families with Dependent Children in order to be in compliance with federal regulations, but such rules shall not be more restrictive than the work requirements applicable to the work incentive program provided for in G.S. 108A-30.

(b) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for Aid to Families with Dependent Children assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining manpower services including training and public service employment provided by or through State agencies or with funds which are allocated to the State of North Carolina di-

§ 108A-28 is set out twice. See headings for effective dates.

rectly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons.

(c) The Social Services Commission shall adopt rules imposing work requirements under the Community Work Experience Program demonstration project, in accordance with federal laws and regulations, as a condition for eligibility for Aid to Families with Dependent Children. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2; 1969, c. 546, s. 1; 1971, c. 283; 1973, c. 476, s. 138; 1977, c. 362; 1981, c. 275, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 19.)

Effect of Amendments. — The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, added subsection (c).

CASE NOTES

Deeming of Support Payments to Child's Siblings Held Unlawful. — Action of state agency, acting under a rational interpretation of pertinent recent federal statutes and regulations, in "deeming" support payments from absent fathers to be income available to all the dependent children in the house, and cutting off or reducing Aid to Families with Dependent Children (AFDC) payments accordingly, constituted an unlawful "taking" of the child's income from an absent father, and unlawfully deprived the other children in the family of AFDC benefits by destroying or reducing their entitlement because one of the mother's children, who had income of his or her own, exercised his or her right to live in the mother's family unit. Gilliard v. Kirk, 633 F. Supp. 1529 (W.D.N.C. 1986).

OPINIONS OF ATTORNEY GENERAL

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 40 N.C.A.G. 652 (1970).

§ 108A-30. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments.

(a) The provisions of Part C of Title IV of the Federal Social Security Act pertaining to the work incentive program for recipients of aid to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this Article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this Article.

(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the

State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.

(d) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission. (1969, c. 739, s. 2; 1973, c. 476, s. 138; c. 744, s. 2; 1981, c. 275, s. 1.)

§ 108A-31. Application for assistance.

Any person or his representative who believes that he or another person is eligible to receive aid to families with dependent children may apply 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 and federal regulations 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; 1981, c. 275, s. 1.)

§ 108A-32. Investigation of applicant.

Upon receipt of an application for public assistance, the county department shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for assistance and to obtain such other information as the Department 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. 38; 1981, c. 275, s. 1.)

§ 108A-33. 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; but the board of social services may delegate to the director the authority to consider, process and approve or reject all applications for assistance, in which event the director shall not be required to report his actions to the board.

(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 final action of the county board of social services or the county director of social services with regard to any application for assistance or modifying or terminating any public assistance previously made. The

recipient of disputed assistance shall receive notice of the time and place of such review. If the board of commissioners deems that assistance was improperly allowed or denied under federal regulations and policies of the Social Services Commission or the Department, 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. Any modification made by the board of county commissioners shall be subject to review by the Secretary.

(d) All rules and regulations of the Social Services Commission or the Department which govern eligibility for public assistance from State appropriations or the amount of public assistance shall be subject to the approval of the Director of the Budget. Prior to taking any action under this subsection, the Director of the Budget may consult with 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; 1981, c. 275, s. 1; 1985, c. 122, s. 7; 1985 (Reg. Sess., 1986), c. 955, ss. 11, 12.)

Editor's Note. — Session Laws 1985, c. 122, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1985."

Section 1 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "This act may be cited as the Separation of Powers Act of 1986."

Section 127 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "If any part of this act shall be declared invalid by any court, this shall not affect any other part of this act."

Effect of Amendments. — The 1985 amendment, effective April 25, 1985, substituted "and consultation with the Advisory Budget Commission" for "and the Advisory Budget Commission" at the end of subsection (d).

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted "and consultation with the Advisory Budget Commission" at the end of the first sentence of subsection (d) and added the second sentence of subsection (d).

CASE NOTES

Child's Support Payments Not Resource of Entire Family. — In calculating aid to families with dependent children benefits, the inclusion of support payments belonging to one child as a resource available to the entire family works an unlawful appropriation of the funds of both the supporting father and the supported child. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 39, 34 L. Ed. 2d 66 (1972).

In calculating aid to families with dependent children benefits, the income of an individual with no legal duty of support may not be presumed to be available to the family, and thus the contribution to the support of one child by one having no legal duty to support the rest of the family cannot be considered a resource available to that family. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 39, 34 L. Ed. 2d 66 (1972).

§ 108A-34. Reconsideration of public assistance.

All public assistance shall be considered as frequently as required by the rules of the Social Services Commission or the Department in the case of medical assistance. Whenever the condition of any recipient has changed to the extent that his assistance 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, but the board may waive the requirement that the director submit his actions to the board for its approval. (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; 1981, c. 275, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Authority of State Board to Order a Uniform Raise in Welfare Payments without Processing Each File. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, State Department of Social Services, 40 N.C.A.G. 703 (1970).

§ 108A-35. Removal to another county.

Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of one month following his move, and thereafter the county to which the recipient has moved shall pay such assistance. (1937, c. 288, ss. 20, 50; 1943, c. 505, ss. 3, 7; 1961, c. 186; 1963, c. 136; 1969, c. 546, s. 1; 1977, c. 654; 1981, c. 275, s. 1.)

§ 108A-36. Assistance not assignable; checks payable to decedents.

The assistance granted by this Article shall not be transferable or assignable at law or in equity; and none of the money paid or payable as assistance shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law.

In the event of the death of a public assistance recipient during or after the first day of the month for which assistance was previously authorized by the county social services board, or county director if waived, any public assistance check or checks payable to such recipient not endorsed prior to such recipient's death shall be delivered to the clerk of superior court and by him administered under the provisions of G.S. 28A-25-6. (1937, c. 288, ss. 17, 47; 1945, c. 615, s. 1; 1953, c. 213; 1969, c. 546, s. 1; 1971, c. 446, ss. 1, 2; 1977, c. 655, ss. 1, 2; 1981, c. 275, s. 1.)

Legal Periodicals. — For article analyzing North Carolina's exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

CASE NOTES

Cited in In re Hare, 32 Bankr. 16 (Bankr. E.D.N.C. 1983).

§ 108A-37. Personal representative for mismanaged public assistance.

(a) Whenever a county director of social services shall determine that a recipient of assistance is unwilling or unable to manage such assistance to the extent that deprivation or hazard to himself or others results, the director shall file a petition before a district court or the clerk of superior court in the county alleging such facts and requesting the appointment of a personal representative to be responsible for receiving such assistance and to use it for the benefit of the recipient.

(b) Upon receipt of such petition, the court shall promptly hold a hearing, provided the recipient shall receive five days' notice in writing of the time and place of such hearing. If the court, sitting without a jury, shall find at the hearing that the facts alleged in the petition are true, it may appoint some responsible person as personal representative. The personal representative shall serve without compensation and be responsible to the court for the faithful performance of his duties. He shall serve until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable. All costs of court relating to proceedings under this section shall be waived.

(c) Any recipient for whom a personal representative is appointed may appeal such appointment to superior court for a hearing de novo without a jury.

(d) All findings of fact made under the proceedings authorized by this section shall not be competent as evidence in any case or proceeding which concerns any subject matter other than that of appointing a personal representative. (1959, c. 1239, ss. 1, 3; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-38. Protective and vendor payments.

Instead of the use of personal representatives provided for by G.S. 108A-37, 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, 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; 1981, c. 275, s. 1.)

§ 108A-39. Fraudulent misrepresentation.

(a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who 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, or person representing himself as such 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 Class I felony.

(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; 1981, c. 275, s. 1.)

CASE NOTES

Purpose. — This section was passed to define and punish a particular, specific crime. State v. Bass, 53 N.C. App. 40, 280 S.E.2d 7 (1981).

All of the elements of § 14-100 are not required to sustain a charge under this section. State v. Bass, 53 N.C. App. 40, 280 S.E.2d 7 (1981).

The agency making the payments does not have to be deceived. State v. Bass, 53 N.C. App. 40, 280 S.E.2d 7 (1981).

Who May Be Guilty. — An employee of the agency providing the funds, or the provider of the funds, can be guilty of violating this section. State v. Bass, 53 N.C. App. 40, 280 S.E.2d 7 (1981).

§ 108A-39.1. AFDC Emergency Assistance Program.

The Social Services Commission shall adopt rules to implement the Aid to Families with Dependent Children-Emergency Assistance (AFDC-EA) Program. Effective November 1, 1986, the Department of Human Resources, Division of Social Services, shall provide emergency assistance to families whose family income does not exceed one hundred ten percent (110%) of the current federal poverty level as established by the U. S. Secretary of Health and Human Services and published annually in the Federal Register. Annual program benefits may not exceed five hundred dollars ($500.00). Funding for the non-federal share of Emergency Assistance benefits shall be shared at a rate of fifty percent (50%) State participation and fifty percent (50%) county participation. (1985 (Reg. Sess., 1986), c. 1014, s. 119.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 244 makes this section effective July 1, 1986.

The second paragraph of Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 119 provides: "Of the funds appropriated in Section 2 of this act to the Department of Human Resources, Division of Social Services, nine hundred twenty-two thousand seven hundred ninety dollars ($922,790) shall be used to fund the State's participation in the Emergency Assistance Program."

Sessions Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243 contains a severability clause.

§ 108A-39.2. Community Work Experience Program.

(a) The purpose of the Community Work Experience Program is to provide work and training for families receiving assistance under the Aid to Families with Dependent Children (AFDC) Program.

(b) Uniform program components shall be developed in the Community Work Experience Program for all program participants. The program components shall include the following:

(1) Assessment of participant vocational and academic skills;
(2) Development of an employability and training plan;
(3) Job Preparation;
(4) Job Development and Placement Services;
(5) Job Training;
(6) Work Experience;
(7) Supportive Services; and
(8) Post-termination services and follow-up.

(c) The County Departments of Social Services shall ensure that each participant is being provided necessary transportation and child care prior to requiring the participant to participate in a program component. The participant shall be reimbursed for any necessary expenses that are incurred in order to participate in a program component.

(d) Participants placed on work experience sites shall be placed for a period not to exceed nine months unless:

(1) The participant submits a signed request to remain on the job site; and
(2) The Director of the County Department of Social Services shall determine that it is in the participant's best interest to remain on the job site; and
(3) It would be the best option for preparing participant to obtain unsubsidized employment.

The County Department of Social Services shall re-evaluate a participant's employability and placement plan when the participant has worked at a worksite for six months and is still on the worksite. Health related problems that may keep a participant from participating in the program shall be taken into consideration by the County Department prior to placing participants on work experience sites.

If the participant has been unable to find subsidized employment after being placed on a work experience site continuously for nine months, the County Department of Social Services may place the participant in a new work experience site for a period not to exceed nine months. The County Department of Social Services shall re-evaluate the participant's employability and placement plan after the participant is on the new worksite six months.

(e) Program participants shall be offered institutional skills training, on-the-job training, or other skills training that is consistent with their employability and training plan. This program shall be coordinated with skills training efforts through local Private Industry Councils and Service Delivery Areas under the Job Training Partnership Act, P.L. 97-300, and other federal, State, or local training programs.

(f) AFDC recipients who are enrolled in a General Equivalency Diploma program shall be excused from participation in the Community Work Experience Program.

(g) Program participants shall be provided a handbook outlining their rights as program participants. This handbook shall include a participant's right to appeal, and the obligation of the program to inform and protect a recipient's rights.

(h) The amount of time that a participant can be required to work at a work experience site shall be calculated by dividing the participant's net AFDC grant by minimum wage. For purposes of this section, the net AFDC grant is equal to the amount of a participant's AFDC grant minus the child support assigned to the State. In no event will a participant be placed at a work experience site for more than 50 hours a month.

(i) The General Assembly, through the Legislative Services Commission, may conduct an evaluation of the Community Work Experience Program. The evaluation should include an analysis of:

(1) The program's impact in helping participants obtain unsubsidized employment;

(2) The types of unsubsidized jobs that participants obtain as a result of the program and the average salary and the benefit package;

(3) Job retention information, including retention rates after six, nine, and 12 months;

(4) The issue of whether participants displace regular, paid employees;

(5) The number of participants sanctioned from the program and the reason for the sanctions;

(6) The adequacy of the supportive services provided during a particpant's participation in the program and upon obtaining unsubsidized employment;

(7) The adequacy of the job training opportunities in helping participants obtain the skills that would enable them to move permanently out of welfare;

(8) The costs of the program per participant, including the costs to the worksite sponsors, as compared to the savings to the State that are directly attributable to the program; and

(9) The participants' evaluation of the program in improving their assessment of the adequacy skills training and support services. The evaluation shall include a comparison of the Community Work Experience Program to other job training models that work with AFDC recipients, including Work Incentive Program (WIN), Job Training Partnership Act (JTPA), the Greensboro Compass program, Human Resource Development (HRD), the Raleigh Self-Sufficiency Demonstration project, and grant diversion.

(j) The Department of Human Resources shall submit a plan to the United States Department of Health and Human Services to

operate an AFDC grant diversion program for participants in a program. The Department shall solicit community involvement from the private and nonprofit sectors in developing the grant diversion plan and job placements. (1985 (Reg. Sess., 1986), c. 1014, s. 128(a)-(j); 1987, c. 831.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 244 makes this section effective July 1, 1986.

The first sentence of Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 128(a) provides: "Of the funds appropriated in Section 2 of this act to the Department of Human Resources for the Community Work Experience Program, the sum of six hundred thousand dollars ($600,000) shall be used to expand the program into 18 new counties in 1986-87."

Sessions Laws 1985 (Reg. Sess., 1986), c. 1014, s. 128(k) provides: "(k) The Department of Human Resources shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 1987 on its progress in implementing the new program, the grant diversion, and the already existing programs."

Sessions Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243 contains a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, rewrote subsection (d).

Part 3. State-County Special Assistance for Adults.

§ 108A-40. Authorization of State-County Special Assistance for Adults Program.

The Department is authorized to establish and supervise a State-County Special Assistance for Adults Program. This program is to be administered by county departments of social services under rules and regulations of the Social Services Commission. (1981, c. 275, s. 1.)

§ 108A-41. Eligibility.

(a) Assistance shall be granted under this Part to all persons in domiciliary facilities for care found to be essential in accordance with the rules and regulations adopted by the Social Services Commission and prescribed by G.S. 108A-42(b).

(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; and

(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.

(c) When determining whether a person has insufficient resources to provide a reasonable subsistence compatible with decency and health, there shall be excluded from consideration the person's primary place of residence and the land on which it is situated, and in addition there shall be excluded real property contiguous with the person's primary place of residence in which the property tax value is less than twelve thousand dollars ($12,000).

(d) The county shall also have the option of granting assistance to Certain Disabled persons as defined in 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. (1949, s. 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; 1981, c. 275, s. 1; c. 849, s. 1; 1983, c. 14, s. 2.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, designated original subsection (c) as (d) and added present subsection (c).

The 1983 amendment, effective July 1, 1983, inserted "and prescribed by G.S. 108A-42(b)" at the end of the first sentence of subsection (a).

OPINIONS OF ATTORNEY GENERAL

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

§ 108A-42. Determination of disability.

(a) For purposes of G.S. 108A-41(b)(1), a person is permanently and totally disabled if:

(1) This person was receiving aid to the disabled assistance in December 1973, and continues to be disabled under the definition of disability, having a physical or mental impairment which substantially precludes him from obtaining gainful employment and this impairment appears reasonably certain to continue without substantial improvement throughout his lifetime; or

(2) This person applied for assistance on or after January 1, 1974, and is disabled under the Social Security standards.

(b) For purposes of G.S. 108A-41(d), a "Certain Disabled" person is a person in a private living arrangement who is age 18 but less than age 65, having a physical or mental impairment which substantially precludes him from obtaining gainful employment, which impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.

(c) Disability shall be reviewed by medical consultants employed by the Department. The final decision on the disability shall be made by these medical consultants under rules and regulations adopted by the Social Services Commission. (1979, c. 702, s. 9; 1981, c. 275, s. 1; 1983, c. 14, s. 1.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote this section.

CASE NOTES

Federal Decisions Are Persuasive but Not Binding. — Federal decisions interpreting the disability definitions for Old Age, Survivors and Disability Benefits (Title II) and SSI benefits (Title XVI) are not binding on this State's courts, but are deemed to be persuasive authority. Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982), decided under former § 108-26.

§ 108A-43. Application procedure.

(a) Applications under this Part shall be made to the county director of social services who, with the approval of the county board of social services and in conformity with the rules and regulations of the Social Services Commission, shall determine whether assistance shall be granted and the amount of such assistance; but the county board of social services may delegate to the county director the authority to approve or reject all applications for assistance under this Part, in which event the county director shall not be required to report his actions to the board.

(b) The amount of assistance which any eligible person may receive shall be determined with regard to the resources and necessary expenditures of the applicant, in accordance with the appropriate rules and regulations of the Social Services Commission. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 4; 1981, c. 275, s. 1.)

§ 108A-44. State funds to counties.

(a) Appropriations made under this Part by the General Assembly to the Department, together with grants of the federal government (when such grants are made available to the State) shall be used exclusively for assistance to needy persons eligible under this Part.

(b) Allotments shall be made annually by the Department to the counties participating in the program established by this Part.

(c) No allotment shall be used, either directly or indirectly, to replace county appropriations or expenditures. (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 717, s. 5; 1975, c. 92, s. 2; 1981, c. 275, s. 1.)

§ 108A-45. 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. 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; 1981, c. 275, s. 1.)

§ 108A-46. Transfer of property for purposes of qualifying for State-county special assistance for adults; periods of ineligibility.

(a) Any person, otherwise eligible, who, either while receiving State-county special assistance or within one year prior to the date of applying for assistance, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest therein, either by himself or through his legal representative, for the purpose of retaining or establishing eligibility for State-county special assis-

tance, shall be ineligible to receive assistance thereafter as set forth in subsection (c) of this section.

Countable real and personal property shall be real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for State-county special assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest therein, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for State-county special assistance unless the person, or his legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person who, by himself or through his legal representative, sells, gives, assigns or transfers real or personal property or an interest therein for the purpose of retaining or establishing eligibility for State-county special assistance, as provided in subsection (a) of this section, shall be ineligible to receive assistance thereafter until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of such person for maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

(1) For uncompensated value of at least one thousand dollars ($1,000) but not more than six thousand dollars ($6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;

(2) For uncompensated value of more than six thousand dollars ($6,000) but not more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;

(3) For uncompensated value of more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar ($500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars ($12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, or any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving State-county special assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment or transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumption created by subsections (b) and (d) may be overcome if the person receiving or applying for State-county special assistance, or his legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for such assistance.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation received for the property or interest, if any. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving State-county special assistance or within one year of the date of an application for such assistance, unless some other time period is mandated by controlling federal law, the uncompensated value for the purposes of subsection (c) shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and the last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c). (1979, c. 585, s. 1; 1981, c. 275, s. 1; c. 758, s. 1.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, rewrote this section. Session Laws 1981, c. 758, s. 4, provides: "This act shall become effective October 1, 1981, and shall apply to applications pending on that date except that this act shall not apply to any transfer of personal property made prior to the date of ratification of this act." The act was ratified July 1, 1981.

Session Laws 1981, c. 758, s. 3, contains a severability clause.

§ 108A-47. Limitations on payments.

No payment of assistance under this Part shall be made for the care of any person in a 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 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; 1981, c. 275, s. 1.)

Part 4. Foster Care and Adoption Assistance Payments.

§ 108A-48. State Foster Care Benefits Program.

(a) The Department is authorized to establish a State Foster Care Benefits Program with appropriations by the General Assembly for the purpose of providing assistance to children who are placed in foster care facilities by county departments of social services in accordance with the rules and regulations of the Social Services Commission. Such appropriations, together with county contributions for this purpose, shall be expended to provide for the costs of keeping children in foster care facilities.

(b) No benefits provided by this section shall be granted to any individual who has passed his eighteenth birthday unless he is less than 21 years of age and is a full-time student or has been accepted for enrollment as a full-time student for the next school term pursuing a high school diploma or its equivalent; a course of study at the college level; or a course of vocational or technical training designed to fit him for gainful employment. (1981, c. 275, s. 1.)

§ 108A-49. Foster care and adoption assistance payments.

(a) Benefits in the form of foster care assistance shall be granted in accordance with the rules and regulations of the Social Services Commission to any dependent child who is eligible to receive AFDC but for his or her removal from the home of a specified relative for placement in a foster care facility; provided, that the child's placement and care is the responsibility of a county department of social services.

(b) Adoption assistance payments for certain adoptive children shall be granted in accordance with the rules and regulations of the Social Services Commission to adoptive parents who adopt a child eligible to receive foster care maintenance payments or supplemental security income benefits; provided, that the child cannot be returned to his or her parents; and provided, that the child has special needs which create a financial barrier to adoption.

(c) The Department is authorized to use available federal payments to states under Title IV-E of the Social Security Act for foster care and adoption assistance payments. (1981, c. 275, s. 1.)

§ 108A-50. State benefits for certain adoptive children.

(a) The Department is authorized to establish a program of State benefits for certain adoptive children from appropriations made by the General Assembly and from grants available from the federal government to the State. This program shall be used exclusively for the purpose of meeting the needs of adoptive children who are physically or mentally handicapped, older, or otherwise hard to place for adoption.

(b) The purpose of this program is to encourage, within the limits of available funds, the adoption of certain hard-to-place children in

order to make it possible for children living in, or likely to be placed in foster homes or institutions, to benefit from the stability and security of permanent homes where such children can receive continuous care, guidance, protection and love to reduce the number of such children who might be placed or remain in foster homes or institutions until they become adults.

(c) Eligibility for an adoptive child to receive assistance shall be determined by the Department under the rules and regulations of the Social Services Commission.

(d) Financial assistance under this program shall not be provided when the needed services are available free of cost to the adoptive child; or are covered by an insurance policy of the adoptive parents; or are available to the child under the Adoption Assistance Program specified in G.S. 108A-49. (1975, c. 953, s. 3; 1981, c. 275, s. 1.)

Part 5. Food Stamp Program.

§ 108A-51. Authorization for Food Stamp Program.

The Department is authorized to establish a statewide food stamp program as authorized by the Congress of the United States. The Department of Human Resources is designated as the State agency responsible for the supervision of such programs. The boards of county commissioners through the county departments of social services are held responsible for the administration and operation of the programs. (1981, c. 275, s. 1.)

§ 108A-52. Determination of eligibility.

Any person who believes that he or another person is eligible to receive food stamps may apply for such assistance to the county department of social services in the county in which the applicant resides. The application shall be made in such form and shall contain such information as the Social Services Commission may require. Upon receipt of an application for food stamps, the county department of social services shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for such assistance and to obtain such other information as the Department may require. Upon the completion of such investigation, the county department of social services shall, within a reasonable period of time, determine eligibility. (1981, c. 275, s. 1.)

§ 108A-53. Fraudulent misrepresentation.

(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in the amount of four hundred dollar ($400.00) or less shall be guilty of a misdemeanor. Whoever know-

ingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than four hundred dollars ($400.00) shall be guilty of a felony and shall be punished as in cases of larceny.

(b) Whoever presents, or causes to be presented, food stamps or authorization cards for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Part or the regulations issued pursuant to this Part shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(c) Whoever receives any food stamps for any consumable item knowing that such food stamps were procured fraudulently under subsections (a) and/or (b) of this section shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(d) Whoever receives any food stamps for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. (1981, c. 275, s. 1.)

CASE NOTES

Cited in State v. Wells, 78 N.C. App. 769, 338 S.E.2d 573 (1986).

Part 6. Medical Assistance Program.

§ 108A-54. Authorization of Medical Assistance Program.

The Department is authorized and empowered to establish a Medical Assistance Program from federal, State and county appropriations and to adopt rules and regulations under which payments are to be made 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; 1981, c. 275, s. 1.)

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

CASE NOTES

Compliance with Statutes and Regulations in Determining Eligibility Required. — A State agency designated by the legislature as being responsible for determining eligibility for medical assistance must comply with State and federal statutes and regulations in making such determinations. Lowe v. North Carolina Dep't of Human Resources, 72 N.C. App. 44, 323 S.E.2d 454 (1984).

Payment by tort-feasor of injured party's claim without notice of subrogee's interest is a complete defense to a subrogee's claim against the tort-feasor. Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

Calculation of Medicaid Reserve. — The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 42 U.S.C. § 1396a(a)-(10)(C)(i)(III), mandates that North Carolina use the "$6,000/6% rule" for calculating what property should be excluded from a persons' Medicaid reserve, under which rule property may be excluded from an applicant's or recipient's reserve of property if it has equity value of less than $6,000 and earns an annual income equal to or greater than 6% of its value, but will be included if it has equity value greater than $6,000 or earns an annual income of less than 6% of its value, because it is a part of a methodology for determining Supplemental Security Income Eligibility. Morris ex rel. Simpson v. Morrow, 783 F.2d 454 (4th Cir. 1986).

Applied in Bowens v. N.C. Dep't of Human Resources, 710 F.2d 1015 (4th Cir. 1983).

Cited in Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979); Forsyth County Bd. of Social Servs. v. Division of Social Servs., 317 N.C. 689, 346 S.E.2d 414 (1986).

§ 108A-55. Payments.

The Department 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. When determining whether a person has sufficient resources to provide necessary medical care, there shall be excluded from consideration the person's primary place of residence and the land on which it is situated, and in addition there shall be excluded real property contiguous with the person's primary place of residence in which the property tax value is less than twelve thousand dollars ($12,000). Payments 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. Payments may also be made to such fiscal intermediaries and to such prepaid health service contractors as may be authorized by the Department.

Provided, no payments 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 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; 1981, c. 275, s. 1; c. 849, s. 2.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, added the second sentence.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

CASE NOTES

Medically Unnecessary Abortions. — By no stretch of the imagination can medically unnecessary abortions be considered as "essential to the health and welfare" of the recipients. Stam v. State, 302 N.C. 357, 275 S.E.2d 439 (1981).

Payment by tort-feasor of injured party's claim without notice of subrogee's interest is a complete defense to a subrogee's claim against the tort-feasor. Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 108A-56. Acceptance of federal grants.

All of the provisions of the federal Social Security Act providing grants to the states for medical assistance are accepted and adopted, and the provisions of this Part shall be liberally construed in relation to such act so that the intent to comply with it shall be made effectual. Nothing in this Part or the regulations made under its authority shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this Part within the provisions of the federal Social Security Act. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

CASE NOTES

Compliance with Statutes and Regulations in Determining Eligibility Required. — A State agency designated by the legislature as being responsible for determining eligibility for medical assistance must comply with State and federal statutes and regulations in making such determinations. Lowe v. North Carolina Dep't of Human Resources, 72 N.C. App. 44, 323 S.E.2d 454 (1984).

Quoted in Lackey v. North Carolina Dep't of Human Resources, 306 N.C. 231, 293 S.E.2d 171 (1982).

Cited in Forsyth County Bd. of Social Servs. v. Division of Social Servs., 317 N.C. 689, 346 S.E.2d 414 (1986).

§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of such assistance, or of his personal representative, his heirs, or the administrator or executor of his estate, against any person. It shall be the responsibility of the county attorney or an attorney retained by the county and/or the State to enforce this section, and said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department. The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid 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 to the recipient.

(b) It shall be a misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise. (1973, c. 476, s. 138; c. 1031, s. 1; 1979, 2nd Sess., c. 1312, ss. 1, 2; 1981, c. 275, s. 1.)

CASE NOTES

Who May Bring Action. — Where a cause of action is created by statute and the statute also provides who is to bring the action, the person or persons so designated, and, ordinarily, only such persons, may sue. Malloy v. Durham County Dep't of Social Servs., 58 N.C. App. 61, 293 S.E.2d 285 (1982), decided under former § 108-61.2.

Subdivision of County May Not Be Subrogated to Its Rights. — A mere subdivision of a county could have no more capacity to assert such right than an agent would with respect to a contractual right of his principal. A county may not confer such power on its subdivision with respect to the county's subrogation rights merely by authorizing or ratifying the suit brought in the name of the subdivision. This rule is one of substantive law, and goes beyond "real party in interest" concerns; hence, any arguments based on § 1A-1, Rule 17 about authorization or ratification by the county are unavailing. Malloy v. Durham County Dep't of Social Servs., 58 N.C. App. 61, 293 S.E.2d 285 (1982), decided under former § 108-61.2.

A county department of social services may not recover by subrogation under this section, since that right inheres only in the county involved, not such county department. Malloy v. Durham County Dep't of Social Servs., 58 N.C. App. 61, 293 S.E.2d 285 (1982), decided under former § 108-61.2.

Payment by tort-feasor of injured party's claim without notice of subrogee's interest is a complete defense to a subrogee's claim against the tort-feasor. Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 108A-58. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility.

(a) Any person, otherwise eligible, who, either while receiving medical assistance benefits or within one year prior to the date of applying for medical assistance benefits, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest therein, either by himself or through his legal representative, for the purpose of retaining or establishing eligibility for medical assistance benefits, shall be ineligible to receive medical assistance benefits thereafter as set forth in subsection (c) of this section.

Countable real and personal property includes real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for medical assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest therein, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of

retaining or establishing eligibility for medical assistance benefits unless the person, or his legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person who, by himself or through his legal representative, sells, gives, assigns or transfers real or personal property or an interest therein for the purpose of retaining or establishing eligibility for medical assistance benefits, as provided in subsection (a) of this section, shall be ineligible to receive these benefits thereafter until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of the person for his maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

(1) For uncompensated value of at least one thousand dollars ($1,000) but not more than six thousand dollars ($6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;

(2) For uncompensated value of more than six thousand dollars ($6,000) but not more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;

(3) For uncompensated value of more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar ($500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars ($12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, of any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving medical assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment of transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumptions created by subsections (b) and (d) may be overcome if the person receiving or applying for medical assistance, or his legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for medical assistance benefits.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation, if any, received for the property or interest. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained ac-

cording to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving medical assistance or within one year of the date of an application for medical assistance, unless some other time period is mandated by controlling federal law, the uncompensated value, for the purposes of subsection (c), shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c).

(h) This section shall not apply to applicants for or recipients of aid to families with dependent children or to persons entitled to medical assistance by virtue of their eligibility for aid to families with dependent children. (1977, c. 59, s. 1; 1981, c. 275, s. 1; c. 758, s. 2.)

Effect of Amendments. — Session Laws 1981, c. 758, s. 2, effective October 1, 1981, rewrote this section.

Session Laws 1981, c. 758, s. 4, provides: "This act shall become effective October 1, 1981, and shall apply to applications pending on that date except that this act shall not apply to any transfer of personal property made prior to the date of ratification of this act." The act was ratified July 1, 1981.

Session Laws 1981, c. 758, s. 3, contains a severability clause.

CASE NOTES

Calculation of Medicaid Reserve. — The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 42 U.S.C. § 1396a(a)(10)(C)(i)(III), mandates that North Carolina use the "$6,000/6% rule" for calculating what property should be excluded from a persons' Medicaid reserve, under which rule property may be excluded from an applicant's or recipient's reserve of property if it has equity value of less than $6,000 and earns an annual income equal to or greater than 6% of its value, but will be included if it has equity value greater than $6,000 or earns an annual income of less than 6% of its value, because it is a part of a methodology for determining Supplemental Security Income Eligibility. Morris ex rel. Simpson v. Morrow, 783 F.2d 454 (4th Cir. 1986).

§ 108A-59. Acceptance of medical assistance constitutes assignment to the State of right to third party benefits; recovery procedure.

(a) Notwithstanding any other provisions of the law, by accepting medical assistance, the recipient shall be deemed to have made an assignment to the State of the right to third party benefits, contractual or otherwise, to which he may be entitled.

It shall be the responsibility of the county attorney of the county from which the medical assistance benefits are received or an attorney retained by that county and/or the State to enforce this subsection, and said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department of Human Resources.

(b) The responsible State agency will establish a third party resources collection unit that is adequate to assure maximum collection of third party resources. (1977, c. 664; 1979, 2nd Sess., c. 1312, ss. 3-5; 1981, c. 275, s. 1.)

CASE NOTES

Medicaid Benefits Protected. — Subsection (a) of this section does not remove Medicaid benefits from the protection of the collateral source rule. Availability of public assistance should not operate to reduce a tortfeasor's legal liability. Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986).

Payment by tort-feasor of injured party's claim without notice of subrogee's interest is a complete defense to a subrogee's claim against the tort-feasor. Johnston County v. McCormick, 65 N.C. App. 63, 308 S.E.2d 872 (1983).

§ 108A-60. 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 Class I felony.

(c) For purposes of this section:

(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; 1981, c. 275, s. 1.)

§ 108A-61. 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 this Part and Title XIX of the Social Security Act. (1979, c. 838; s. 24; 1981, c. 275, s. 1.)

Editor's Note. — Session Laws 1983, c. 761, s. 60(6), Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 62(f), and Session Laws 1985, c. 479, s. 86(e), provide that, notwithstanding the provisions of this section, the Department of Human Resources, Division of Medical Assistance, may not consider the income or assets of the spouse of a person who is admitted as a long-term care patient in a certified public or private intermediate care or skilled nursing facility to be available to the institutionalized person.

Session Laws 1987, c. 738, s. 67(e) provides: "Spouse Responsibility. Notwithstanding the provisions of G.S. 108A-61, the Department of Human Resources, Division of Medical Assistance, may not consider the income or assets of the spouse of a person who is admitted as a long-term care patient in a certified public or private intermediate care or skilled nursing facility to be available to the institutionalized person."

OPINIONS OF ATTORNEY GENERAL

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 former § 108-61.4A, pertaining to the same subject matter as this section, could not take effect so long as the aforementioned order stood. See opinion of Attorney General to Dr. Sarah T. Morrow, Secretary of Human Resources, May 30, 1979.

§ 108A-62. Therapeutic leave for medical assistance patients.

Patients at an intermediate care facility or skilled nursing facility may take up to 60 days of therapeutic leave in any 12-month period without the facility losing reimbursement under the medical assistance program, provided, however, no more than 14 consecutive days may be taken without approval of the Department of Human Resources, Division of Medical Assistance. (1979, c. 925; 1981, c. 275, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 120.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, substituted "60 days" for "18 days" and added the language beginning "provided, however."

§ 108A-63. Medical assistance provider 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 Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person. (1979, c. 510, s. 1; 1981, c. 275, s. 1.)

CASE NOTES

Pharmacist who actually furnished and provided medical assistance to Medicaid patients is a "provider" under the statute, unless some other provision of law gives the word a different meaning from the one commonly understood. None does. State v. Beatty, 64 N.C. App. 511, 308 S.E.2d 65, cert. denied, 309 N.C. 823, 310 S.E.2d 354 (1983).

Definition of "Provider" in Federal Medicaid Regulations. — Under Title XIX of the Social Security Act 42 U.S.C. § 1396, et seq., drugs prescribed for and dispensed to eligible patients are part of the medical care and services covered by Medicaid and regulations governing all aspects of Medicaid were adopted. These regulations may be found in the Code of Federal Regulations. One of them defines a Medicaid "provider" as "any individual or entity furnishing Medicaid services under a provider agreement with the [state] Medicaid agency." 42 C.F.R. § 430.1 (1982). Another refers to a "provider" as "an individual or entity which furnishes items or services for which payment is claimed under Medicaid." 42 C.F.R. § 455.300(a) (1982). These regulations are as much a part of the law as they would be if they had been read three times and adopted by the General Assembly and explicitly set forth in the General Statutes. State v. Beatty, 64 N.C. App. 511, 308 S.E.2d 65, cert. denied, 309 N.C. 823, 310 S.E.2d 354 (1983).

§ 108A-64. Medical assistance recipient fraud.

(a) It shall be unlawful for any person to knowingly and willfully and with intent to defraud make or cause to be made a false statement or representation of a material fact in an application for assistance under this Part, or intended for use in determining entitlement to such assistance.

(b) It shall be unlawful for any applicant, recipient or person acting on behalf of such applicant or recipient to knowingly and willfully and with intent to defraud, conceal or fail to disclose any condition, fact or event affecting such applicant's or recipient's initial or continued entitlement to receive assistance under this Part.

(c) (1) A person who violates a provision of this section shall be guilty of a Class I felony if the value of the assistance wrongfully obtained is more than four hundred dollars ($400.00).

(2) A person who violates a provision of this section shall be guilty of a misdemeanor if the value of the assistance wrongfully obtained is four hundred dollars ($400.00) or less, and shall be punished by a term of imprisonment of not more than two years or a fine of not more than five hundred dollars ($500.00), or both, at the discretion of the court.

(d) For purposes of this section the word "person" includes any natural person, association, consortium, corporation, body politic,

partnership, or other group, entity or organization. (1981, c. 275, s. 1.)

§ 108A-65. Conflict of interest.

(a) It shall be unlawful for any person who is or has been an officer or employee of State or county government, and as such is or has been responsible for the expenditure of substantial amounts of federal, State or county money under the State medical assistance plan, or any person who is the partner of the present or former officer or employee, to engage in any of the following activities relating to the State medical assistance program:

(1) Knowingly to act as agent or attorney for, or otherwise knowingly to represent, any person other than the United States, the State or a county, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, the State or a county to:
   a. Any department, agency, court, board, commission, legislature or committee of the United States, the State or a county, or any officer or employee thereof,
   b. In connection with any of the following matters in which the United States, the State, or a county is a party or has a direct and substantial interest, such as any judicial or other proceeding, legislation, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties,
   c. In which he participated personally and substantially as an officer or an employee through decision, approval, recommendation, the rendering of advice, investigation or otherwise.

(2) Within two years after his employment has ceased, knowingly to act as agent or attorney for, or otherwise knowingly to represent, any other person other than the United States, the State or a county, in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, the State or a county to:
   a. Any department, agency, court, board, commission, legislature or committee of the United States, the State, or a county, or any officer or employee thereof,
   b. In connection with any of the following matters in which the United States, the State, or a county is a party or has a direct and substantial interest, such as, any judicial or other proceeding, legislation, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties,
   c. Which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of responsibility.

(3) Within two years after his employment has ceased, knowingly to aid, counsel, advise, consult or by personal presence represent any other person other than the United States, the State or a county in any formal or informal appearance before:

a. Any department, agency, court, board, commission, legislature or committee of the United States, the State, or the county, or any officer or employee thereof,

b. In connection with any of the following matters in which the United States, the State, or a county is a party or has a direct and substantial interest, such as, any judicial or other proceeding, legislation, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties,

c. Which was actually pending under his official responsibility as an officer or employee within the period of one year prior to the termination of such responsibility.

(4) To participate personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise, in a judicial or other proceeding legislation, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(b) Violation of this statute is a general misdemeanor.

(c) The Department of Human Resources shall annually identify and designate by rule or regulation those positions which are filled by State or county officers or employees who are responsible for the expenditure of substantial amounts of moneys under the State medical assistance plan. (1981, c. 679, s. 1.)

Editor's Note. — Session Laws 1981, c. 679, s. 2, makes this section effective October 1, 1981.

§ 108A-66. (For effective date see note) Increased per diem rate for certain hospitals serving indigent patients.

The Department of Human Resources, Division of Medical Assistance, shall develop, as part of the Medicaid Hospital Reimbursement Plan, a new method for increasing per diem rates to those hospitals serving a disproportionate share of indigent patients. This plan shall take into account the charity care provided to patients with incomes equal to or below two hundred percent (200%) of the annual federal poverty guidelines issued by the United States Department of Health and Human Services in inpatient, outpatient,

§ 108A-66 has a postponed effective date. See note for date.

pharmaceutical and pregnancy related services. The Department of Human Resources, Division of Medical Assistance, may take into account any other factors that the Department determines are related to the disproportionate distribution of indigent care. (1987, c. 861, s. 2.)

Editor's Note. — Session Laws 1987, c. 861, s. 4 provides that this section shall become effective when funds are available to implement it, except that the Department of Human Resources may prior to that date develop the method provided for by this section.

§§ 108A-67 to 108A-70: Reserved for future codification purposes.

Article 3.

Social Services Programs.

§ 108A-71. Authorization of social services programs.

The Department is hereby authorized to accept all grants-in-aid available for programs of social services under the Social Security Act, other federal laws or regulations, State appropriations and other non-federal sources. The Department is designated as the single State agency responsible for administering or supervising the administration of such programs. It is the intent of this Article that programs of social services be administered so that the State and its citizens may benefit fully from any grants-in-aid. (1981, c. 275, s. 1.)

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Cited in Forsyth County Bd. of Social Servs. v. Division of Social Servs., 317 N.C. 689, 346 S.E.2d 414 (1986).

§ 108A-72. Social services checks payable to decedents.

In the event of the death of a recipient of a cash payment service, any check or checks payable to such recipient but not endorsed prior to such recipient's death shall be returned to the issuing agency, made void, and reissued to the provider of the service. (1981, c. 275, s. 1.)

§ 108A-66 has a postponed effective date. See note for date.

§ 108A-73. Services appeals and confidentiality of records.

The provisions of Article 4 on public assistance and social services appeals and confidentiality of records shall be applicable to social services programs authorized under this Article. (1981, c. 275, s. 1.)

§§ 108A-74 to 108A-78: Reserved for future codification purposes.

Article 4.

Public Assistance and Social Services Appeals and Access to Records.

§ 108A-79. Appeals.

(a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services, county department 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 or county department of social services to act within a reasonable time under the rules and regulations of the Social Services Commission or the Department. 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 workdays after notice of this action and of the right to appeal is mailed or delivered by hand to the recipient; provided, however, termination or modification of assistance may be effective immediately upon the mailing or delivery of notice in the following circumstances:

(1) When the modification is beneficial to the recipient; or

(2) When federal regulations permit immediate termination or modification upon mailing or delivery of notice and the Social Services Commission or the Department of Human Resources promulgates regulations adopting said federal law or regulations. When federal and State regulations permit immediate termination or modification, the recipient shall have no right to continued assistance at the present level pending a hearing, as would otherwise be provided by subsection (d) of this section.

(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, or to a State level hearing in the case of the food stamp program, 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 an 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.

Such notice of appeal must be given within 60 days from the date of the action, or 90 days from the date of notification in the case of the food stamp program. Failure to give timely notice of appeal constitutes a waiver of the right to a hearing except that, for good cause shown, the county department of social services may permit an appeal notwithstanding the waiver. The waiver shall not affect the right to reapply for benefits.

(d) If there is such timely appeal in cases not involving disability, 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. If there is such timely appeal in cases involving disability, the county director or a designated representative of the county director shall within five days of the request for an appeal forward the request to the Department of Human Resources, and the Department shall designate a hearing officer who shall promptly hold a hearing in the county according to the provisions of subsections (i) and (j) of this section. In cases involving termination or modification of assistance (other than cases of immediate termination or modification of assistance pursuant to subsection (b) (2) of this section), the recipient shall continue to receive assistance at the present level pending the decision at the initial hearing, whether that be the local appeal hearing decision or, in cases involving questions of disability, the Department of Human Resources hearing decision, provided that in order to continue receiving assistance pending the initial hearing decision the recipient must request 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, 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 or his personal representative shall have adequate opportunity to examine the contents of his case file for the matter pending together with those portions of other public assistance or social services case files which pertain to the appeal, and all documents and records which the county department of social services intends to use at the hearing. Those portions of the public assistance or social services case file which do not pertain to the appeal or which are required by federal statutes or regulations or by State statutes or regulations to be held confidential shall not be released to the appellant or his personal representative. In cases where the appellant has been denied access to the public assistance or social services case file the hearing officer shall certify as part of the official record that the hearing officer has examined the case files and that no portion of those files pertain to the appeal. Such certification may be subject to judicial review as provided in subsection (k) of this section. Nothing in this section is intended to restrict an applicant or recipient access to information if that access is allowed by rules and regulations promulgated pursuant to G.S. 108A-80.

(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. 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 except that, for good cause shown, the Department may issue an order permitting a review of the local appeal hearing notwithstanding the waiver. The waiver shall not affect the right to reapply for benefits.

(h) Subsections (d)-(g) of this section shall not apply to the food stamp program. The first appeal for a food stamp recipient or his representative shall be to the Department. Pending hearing, the recipient's assistance shall be continued at the present level upon timely request.

(i) If there is an appeal from the local appeal hearing decision, or from a food stamp recipient or his representative where there is no local hearing, or if there is an appeal of a case involving questions of disability the county director shall notify the Department according to its rules and regulations. The Department 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 150B, 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 or his personal representative shall have adequate opportunity to examine his case file and all documents and records which the county department of social services intends to use at the hearing together with those portions of other public assistance or social services case files which pertain to the appeal. Those portions of the public assistance or social services case files which do not pertain to the appeal or which are required by federal statutes or regulations or by State statutes or regulations to be held confidential shall not be released to the appellant or his personal representative. In cases where the appellant has been denied access to portions of the public assistance or social services case file, the hearing officer shall certify as part of the official record that the hearing officer has examined the case files and that no portion of those files pertain to the appeal. Such certification may be subject to judicial review as provided in subsection (k) of this section. Nothing in this section is intended to restrict an applicant or recipient access to information if that access is allowed by rules or regulations promulgated pursuant to G.S. 108A-80.

(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 (k) 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. 150B-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.

(j) 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, or 45 days in the case of the food stamp program, 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 the 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 (k) 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.

(k) Any applicant or recipient who is dissatisfied with the final decision of the Department 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. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county from which the case arose may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. The hearing shall be conducted according to the provisions of Article 4, Chapter 150B, of the North Carolina General Statutes. The court shall, on request, examine the evidence excluded at the hearing under G.S. 108A-79(e)(4) or G.S. 108A-79(i)(1) and if the evidence was improperly excluded, the court shall consider it. Notwithstanding the foregoing provisions, the court may take testimony and examine into the facts of the case, including excluded evidence, to determine whether the final decision is in error under federal and State law, and under the rules and regulations of the Social Services Commission or the Department of Human Resources. Furthermore, the court shall set the matter for hearing within 15 days from the filing of the record under G.S. 150B-47 and after reasonable written notice to the Department of Human Resources and the applicant or recipient. Nothing in this subsection shall be construed to abrogate any rights that the county may have under Article 4 of Chapter 150B.

(l) 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; 1981, c. 275, s. 1; c. 419, ss. 1-3; c. 420, ss. 1-3; 1987, c. 599, ss. 1-3; c. 827, s. 1.)

Effect of Amendments. — The first 1981 amendment, effective October 1, 1981, rewrote subdivision (4) of subsection (e) and subdivision (1) of subsection (i), added the second sentence of subsection (k) and rewrote the third and fourth sentences of subsection (k).

The second 1981 amendment, effective October 1, 1981, rewrote subsections (b) and (d) and inserted "or if there is an appeal of a case involving questions of disability" in the first sentence of subsection (i).

Session Laws 1987, c. 599, ss. 1-3, effective January 1, 1988, rewrote the second and third sentences of the last paragraph of subsection (c), which read "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"; substituted the present third and fourth sen-

tences of subsection (g) for a former third sentence, which read "Failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department, but shall not affect the right to reapply for benefits"; and in subsection (k) substituted "applicant or recipient" for "appellant or county board of social services or board of county commissioners in the case of the food stamp program" near the beginning of the first sentence, inserted the present second sentence, substituted "Chapter 150B" for "Chapter 150A" in the third sentence, substituted "final decision is in error" for "appellant is entitled to public assistance" in the fifth sentence, substituted "G.S. 150B-47" for "G.S. 150A-47" in the sixth sentence and substituted "applicant or recipient" for "appellant" at the end of that sentence, and added the final sentence.

Session Laws 1987, c. 827, s. 1, effective August 13, 1987, substituted reference to Chapter 150B for reference to Chapter 150A in this section.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

County Board May Not Appeal Final Agency Award. — So much of subsection (k) of this section as purports to authorize county boards of social services to petition for judicial review in superior court does not apply to a final agency decision awarding Medicaid benefits to an applicant. Forsyth County Bd. of Social Servs. v. Division of Social Servs., 317 N.C. 689, 346 S.E.2d 414 (1986).

As Federal Regulations Prohibit Local Agencies from Challenging Department's Decisions. — Federal regulations prohibit local agencies such as county boards and departments of social services from changing or disapproving of Department of Human Resources (DHR) decisions or "otherwise" substituting their judgment for DHR's. Forsyth County Bd. of Social Servs. v. Division of Social Servs., 317 N.C. 689, 346 S.E.2d 414 (1986).

Cited in Alexander v. Hill, 549 F. Supp. 1355 (W.D.N.C. 1982); Alexander v. Hill, 625 F. Supp. 564 (W.D.N.C. 1985); Hunt v. Robeson County Dep't of Social Servs., 816 F.2d 150 (4th Cir. 1987).

OPINIONS OF ATTORNEY GENERAL

Provisions Governing Appeals. — Appeals by applicants and recipients of public assistance or social services from adverse decisions of county agencies or boards are governed by the substantive provisions and procedural requirements of this section, including the procedural provisions of the Administrative Procedure Act (§ 150B-1 et seq.) consistent with the statute, to the extent that substance and procedure are not in conflict with applicable federal law and regulations. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 55 N.C.A.G. 91 (1986).

Substantive Provisions of Section Govern over APA. — Given the detailed substantive provisions of this section, designed specifically to apply to appeals of county agency decisions, and the fact that the Administrative Procedure Act (APA), by its terms, does not apply to such appeals, the Legislature, by reference to the APA, did not intend to substitute the Act's substantive requirements for those of this section. The citation to the APA simply indicates a legislative intent to incorporate the powers of hearing officers and the hearing procedures detailed in the Act into subsection (i) by reference. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 55 N.C.A.G. 91 (1986).

Secretary May Delegate Decision-Making Authority Regarding Appeals. — See opinion of Attorney General to Mr. David T. Flaherty, N.C. Department of Human Resources, 42 N.C.A.G. 313 (1973).

§ 108A-80. 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 or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of Aid To Families with Dependent Children and State-County Special Assistance for Adults, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a misdemeanor.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a general misdemeanor.

(d) The Social Services Commission shall have the authority to adopt rules and regulations governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Human Resources shall have the authority to adopt rules and regulations governing access to medical assistance case files. (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, s. 19; 1981, c. 275, s. 1; c. 419, s. 4.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, added subsection (d).

CASE NOTES

Test for State Interest Justifying Confidentiality. — In order to justify the application of a confidentiality rule, there must be shown a state interest in confidentiality applicable on the facts which outweighs the public and individual interests in the particular statements made. Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

OPINIONS OF ATTORNEY GENERAL

Although the Public Assistance Recipient Check Register Is a Public Record, It May Not Be Used for Any Commercial or Political Reason, Including Publication by the Media. — See opinion of Attorney General to Dr. Renee P. Hill, Director, Division of Social Services, N.C. Department of Human Resources, 45 N.C.A.G. 273 (1976).

§§ 108A-81 to 108A-85: Reserved for future codification purposes.

Article 5.

Financing of Programs of Public Assistance and Social Services.

§ 108A-86. Financial transactions between the State and counties.

The Secretary shall have the power to promulgate rules and regulations establishing procedures for the counties to follow in financing programs of public assistance and social services under Article 2 and Article 3. (1981, c. 275, s. 1.)

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 108A-87. Allocation of nonfederal shares.

(a) The nonfederal share of the annual cost of each public assistance and social services program and related administrative costs may be divided between the State and counties as determined by the General Assembly and in a manner consistent with federal laws and regulations.

(b) The nonfederal share of the annual cost of public assistance and social services programs and related administrative costs provided to Indians living on federal reservations held in trust by the United States on their behalf shall be borne entirely by the State. (1965, c. 708; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 1.)

OPINIONS OF ATTORNEY GENERAL

State Must Pay All Nonfederal Share of Medicaid Benefits for Indians Living on Federal Reservation. — See opinion of Attorney General to Mr. Clifton M. Craig, Commissioner, Department of Social Services, 41 N.C.A.G. 140 (1970).

§ 108A-88. Determination of State and county financial participation.

Before February 15 of each year, the Secretary shall notify the director of social services of each county of the amount of State and federal moneys estimated to be available, as best can be determined, to that county for programs of public assistance, social services and related administrative costs, as well as the percentage of county participation expected to be required for the budget for the succeeding fiscal year. In odd-numbered years, in making such notification, the Secretary shall notify the counties of any changes in funding levels, formulas, or programs relating to public assistance proposed by the Governor to the General Assembly in the proposed budget and budget report submitted under the Executive Budget Act. Counties shall be notified of additional changes in the proposed budget of the Governor and the Advisory Budget Commission that are made by the General Assembly or the United States Congress subsequent to the February 15 estimates. (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; 1979, 2nd Sess., c. 1198; 1981, c. 275, s. 1.)

CASE NOTES

Determination of Budget by Department of Human Resources as Final and Binding. — The Department of Human Resources has the power to make a final determination of an appropriate budget of total county funds that is binding upon the county. Fracaro v. Priddy, 514 F. Supp. 191 (M.D.N.C. 1981).

§ 108A-89. State Public Assistance Contingency Loan Program.

(a) The Department is authorized and empowered to establish a program known as the "State Public Assistance Contingency Loan Program." The purpose of this program shall be to make loans available to counties whose actual expenditures, excluding related administrative costs, exceed the estimates for public assistance programs only provided by the Department under G.S. 108A-88.

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

(c) A loan provided under this section shall be used by a county only to pay the county share of public assistance costs that exceeds the estimate provided by the Department under G.S. 108A-88 in order to sustain an adequate program of public assistance in that county.

(d) Any amount borrowed by a county from the "State Public Assistance Contingency Fund" during one fiscal year shall be repaid to said fund within the next two fiscal years. (1973, c. 1418, s. 2; 1977, c. 1089, s. 2; 1977, 2nd Sess., c. 1219, s. 22; 1981, c. 275, s. 1.)

Cross References. — As to withholding of State moneys from counties failing to pay public assistance cost, see § 108A-93.

§ 108A-90. Counties to levy taxes.

(a) Whenever the Secretary 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, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(b) The board of county commissioners may combine any or all of the separate special taxes for each program of public assistance and for the related administrative costs of such programs in place of levying separate special taxes for each item. This consolidated tax shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of county income and revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance programs, and the related administrative costs of each program. The appropriations and expenditures for each of the several programs and for related administrative costs shall be separately stated and accounted for. (1937, c. 288, ss. 9, 39; 1969, c. 546, s. 1; 1971, c. 780, s. 35; 1973, c. 476, s. 138; c. 1418, s. 4; 1981, c. 275, s. 1.)

CASE NOTES

Cited in Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

§ 108A-91. Appropriations not to revert.

County appropriations for public assistance expenses or related administrative costs shall not lapse or revert, and the unexpended balances may be considered in making further public assistance or administrative appropriations. At any time during the fiscal year, any county may transfer county funds from one public assistance program to another and between programs of public assistance and administration if such action appears to be both necessary and feasible, provided the county secures the approval of the Secretary or his representative. (1953, c. 891; 1967, c. 554; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1418, s. 5; 1981, c. 275, s. 1.)

§ 108A-92. State Public Assistance Equalization Program.

The Secretary is authorized and directed to reserve from State appropriations for the programs of public assistance an amount found to be necessary to equalize the burden of taxation in the counties of the State, and to equalize the benefits received by the recipients of public assistance. This amount shall be expended and disbursed solely for the use and benefit of persons eligible for assistance. The amount reserved shall be distributed among the counties according to their needs under a formula approved by the Social

Services Commission so as to produce a fair and just distribution. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 1.)

CASE NOTES

This section vests in the Social Services Commission discretionary authority to approve an equalization formula designed to distribute the funds among the counties according to their needs in a fair and just manner. When discretionary authority is vested in a Commission, the court has no power to substitute its discretion for that of the Commission; and, in the absence of fraud, manifest abuse of discretion or conduct in excess of lawful authority, the court has no power to intervene. Alamance County v. N.C. Dep't of Human Resources, 58 N.C. App. 748, 294 S.E.2d 377 (1982).

§ 108A-93. Withholding of State moneys from counties failing to pay public assistance costs.

The Director of the Budget is authorized to withhold from any county that does not pay its full share of public assistance costs to the State and has not arranged for payment pursuant to G.S. 108-54.1 or G.S. 108A-89, any State moneys appropriated from the General Fund for public assistance and related administrative costs, or to direct the Secretary of Revenue and State Treasurer to withhold any tax owed to a county under Article 7 of Chapter 105 of the General Statutes, G.S. 105-113.82, Article 39 of Chapter 105 of the General Statutes or Chapter 1096 of the Session Laws of 1967. The Director of the Budget shall notify the chairman of the board of county commissioners of the proposed action prior to the withholding of funds. (1981, c. 859, s. 16; 1985, c. 114, s. 13.)

Editor's Note. — Session Laws 1981, c. 859, s. 98, makes this section effective July 1, 1981.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

Section 14 of Session Laws 1985, c. 114, provides that the act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

Section 108-54.1, referred to in this section, was repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981.

Effect of Amendments. — The 1985 amendment, effective April 23, 1985, substituted "G.S. 105-113.82" for "G.S. 105-113.86."

§§ 108A-94 to 108A-98: Reserved for future codification purposes.

Article 6.

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

§ 108A-99. Short title.

This Article may be cited as the "Protection of the Abused, Neglected, or Exploited Disabled Adult Act." (1973, c. 1378; s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

CASE NOTES

Cited in In re Wheeler, — N.C. App. —, 354 S.E.2d 374 (1987).

§ 108A-100. Legislative intent and purpose.

Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-101. Definitions.

(a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(b) The word "caretaker" shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(c) The word "director" shall mean the director of the county department of social services or his representative in the county in which the person resides or is present.

(d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor 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.

(e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.

(f) The words "district court" shall mean the judge of that court.

(g) The word "emergency" refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.

(h) The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

(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. 108A-106 and in Chapter 122 of the General Statutes.

(j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

(k) The word "indigent" shall mean indigent as defined in G.S. 7A-450.

(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 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-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care 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 35A, or guardian as defined in G.S. 122C-3(15), and he needs medical treatment.

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797; 1979, c. 1044, ss. 1-4; 1981, c. 275, s. 1; 1985, c. 589, s. 34; 1987, c. 550, s. 24.)

Editor's Note. — Session Laws 1985, c. 589, s. 65 is a severability clause.

Chapter 122, referred to in subsection (i) of this section, was repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986. See now Chapter 122C.

Effect of Amendments. — The 1985 amendment, effective Jan. 1, 1986, substituted "G.S. 122C-3(15)" for "G.S. 122-36(n)" near the end of subdivision (m).

The 1987 amendment, effective October 1, 1987, substituted "Chapter 35A" for "Chapter 33, Chapter 35" in subsection (m).

CASE NOTES

Whether "spankings or beatings" of a "disabled adult" amount to abuse within the meaning of subsection (a) of this section depends on the circumstances under which such spankings or beatings are administered. In re Lowery, 65 N.C. App. 320, 309 S.E.2d 469 (1983).

§ 108A-102. Duty to report; content of report; immunity.

(a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

(c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-103. Duty of director upon receiving report.

(a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. When necessary for a complete evaluation of the report, the director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility or agency acting as a caretaker for the disabled adult. This shall include but not be limited to records maintained by facilities licensed by the North Carolina Department of Human Resources. Use of information so obtained shall be subject to and governed by the provisions of G.S. 108A-80 and Article 3 of Chapter 122C of the General Statutes. The director shall have the authority to conduct an interview with the disabled adult with no other persons present. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.

(b) The staff and physicians of local health departments, area mental health, mental retardation, and substance abuse authorities, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1; 1985, c. 589, s. 35; c. 658, s. 1; 1985 (Reg. Sess., 1986), c. 863, s. 6.)

Editor's Note. — Session Laws 1985, c. 589, s. 65 is a severability clause.

Effect of Amendments. — The 1985 amendment by c. 589, s. 35, effective Jan. 1, 1986, substituted "area mental health, mental retardation, and substance abuse authorities" for "mental health clinics" in the first sentence of subsection (b).

The 1985 amendment by c. 658, s. 1, effective July 9, 1985, inserted the present third, fourth, fifth and sixth sentences of subsection (a).

The 1985 (Reg. Sess., 1986) amendment, effective August 1, 1986, substituted "Article 3 of Chapter 122C of the General Statutes" for "G.S. 122-8.1" at the end of the fifth sentence of subsection (a).

§ 108A-104. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.

(a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.

(b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.

(c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-105. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

(a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least

five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17. If the person is indigent, the cost of representation shall be borne by the State.

(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 35A; 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 35A. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3, 1979, c. 1044, s. 5; 1981, c. 275, s. 1; 1985, c. 658, s. 2; 1987, c. 550, s. 25.)

Editor's Note. — Chapter 122, referred to in subsection (d) of this section, was repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986. See now Chapter 122C.

Effect of Amendments. — The 1985 amendment, effective July 9, 1985, substituted "or Article 2" for "G.S. 33-7" in two places in subsection (c).

The 1987 amendment, effective October 1, 1987, substituted "Chapter 35A" for "Chapter 35, Article 1A, or or Article 2, as appropriate" in two places in the third sentence of subsection (c).

CASE NOTES

Applied in In re Lowery, 65 N.C. App. 320, 309 S.E.2d 469 (1983).

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

(a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:

(1) A disabled adult lacks capacity to consent and that he is in need of protective service;
(2) An emergency exists; and
(3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

(b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.

(c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.

(d) Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the said order. Copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At such hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in accordance with subsections (a) and (b) of this section.

(e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

(f) (1) Upon petition by the director, a court may order that:
a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.

(2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:
a. A disabled adult lacks the capacity to consent and that he is in need of protective services;
b. The disabled adult is being financially exploited by his caretaker; and
c. No other person is able or willing to arrange for protective services.
(3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.

(g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith. (1975, c. 797; 1981, c. 275, s. 1; 1985, c. 658, s. 3.)

Effect of Amendments. — The 1985 amendment, effective July 9, 1985, in subsection (d), divided the former second sentence into the present second and third sentences, in the present second sentence substituted "up to and including the time for the hearing of the petition for emergency services" for "within 20 days thereafter," substituted "if any exists" for "if any exist," and deleted "otherwise same to remain in effect; and" at the end of the present second sentence, and added the present fourth and fifth sentences.

§ 108A-107. Motion in the cause.

Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-108. Payment for essential services.

At the time the director, in accordance with the provisions of G.S. 108A-103 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-109. Reporting abuse.

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-110. Funding of protective services.

Any funds appropriated by counties for home health care, boarding home, nursing home, emergency assistance, medical or psychiatric evaluations, and other protective services and for the development and improvement of a system of protective services, including additional staff, may be matched by State and federal funds. Such funds shall be utilized by the county department of social services for the benefit of disabled adults in need of protective services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-111. Adoption of standards.

The Department and the administrative office of the court shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this Article. (1975, c. 797; 1981, c. 275, s. 1.)

Chapter 109.

Bonds.

Article 1.

Official Bonds.

§ 109-1. Irregularities not to invalidate.

CASE NOTES

Official bonds should be liberally, etc. — In accord with 1st paragraph in original. See Town of Scotland Neck v. Western Sur. Co., 301 N.C. 331, 271 S.E.2d 501 (1980).

Where a bond is clear and unambiguous in its language, the terms of the bond cannot be extended. Town of Scotland Neck v. Western Sur. Co., 301 N.C. 331, 271 S.E.2d 501 (1980).

§ 109-3. Condition and terms of official bonds.

Every treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C.S., s. 326; 1985, c. 438.)

Effect of Amendments. — The 1985 amendment, effective June 21, 1985, deleted "clerk" following "Every."

CASE NOTES

Stated in Town of Scotland Neck v. Western Sur. Co., 301 N.C. 331, 271 S.E.2d 501 (1980).

Article 5.

Actions on Bonds.

§ 109-34. Liability and right of action on official bonds.

CASE NOTES

Applied in Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980).

Stated in Bynum v. Kidd, 570 F. Supp. 696 (W.D.N.C. 1983).

Article 6.

Guaranteed Arrest Bond Certificates of Automobile Clubs and Associations in Lieu of Bond.

§ 109-40. Authority for qualified surety companies to guarantee certain arrest bond certificates.

(a) Any domestic or foreign surety company which has qualified to transact business in this State may become a surety, by filing with the North Carolina Department of Insurance an undertaking to become surety, in an amount not to exceed five hundred dollars ($500.00) with respect to each guaranteed arrest bond certificate issued by an automobile club or association.

(b) The undertaking shall be in a form to be prescribed by the Department of Insurance and shall state:

(1) The name and address of the automobile club or clubs or automobile association or associations with respect to which the surety company undertakes to guarantee the arrest bond certificates.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture, in an amount not to exceed five hundred dollars ($500.00) of any person who, after posting a guaranteed arrest bond certificate which the surety has undertaken to guarantee, fails to make the appearance for which the guaranteed arrest bond certificate was posted. (1985, c. 623, s. 1.)

Editor's Note. — Session Laws 1985, c. 623, s. 2 makes this Article effective Oct. 1, 1985.

§ 109-41. Guaranteed arrest bond certificates accepted.

(a) Any guaranteed arrest bond certificate guaranteed by a surety company pursuant to G.S. 109-40, shall be accepted in lieu of cash bail or other bond in an amount not to exceed five hundred dollars ($500.00) as a bail bond, when signed by the person whose signature appears on the certificate, to guarantee the appearance of that person in any court in this State at the time set by the court when the person is arrested for the violation of any motor vehicle law of the State or any motor vehicle ordinance of any motor vehicle law of the State or any motor vehicle ordinance of any municipality of this State. The guaranteed arrest bond certificate shall not apply to, and shall not be accepted in lieu of cash bail or bond when the person has been arrested for any impaired driving offense or for any felony.

(b) A guaranteed arrest bond certificate that is posted as a bail bond in any court shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law. (1985, c. 623, s. 1.)

Chapter 110.

Child Welfare.

Article 1.

Child Labor Regulations.

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

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

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.

Article 2.

Juvenile Services.

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

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

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

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

Article 3.

Control over Child-Caring Facilities.

§ 110-49: Repealed by Session Laws 1983, c. 637, s. 3, effective October 1, 1983.

Repeal of Article. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, and referred to in the bound volume, was itself repealed by Session Laws 1981, c. 932, s. 1.

Article 4A.

Interstate Compact on the Placement of Children.

§ 110-57.1. Adoption of Compact.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as contained in this Article. It is the intent of the General Assembly that Article 4 shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact. It is the intent of the General Assembly that Chapter 48 of the General Statutes shall govern the adoption of children within the boundaries of North Carolina.
(1971, c. 453, s. 1; 1973, c. 476, s. 138; 1983, c. 454, s. 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, only the introductory paragraph is set out.

Effect of Amendments. — The 1983 amendment, effective June 6, 1983, added the last sentence of the first paragraph.

OPINIONS OF ATTORNEY GENERAL

Applicability When Child Is Sent Out of State. — The Interstate Compact on the Placement of Children (§ 110-57.1, et seq.) does apply when a North Carolina child is sent by a court, government agency, or child-placing agency to live with a parent, relative, or guardian in another party state. See opinion of Attorney General Dr. Sarah T. Morrow, Secretary, North Carolina

Department of Human Resources, 52 N.C.A.G. 22 (1982).

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

Article 7.

Day-Care Facilities.

Repeal of Article. — The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 110-85. Legislative intent and purpose.

The General Assembly hereby declares its intent with respect to day care of children:

(3) This protection requires the following elements for a comprehensive approach: mandatory licensing of day-care facilities under minimum standards; promotion of higher levels of day care than required for a license through the development of higher standards which operators may comply with on a voluntary basis; registration of child day care homes which are too small to be regulated through licensing; and a program of education to help operators improve their programs and to develop public understanding of day-care needs and problems. (1971, c. 803, s. 1; 1987, c. 788, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Section 97 of Session Laws 1985, c. 479, as amended by s. 130(a) of Session Laws 1985 (Reg. Sess., 1986), c. 1014, effective July 1, 1986, provides:

"(a) Rules for the monthly schedule of payments for the purchase of day care services for low income children shall be established by the Social Services Commission pursuant to G.S. 143B-153(8)a., in accordance with the following requirements:

"(1) Effective July 1, 1986, for facilities in which fewer than fifty percent (50%) of the enrollees are subsidized by State or federal funds, the State shall continue to pay the same fee paid by private paying parents for a child in the same age group in the same facility.

"(2) Effective July 1, 1986, facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds shall be reimbursed at the facilities' fiscal year 1985-86 payment rate.

"(3) Effective January 1, 1987, facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds may choose annually one of the following payment options:

"a. The facility's payment rate for fiscal year 1985-86; or

"b. The county market rate, as calculated annually by the Department of Human Resources' Office of Child Day Care Services. A market rate shall be calculated for each county and for each age group of enrollees, and shall be the county average of all fees charged to unsubsidized private paying parents for each age group of enrollees. In fiscal year 1986-87, the county market rates shall be calculated from data collected by the Department of Human Resources' Office of Child Day Care Services in its 1986 Survey of Market Rates. Effective July 1, 1987, the county market rates shall be calculated from facility fee schedules collected by the Office of Child Day Care Services during its annual inspection visits.

"(b) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes may participate in the program that provides for the purchase of slots in day care facilities, for minor children of needy families. No separate licensing requirements may be used to select facilities to participate.

"Effective July 1, 1986, day care plans from which the State purchases day care services shall meet the standards established by the Child Day Care Commission pursuant to G.S. 110-101 and G.S. 110-105.1. Until it can demonstrate that it meets the standards adopted by the Child Day Care Commission, a day care plan from which the State purchases day care services for minor children of needy families shall meet all certification standards adopted by the Department of Human Resources' Office of Child Day Care Services. The fee for the purchase of care from a day care plan is one hundred fifty dollars ($150.00) per month. The fee for the purchase of care from individual Child Caring Providers is one hundred dollars ($100.00) per month.

"(c) Effective January 1, 1986, providers whose programs exceed licensing standards may modify their programs to standards consistent with licensing standards.

"(d) Any savings that result by reason of this schedule shall be used by the Department to provide for payment of the costs of necessary day care for more minor children of needy families.

"(e) County departments of social services shall continue to negotiate with day care providers for day care services below those rates prescribed by subsection (a) of this section. County departments are directed to purchase day care services so as to serve the greatest number of children possible with existing resources."

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, substituted "child day care homes" for "day-care plans" in subdivision (3).

Legal Periodicals. — For survey of 1979 constitutional law, see 58 N.C.L. Rev. 1326 (1980).

CASE NOTES

Quoted in State, Child Day-Care Licensing Comm'n v. Fayetteville St. Christian School, 299 N.C. 351, 261 S.E.2d 908 (1980).

§ 110-86. Definitions.

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) "Commission" means the Child Day-Care Commission created under this Article.

(2) "Child Day Care" means any child care arrangement wherein three or more children less than 13 years old receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child's own home where other unrelated children are in care.

(3) "Day care facility" includes any child day care center or child care arrangement which provides day care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same or different children attend. The following are not included: public schools; nonpublic schools whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; Bible schools conducted during vacation periods; facilities licensed under Article 2 of Chapter 122C of the General Statutes; and cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.

Day care facilities are separated by capacity into the following categories which determine applicable requirements and standards as established by the Commission pursuant to G.S. 110-88:

Facility Type
Large Home
Small Center
Medium Center
Large Center

The Commission shall establish the maximum capacity for each of the four categories of facilities.

(4) "Child Day Care Home" means any day care program or child care arrangement wherein any person not excluded in G.S. 110-86(2) provides day care on a regular basis of at least once per week for more than four hours per day for more than two children under 13 years of age and fewer than six children at any one time, wherever operated, and whether or not operated for profit. The four hour limit applies regardless of the time of day and regardless of whether the same or different children attend. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included.

To determine whether a child care arrangement is a child day care home, all children shall be counted except

the operator's own school-aged children and school-aged children who reside at the location of the day care home. Notwithstanding the limitation to five children prescribed above, the day care home operator may care for three additional school-aged children.

(6) "License" means a license issued by the Secretary to any day-care facility which meets the statutory standards established under this Article.

(1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, ss. 1-3; 1983, c. 46, s. 1; c. 297, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 78; 1985, c. 589, s. 36; c. 757, s. 155(c); 1987, c. 788, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 and Session Laws 1985, c. 589, s. 65 contain severability clauses.

Session Laws 1987, c. 788, s. 27 provides: "All child day care facilities and homes currently registered or licensed, or seeking licensing or registration, or operating in accordance with G.S. 110-106 or G.S. 110-106.1, shall comply with all current regulations applicable to the type of facility or home until such time as the Commission has adopted regulations adjusted for size of facility pursuant to Sections 2(b) and 6(f), (g), (h) and (j) of this act and appropriate implementation procedures. The Commission's rules shall become effective on or before July 1, 1988."

Effect of Amendments. — The first 1983 amendment, effective Oct. 1, 1983, rewrote subdivision (3).

The second 1983 amendment, effective Oct. 1, 1983, inserted "aunts, uncles, brothers and sisters who are not minors, and" in subdivision (2) and rewrote subdivision (4).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added the second paragraph of subdivision (4).

The 1985 amendment by c. 589, s. 36, effective Jan. 1, 1986, inserted "facilities licensed under Article 2 of Chapter 122C of the General Statutes" near the end of subdivision (3).

The 1985 amendment by c. 757, s. 155(c), effective July 1, 1985, deleted "Licensing" preceding "Commission" in subdivision (1).

The 1987 amendment, effective August 12, 1987, rewrote subdivision (2), rewrote the first sentence of subdivision (3), deleted "summer day camps which are run by nonprofit organizations exempt from taxation pursuant to Article 4 of Chapter 105 of the General Statutes" preceding "Bible schools" in the second sentence of subdivision (3), added the second and third paragraphs of subdivision (3), rewrote subdivision (4), and substituted "secretary" for "Commission" in subdivision (6).

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

CASE NOTES

Quoted in State, Child Day-Care Licensing Comm'n v. Fayetteville St. Christian School, 299 N.C. 351, 261 S.E.2d 908 (1980); Kiddie Korner Day Schools, Inc. v. Charlotte- Mecklenburg Bd. of Educ., 55 N.C. App. 134, 285 S.E.2d 110 (1981).

§ 110-88. (Effective until February 1, 1988) Powers and duties of the Commission.

The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any day-care facility which meets all applicable standards established under this Article.

§ 110-88 is set out twice. See headings for effective dates.

(2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any day care facility.

(3) To make rules establishing minimum and reasonable standards for the operation of day-care homes and the issuance of registration certificates. These rules shall establish minimum standards of health, sanitation, and safety that will be required in day-care plans and will recognize the vital role that parents and guardians play in the monitoring of the care provided in day-care plans.

(4) Repealed by Session Laws 1975, c. 879, s. 15.

(5) To make rules and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules for the issuance of a provisional license to a day-care facility which does not conform in every respect with the standards established in this Article provided that the Secretary of Human Resources finds that the operator is making a reasonable effort to conform to such standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.

(6a) To make rules for administrative action against a day care facility or home when the Secretary's investigations pursuant to G.S. 110-105(a)(3) or G.S. 110-105.1(4) [110-105.1(a)(4)] substantiate that child abuse or neglect did occur in the facility or home. The type of sanction shall be determined by the severity of the incident and the probability of reoccurrence. The administrative actions shall include written warnings and special provisional licenses or registration certificates.

A written warning may be issued which shall specify the corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.

When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for six months from imposition and may not be renewed. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situation no longer exists. The Department shall make three unannounced visits during the period the special provisional license is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration may include the permanent removal from day care of the substantiated abuser or neglecter.

§ 110-88 is set out twice. See headings for effective dates.

Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission shall be empowered to issue two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Commission.

(8) To develop a procedure by which the Department [of Human Resources] shall furnish such forms as may be required for implementation of this Article.

(9) Repealed by Session Laws 1985, c. 757, s. 156(bb), effective Oct. 1, 1985.

(10) To develop rules for the issuance of a temporary license which shall expire in 90 days and which may be issued to the operator of a previously licensed facility when a change in ownership or location occurs, provided the operator applied for a license prior to the change in status.

(11) To develop rules for the care of sick children in facilities and homes. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 788, s. 3; c. 827, s. 232.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 110-88.

Editor's Note. — The reference in subdivision (6a) to § 110-105.1(4) was apparently intended to refer to § 110-105.1(a)(4).

Effect of Amendments. — The 1985 amendment by c. 757, s. 155(d) and (e), effective July 1, 1985, substituted "Department" for "Commission" in subdivision (2), and substituted "Human Resources" for "Administration" in subdivisions (6) and (8).

The 1985 amendment by c. 757, s. 156(a), effective Jan. 1, 1986, rewrote subdivision (3).

The 1985 amendment by c. 757, s. 156(z), (aa), and (bb), effective Oct. 1, 1985, substituted "To require that the issuance of licenses for day-care facilities be" for "To approve the issuance of licenses for day-care facilities" at the beginning of subdivision (2), added subdivision (6a), and deleted subdivision (9), which read "To serve as an administrative-appeal body to determine all issues related to the issuance, renewal and revocation of licenses.

Session Laws 1987, c. 788, s. 3, effective August 12, 1987, substituted "all applicable" for "the health and safety" in subdivision (1), rewrote subdivision (2), substituted "homes" for "plans" in the first sentence of subdivision (3), deleted "relating to health and safety" following "to the standards" and deleted "and the Commission concurs in the finding" preceding "that the operator is making" in subdivision (6), rewrote subdivision (6a), and added subdivisions (10) and (11).

Session Laws 1987, c. 827, s. 232, effective August 13, 1987, deleted "and regulations" following "rules" in subdivisions (5) and (6).

Legal Periodicals. — For comment on sectarian education and the state, see 1980 Duke L.J. 801.

§ 110-88 is set out twice. See headings for effective dates.

§ 110-88. (Effective February 1, 1988) Powers and duties of the Commission.

The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any day-care facility which meets all applicable standards established under this Article.

(2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any day care facility.

(3) To make rules establishing minimum and reasonable standards for the operation of day-care homes and the issuance of registration certificates. These rules shall establish minimum standards of health and safety that will be required in day-care plans and will recognize the vital role that parents and guardians play in the monitoring of the care provided in day-care plans.

(4) Repealed by Session Laws 1975, c. 879, s. 15.

(5) To make rules and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules for the issuance of a provisional license to a day-care facility which does not conform in every respect with the standards established in this Article provided that the Secretary of Administration finds that the operator is making a reasonable effort to conform to such standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.

(6a) To make rules for administrative action against a day care facility or home when the Secretary's investigations pursuant to G.S. 110-105(a)(3) or G.S. 110-105.1(4) [110-105.1(a)(4)] substantiate that child abuse or neglect did occur in the facility or home. The type of sanction shall be determined by the severity of the incident and the probability of reoccurrence. The administrative actions shall include written warnings and special provisional licenses or registration certificates.

A written warning may be issued which shall specify the corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.

When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for six months from imposition and may not be renewed. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situa-

§ 110-88 is set out twice. See headings for effective dates.

tion no longer exists. The Department shall make three unannounced visits during the period the special provisional license is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration may include the permanent removal from day care of the substantiated abuser or neglecter.

Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission shall be empowered to issue two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Commission.

(8) To develop a procedure by which the Department [of Administration] shall furnish such forms as may be required for implementation of this Article.

(9) To serve as an administrative-appeal body to determine all issues related to the issuance, renewal and revocation of licenses.

(10) To develop rules for the issuance of a temporary license which shall expire in 90 days and which may be issued to the operator of a previously licensed facility when a change in ownership or location occurs, provided the operator applied for a license prior to the change in status.

(11) To develop rules for the care of sick children in facilities and homes. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 543, s. 2; c. 788, s. 3; c. 827, s. 232.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 110-88.

Editor's Note. — Session Laws 1987, c. 543, which deleted a reference to sanitation in the second sentence of subdivision (3), provides in s. 8 that the act is effective February 1, 1988, but that upon ratification of the act (July 3, 1987), the Commission for Health Services is authorized to adopt rules pursuant to authority granted under the act, and that these rules shall not be effective before February 1, 1988.

The reference in subdivision (6a) to § 110-105.1(4) was apparently intended to refer to § 110-105.1(a)(4).

Effect of Amendments. — Session Laws 1987, c. 788, s. 3, effective August 12, 1987, substituted "all applicable" for "the health and safety" in subdivision (1), rewrote subdivision (2), substituted "homes" for "plans" in the first sentence of subdivision (3), deleted "relating to health and safety" following "to the standards" and deleted "and the Commission concurs in the finding" preceding "that the operator is making" in subdivision (6), rewrote subdivision (6a), and added subdivisions (10) and (11).

Session Laws 1987, c. 827, s. 232, effective August 13, 1987, deleted "and regulations" following "rules" in subdivisions (5) and (6).

Session Laws 1987, c. 543, s. 2, effective February 1, 1988, deleted "sanitation" following "minimum standards of health," in the second sentence of subdivision (3).

§ 110-88 is set out twice. See headings for effective dates.

§ 110-90. Powers and duties of Secretary of Human Resources.

The Secretary of Human Resources shall have the following powers and duties under the policies and rules of the Commission:

(1) To administer the licensing program for day-care facilities and the registration system for day-care homes.

(5) To revoke the license of any day care facility which ceases to meet the standards established by this Article. Such revocations shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(7) To promote and coordinate educational programs and materials for operators of day-care facilities and day-care homes which are designed to improve the quality of day care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.

(9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a license or registration. Such actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation or suspension of a license or the levying of a civil or administrative penalty. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, ss. 155(g), 156(cc), (dd); 1987, c. 788, s. 4; c. 827, s. 233.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1985 amendment by c. 757, s. 155(g), effective July 1, 1985, substituted "Human Resources" for "Administration" in the catchline and in the introductory language.

The 1985 amendment by c. 757, s. 156(cc) and (dd), effective Oct. 1, 1985, added the second sentence of subdivision (5) and added new subdivision (9).

Session Laws 1987, c. 788, s. 4, effective August 12, 1987, substituted "homes" for "plans" in subdivisions (1) and (7), rewrote subdivisions (5) and (9), and added subdivision (10).

Session Laws 1987, c. 827, s. 233, effective August 13, 1987, substituted "and rules" for "rules and regulations" in the first sentence.

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

No day-care home shall be registered if that home is operated by or employs any person who has been convicted of a crime involving child abuse, child neglect, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotics or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children. The person registered to provide care in a day-care home shall be at least 18 years of age and literate. A person who is less than 18 years of age, but at least 16 years of age, may work on a day-care home if under

the direct supervision of the person registered to provide the care. (1977, c. 1011, s. 2; 1983, c. 277, s. 1; 1985, c. 757, s. 156(b); 1987, c. 788, s. 4.)

Cross Reference. — As to standards applicable to day-care facilities operated by churches, synagogues, or schools of religious charter, see § 110-106.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "mentally or emotionally impaired to an extent that may be injurious to children" for "mentally retarded or mentally ill to an extent that may be injurious to children" at the end of the section.

The 1985 amendment, effective Jan. 1, 1986, added the last two sentences.

The 1987 amendment, effective August 12, 1987, substituted "home" for "plan" throughout the section, substituted "and literate" for "or a high school graduate" in the second sentence, and deleted "who is not a high school graduate, and" following "a person" at the beginning of the third sentence.

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

§ 110-91. (Effective until February 1, 1988) Mandatory standards for a license.

The following standards shall be complied with by all day-care facilities, except as otherwise provided in this Article. These shall be the only required standards for the issuance of a license by the Secretary of Human Resources under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for facilities subject to licensing but which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

(1) Medical Care and Sanitation. — Each day-care facility, and all personnel, shall meet the minimum health and sanitation standards developed by the Commission for Health Services subject to adoption by the Commission not inconsistent with the provisions of this Article. The health and sanitation standards developed by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; health of staff members; and such other items and facilities as are necessary in the interest of the public health. Each year, or more often if required by the Secretary in a particular case, each day-care facility shall submit evidence satisfactory to the Department that it conforms to these health and sanitation standards.

Each child shall have a medical examination by a licensed physician or his authorized agent who is currently approved by the North Carolina Board of Medical Examiners, or comparable certifying board in any state contiguous to North Carolina, prior to being admitted or within 30 days following admission to a day-care facility; a record of such examination shall be on file in the records of the facility, provided, however, that no medical certificate shall be required of any child who is and has been in nor-

§ 110-91 is set out twice. See headings for effective dates.

mal health and whose parent, guardian, or full-time custodian objects in writing to a medical examination on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in such manner as to meet the requirements of Articles 9 and 9A of Chapter 130 of the General Statutes.

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. Medical information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility in the records of the facility in accordance with a form approved by the Commission for this purpose.

There shall be a separate bed, cot or mat, equipped with individual linen, for each child to use during rest periods, except for school-aged children; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day-care facility.

(2) Health-Related Activities. — Each child in a day-care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission. After consultation with the Division of Health Services of the Department of Human Resources, nutrition standards shall provide for specific requirements for infants. Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks shall be planned at least one week in advance, dated, and posted where they can be seen by parents.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. — Each day-care facility shall be located in an area which is free from conditions which are deemed haz-

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ardous to the physical and moral welfare of the children in care in the opinion of the Commission.

(4) Building. — Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. — All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after consultation with local fire departments and volunteer fire departments, subject to adoption by the Commission.

(6) Space and Equipment Requirements. — There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of airspace per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection; provided, however, that a facility operated in a public school shall be deemed to have adequate fencing protection; provided, also, that a facility operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each day-care facility shall provide equipment and furnishings that are child size, sturdy, safe, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3). Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

(7) Staff-Child Ratio. — In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules regarding staff-child ratios, group sizes and multi-age groupings for each category of facility provided that such rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

(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. All staff counted in determining the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work

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under the direct supervision of a literate staff person who is at least 21 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 or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined in G.S. 110-86(3). It is the intent of this provision to guarantee that all children in day care are cared for by qualified people but also to recognize that qualifications for good child care may not be limited to formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience. No requirements may interfere with the teachings or doctrine of any established religious organization.

(9) Records. — Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Department.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any day-care facility, except financial records, shall be subject to review by the Secretary of Human Resources or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

(10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care.

Each day-care facility shall have a written policy on discipline, which policy describes the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

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(11) Staff Development. — The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include a requirement that each day-care facility shall have a written staff development plan that shall include training activities for each staff member.

(12) Planned Age Appropriate Activities. — Each day-care facility shall have a planned schedule of activities posted in a prominent place to enable parents to review it, and a written plan of age appropriate activities available to parents. Each facility shall have age appropriate activities and play materials to implement the written plan. The Commission shall establish minimum standards for age-appropriate activities appropriate for each category of facility as defined in G.S. 110-86(3).

(13) Transportation. — All day-care facilities shall abide by North Carolina law regulating the use of seat belts and child passenger restraint devices. All vehicles operated by any facility staff person or volunteer to transport children shall be properly equipped with appropriate seat belts or child restraint devices as approved by the Commissioner of Motor Vehicles. Each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. These restraint regulations do not apply to vehicles not required by federal law to be equipped with seat restraints. All vehicles used to transport children shall meet and maintain the safety inspection standards of the Division of Motor Vehicles of the Department of Transportation and the facility shall comply with all other applicable State and federal laws and regulations concerning the operation of a motor vehicle. Children may never be left unattended in a vehicle.

The ratio of adults to children in day-care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation. (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; 1981 (Reg. Sess., 1982), c. 1382, ss. 1, 2; 1983, c. 46, s. 2; cc. 62, 277, 612; 1985, c. 757, ss. 155(h), (i), 156(c)-(h); 1987, c. 788, s. 6; c. 827, s. 234.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 110-91.

Cross References. — As to standards applicable to day-care facilities operated by churches, synagogues, or schools of religious charter, see § 110-106.

Editor's Note. —

Articles 9 and 9A of Chapter 130 were repealed by Session Laws 1983, c. 891, s. 1 and Session Laws 1971, c. 191, respectively. For immunization requirements, see now § 130A-152 et seq.

Session Laws 1987, c. 788, s. 27 provides: "All child day care facilities and homes currently registered or licensed, or seeking licensing or registration, or operating in accordance with G.S. 110-106 or G.S. 110-106.1, shall comply with all current regulations applicable to the type of facility or home until such time as the Commission has adopted regulations adjusted for size of facility pursuant to Sections 2(b) and 6(f), (g), (h) and (j) of this act and appropriate implementation procedures. The Commission's rules shall become effective on or before July 1, 1988."

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Section 156(e) of Session Laws 1985, c. 757, referred to in subdivision (7) of this section, was formerly codified as paragraphs (7)a to (7)c of this section.

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

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, rewrote subdivision (7)c, which formerly provided for a 20% tolerance as to groups and numbers of children specified and as to the total number for which the facility was licensed, with the exception that no more than 25 children could be attended by one staff member. The amendment also deleted subdivision (7)d, relating to the care of school age children in after-school hours.

Session Laws 1983, c. 46, s. 2, effective Oct. 1, 1983, added the proviso at the end of the first paragraph of subdivision (6).

Session Laws 1983, c. 62, s. 1, effective Oct. 1, 1983, substituted the present second and third sentences of subdivision (8) for a former second sentence, which read "Each staff member employed in a day-care facility supervising children shall be not less than 16 years of age."

Session Laws 1983, c. 277, effective July 1, 1983, substituted "or emotionally impaired" for "retarded or mentally ill" near the end of subdivision (8).

Session Laws 1983, c. 612, effective Oct. 1, 1983, rewrote the second sentence of the introductory paragraph, which formerly read "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."

The 1985 amendment by c. 757, s. 155(h) and (i), effective July 1, 1985, substituted "Human Resources" for "Administration" in the second sentence of the introductory paragraph and in the third paragraph of subdivision (9).

The 1985 amendment by c. 757, s. 156(c) to (e), (g), and (h), effective Jan. 1, 1986, rewrote the first paragraph of subdivision (2), inserted "and Equipment" in the subdivision catchline to subdivision (6), added the second paragraph of subdivision (6), rewrote paragraphs a, b, and c of subdivision (7), added the second paragraph of subdivision (10), and added new subdivisions (11), (12), and (13).

The 1985 amendment by c. 757, s. 156(f), effective Jan. 1, 1987, added the second paragraph of subdivision (8).

Session Laws 1987, c. 788, s. 6, effective August 12, 1987, deleted "relating to the health and safety of children" following "The following standards" at the beginning of the first sentence of the introductory language, substituted "Secretary" and "Department" for "Commission" in the third sentence of the first paragraph of subdivision (1), inserted "or comparable certifying board in any state contiguous to North Carolina" and substituted "30 days" for "two weeks" in the first sentence of the second paragraph of subdivision (1), substituted "specific written instructions" for "specific instructions" in the second sentence of the fourth paragraph of subdivision (1), rewrote the first sentence of the fifth paragraph of subdivision (1), inserted the present second sentence of the second paragraph of subdivision (6), rewrote subdivision (7), substituted "16" for "18" in the second sentence of the first paragraph of subdivision (8), substituted "provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 years of age" for "or a high school graduate" in the second sentence of the first paragraph of subdivision (8), deleted a former third sentence of that paragraph, relating to persons less than 18 years of age but at least 16 working in day-care facilities provided they are under supervision of a staff member, rewrote the first two sentences of the second paragraph of subdivision (8), substituted "Department" for "Commission" at the end of the first paragraph of subdivision (9) and in the third and fourth paragraphs of that subdivision, substituted "Secretary" for "Commission" in the fourth paragraph of subdivision (9), added the third sentence of subdivision (12), deleted "commercial vehicles, or other" preceding "vehicles not required" in the fourth sentence of subdivision (13) and inserted "by federal law" thereafter, and substituted "be less than" for "exceed" in the first sentence of the second paragraph of subdivision (13).

Session Laws 1987, c. 827, s. 234, effective August 13, 1987, deleted "and regulations to be" following "rules" in subdivision (6) and deleted "and regula-

§ 110-91 is set out twice. See headings for effective dates.

tions" following "rules" in subdivision (7).

CASE NOTES

Stated in State, Child Day-Care Licensing Comm'n v. Fayetteville St. Christian School, 299 N.C. 351, 261 S.E.2d 908 (1980).

§ 110-91. (Effective February 1, 1988) Mandatory standards for a license.

The following standards shall be complied with by all day-care facilities, except as otherwise provided in this Article. These shall be the only required standards for the issuance of a license by the Secretary of Human Resources under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for facilities subject to licensing but which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

(1) Medical Care and Sanitation. — The Commission for Health Services shall adopt rules which establish minimum sanitation standards for day-care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; health of staff members; and such other items and facilities as are necessary in the interest of the public health.

Each child shall have a medical examination by a licensed physician or his authorized agent who is currently approved by the North Carolina Board of Medical Examiners, or comparable certifying board in any state contiguous to North Carolina, prior to being admitted or within 30 days following admission to a day-care facility; a record of such examination shall be on file in the records of the facility, provided, however, that no medical certificate shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a medical examination on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in such manner as to meet the requirements of Articles 9 and 9A of Chapter 130 of the General Statutes.

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custo-

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dian. Medical information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility in the records of the facility in accordance with a form approved by the Commission for this purpose.

There shall be a separate bed, cot or mat, equipped with individual linen, for each child to use during rest periods, except for school-aged children; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day-care facility.

(2) Health-Related Activities. — Each child in a day-care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission. After consultation with the Division of Health Services of the Department of Human Resources, nutrition standards shall provide for specific requirements for infants. Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks be planned at least one week in advance, dated, and posted where they can be seen by parents.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. — Each day-care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Commission.

(4) Building. — Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. — All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after con-

§ 110-91 is set out twice. See headings for effective dates.

sultation with local fire departments and volunteer fire departments, subject to adoption by the Commission.

(6) Space and Equipment Requirements. — There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of airspace per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection; provided, however, that a facility operated in a public school shall be deemed to have adequate fencing protection; provided, also, that a facility operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each day-care facility shall provide equipment and furnishings that are child size, sturdy, safe, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3). Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

(7) Staff-Child Ratio. — In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules regarding staff-child ratios, group sizes and multi-age groupings for each category of facility provided that such rules and regulations shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

(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. All staff counted in determining the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 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 or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined

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in G.S. 110-86(3). It is the intent of this provision to guarantee that all children in day care are cared for by qualified people but also to recognize that qualifications for good child care may not be limited to formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience. No requirements may interfere with the teachings or doctrine of any established religious organization.

(9) Records. — Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Department.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any day-care facility, except financial records, shall be subject to review by the Secretary of Human Resources or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

(10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care.

Each day-care facility shall have a written policy on discipline, which policy describes the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

(11) Staff Development. — The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include a requirement that each day-care facility shall have a written staff development plan that shall include training activities for each staff member.

(12) Planned Age Appropriate Activities. — Each day-care facility shall have a planned schedule of activities posted in a prominent place to enable parents to review it, and a written plan of age appropriate activities available to parents. Each facility shall have age appropriate activities and play materials to implement the written plan. The Commission shall establish minimum standards for age-appropriate activities appropriate for each category of facility as defined in G.S. 110-86(3).

§ 110-91 is set out twice. See headings for effective dates.

(13) Transportation. — All day-care facilities shall abide by North Carolina law regulating the use of seat belts and child passenger restraint devices. All vehicles operated by any facility staff person or volunteer to transport children shall be properly equipped with appropriate seat belts or child restraint devices as approved by the Commissioner of Motor Vehicles. Each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. These restraint regulations do not apply to vehicles not required by federal law to be equipped with seat restraints. All vehicles used to transport children shall meet and maintain the safety inspection standards of the Division of Motor Vehicles of the Department of Transportation and the facility shall comply with all other applicable State and federal laws and regulations concerning the operation of a motor vehicle. Children may never be left unattended in a vehicle.

The ratio of adults to children in day-care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation. (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; 1981 (Reg. Sess., 1982), c. 1382, ss. 1, 2; 1983, c. 46, s. 2; cc. 62, 277, 612; 1985, c. 757, ss. 155(h), (i), 156(c)-(h); 1987, c. 543, s. 3; c. 788, s. 6; c. 827, s. 234.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 110-91.

Editor's Note. —

Session Laws 1987, c. 788, s. 27 provides: "All child day care facilities and homes currently registered or licensed, or seeking licensing or registration, or operating in accordance with G.S. 110-106 or G.S. 110-106.1, shall comply with all current regulations applicable to the type of facility or home until such time as the Commission has adopted regulations adjusted for size of facility pursuant to Sections 2(b) and 6(f), (g), (h) and (j) of this act and appropriate implementation procedures. The Commission's rules shall become effective on or before July 1, 1988."

Session Laws 1987, c. 543, which amended subdivision (1), provides in s. 8 that the act is effective February 1, 1988, but that upon ratification of the act (July 3, 1987), the Commission for Health Services is authorized to adopt rules pursuant to authority granted under the act, and that these rules shall not be effective before February 1, 1988.

Section 156(e) of Session Laws 1985, c. 757, referred to in subdivision (7) of this section, was formerly codified as paragraphs (7)a to (7)c of this section.

Effect of Amendments. —

Session Laws 1987, c. 788, s. 6, effective August 12, 1987, deleted "relating to the health and safety of children" following "The following standards" at the beginning of the first sentence of the introductory language, substituted "Secretary" and "Department" for "Commission" in the third sentence of the first paragraph of subdivision (1), inserted "or comparable certifying board in any state contiguous to North Carolina" and substituted "30 days" for "two weeks" in the first sentence of the second paragraph of subdivision (1), substituted "specific written instructions" for "specific instructions" in the second sentence of the fourth paragraph of subdivision (1), rewrote the first sentence of the fifth paragraph of subdivision (1), inserted the present second sentence of the second paragraph of subdivision (6), rewrote subdivision (7), substituted "16" for "18" in the second sentence of the first paragraph of subdivision (8), substituted "provided that persons younger than 18 years of age work under the direct supervision of a literate staff person

§ 110-91 is set out twice. See headings for effective dates.

who is at least 21 years of age" for "or a high school graduate" in the second sentence of the first paragraph of subdivision (8), deleted a former third sentence of that paragraph, relating to persons less than 18 years of age but at least 16 working in day-care facilities provided they are under supervision of a staff member, rewrote the first two sentences of the second paragraph of subdivision (8), substituted "Department" for "Commission" at the end of the first paragraph of subdivision (9) and in the third and fourth paragraphs of that subdivision, substituted "Secretary" for "Commission" in the fourth paragraph of subdivision (9), added the third sentence of subdivision (12), deleted "commercial vehicles, or other" preceding "vehicles not required" in the fourth sentence of subdivision (13) and inserted "by federal law" thereafter, and substituted "be less than" for "exceed" in the first sentence of the second paragraph of subdivision (13).

Session Laws 1987, c. 827, s. 234, effective August 13, 1987, deleted "and regulations to be" following "rules" in subdivision (6) and deleted "and regulations" following "rules" in subdivision (7).

Session Laws 1987, c. 543, s. 8, effective February 1, 1988, rewrote the first sentence of the first paragraph of subdivision (1), which read "Each day-care facility, and all personnel, shall meet the minimum health and sanitation standards developed by the Commission for Health Services subject to adoption by the Commission not inconsistent with the provisions of this Article"; substituted "The sanitation rules adopted" for "The health and sanitation standards developed" at the beginning of the second sentence of the first paragraph of subdivision (1); and deleted a former final sentence of the first paragraph of subdivision (1), which read "Each year, or more often if required by the Commission in a particular case, each day-care facility shall submit evidence satisfactory to the Commission that it conforms to these health and sanitation standards."

§ 110-92. (Effective until February 1, 1988) Duties of State and local agencies.

When requested by an operator of a day-care facility or by the Secretary of Human Resources, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards developed by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department on forms approved by the Commission and provided by the Department.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary of Human Resources on forms provided by the Department so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 879, s. 15; 1985, c. 757, s. 155(j).)

§ 110-92 is set out twice. See headings for effective dates.

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 110-92.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted the former first paragraph, relating to the authority of the Department of Human Resources to visit or approve or disapprove a day-care facility for purchase of care with federal funds or for placement of children from families receiving financial assistance or services, substituted "Human Resources" for "Administration" in the present first and second paragraphs, and substituted "Department" for "Commission" in the present second paragraph.

§ 110-92. (Effective February 1, 1988) Duties of State and local agencies.

When requested by an operator of a day-care facility or by the Secretary of Human Resources, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards adopted as rules [by] the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department on forms approved and provided by the Department.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary of Human Resources on forms provided by the Department so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 879, s. 15; 1985, c. 757, s. 155(j); 1987, c. 543, s. 4.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 110-92.

Editor's Note. —

Session Laws 1987, c. 543, s. 8 makes the act effective February 1, 1988, but provides that upon ratification of the act (July 3, 1987), the Commission for Health Services is authorized to adopt rules pursuant to authority granted under the act, and that these rules shall not be effective before February 1, 1988.

It would appear that deletion of the word "by" following "adopted as rules" by the 1987 amendment was inadvertent.

Effect of Amendments. —

The 1987 amendment, effective February 1, 1988, substituted "adopted as rules" for "developed by" near the middle of the first paragraph, and deleted "by the Commission and" preceding "provided by the Department" at the end of that paragraph.

§ 110-92 is set out twice. See headings for effective dates.

§ 110-93. (Effective until February 1, 1988) Licensing procedure.

(a) Each operator of a day-care facility shall annually apply to the Department for a license. The application shall be in such form as is required by the Department. Each operator seeking a license shall be responsible for accompanying his application with the necessary supporting data and reports to show conformity with the standards established or authorized by this Article including reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Department.

(b) If an operator conforms to the standards established or authorized by this Article as shown in his application and other supporting data, the Secretary of Human Resources shall issue a license for no more than 12 months subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required standards, the Secretary may issue a provisional license under the policies of the Commission provided that the operator shall be notified in writing by registered or certified mail of the reasons for issuance of a provisional license.

(c) Each licensed operator of [a] day-care facility must annually apply in order to renew his license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article.

(d) Repealed by Session Laws 1977, c. 929, s. 1. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, s. 4; c. 929, s. 1; 1985, c. 757, s. 155(k), (l); 1987, c. 788, s. 7.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 110-93.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, substituted "Department" for "Commission" in subsection (a) and substituted "Human Resources" for "Administration" in subsection (b).

The 1987 amendment, effective August 12, 1987, substituted "for no more than 12 months" for "effective for one year" in the first sentence of subsection (b).

CASE NOTES

Stated in State, Child Day-Care Licensing Comm'n v. Fayetteville St. Christian School, 299 N.C. 351, 261 S.E.2d 908 (1980).

§ 110-93. (Effective February 1, 1988) Licensing procedure.

(a) Each operator of a day-care facility shall annually apply to the Department for a license. The application shall be in such form as is required by the Department. Each operator seeking a license shall be responsible for accompanying his application with the necessary supporting data and reports to show conformity with rules adopted by the Commission for Health Services pursuant to G.S. 110-91(1) and with the standards established or authorized by this Article including reports from the local and district health depart-

§ 110-93 is set out twice. See headings for effective dates.

ments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Department.

(b) If an operator conforms to the rules adopted by the Commission for Health Services pursuant to G.S. 110-91(1) and with the standards established or authorized by this Article as shown in his application and other supporting data, the Secretary of Human Resources shall issue a license for no more than 12 months subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required rules and standards, the Secretary may issue a provisional license under the policies of the Commission provided that the operator shall be notified in writing by registered or certified mail of the reasons for issuance of a provisional license.

(c) Each licensed operator of [a] day-care facility must annually apply in order to renew his license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article.

(d) Repealed by Session Laws 1977, c. 929, s. 1. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, s. 4; c. 929, s. 1; 1985, c. 757, s. 155(k), (l); 1987, c. 543, ss. 5, 6; c. 788, s. 7.)

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 110-93.

Editor's Note. —

Session Laws 1987, c. 543, which amended subsections (a) and (b), provides in s. 8 that the act is effective February 1, 1988, but that upon ratification of the act (July 3, 1987), the Commission for Health Services is authorized to adopt rules pursuant to authority granted under the act, and that these rules shall not be effective before February 1, 1988.

Effect of Amendments. —

Session Laws 1987, c. 788, s. 7, effective August 12, 1987, substituted "for no more than 12 months" for "effective for one year" in the first sentence of subsection (b).

Session Laws 1987, c. 543, ss. 5 and 6, effective February 1, 1988, inserted "rules adopted by the Commission for Health Services pursuant to G.S. 110-91(1) and with" in the third sentence of subsection (a), and in subsection (b) inserted "rules adopted by the Commission for Health Services pursuant to G.S. 110-91(1) and with the" in the first sentence and inserted "rules and" preceding "standards" in the second sentence.

§ 110-94. Administrative Procedure Act.

The provisions of General Statutes Chapter 150B known as the Administrative Procedure Act shall be applicable to the Child Day-Care Commission. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 929, s. 2; 1985, c. 757, s. 155(m); 1987, c. 788, s. 8.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, deleted "Licensing" preceding "Commission."

The 1987 amendment, effective August 12, 1987, substituted "Chapter 150B" for "Chapter 150A."

§ 110-93 is set out twice. See headings for effective dates.

§ 110-98. Mandatory compliance.

It shall be unlawful for any operator or employee of a day-care facility or day-care home to offer or provide day care without complying with the provisions of this Article. (1971, c. 803, s. 1; 1985, c. 757, s. 156(ee); 1987, c. 788, s. 9.)

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, rewrote this section.

The 1987 amendment, effective August 12, 1987, substituted "home" for "plan."

§ 110-98.1. Prima facie evidence of existence of day-care.

A child-care arrangement providing day care for more than two children for more than four hours per day on two or more consecutive days shall be prima facie evidence of the existence of a day-care facility or day care home. (1977, c. 4, s. 6; 1987, c. 788, s. 10.)

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, deleted "facility" at the end of the catchline, substituted "two" for "five," and added "or day care home" at the end of the section.

§ 110-100. Licenses are property of the State.

Any license issued to a day-care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary of Human Resources in the event that the license is not renewed or is revoked or has expired or in the event that the grade or rating is changed. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(n).)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, substituted "Human Resources" for "Administration".

§ 110-101. (For schedule of applicability see note) Registration; minimum standards for child day care homes.

It shall be unlawful for any person to operate a day care home unless such day care home is registered with the Department in accordance with the requirements for registration adopted by the Commission. The person who is registered shall be the individual who is on site providing care. A registration certificate shall be issued and remain valid for a two-year period unless revoked, suspended or modified. Each home shall display its current registration certificate in a prominent place. The registration certificate shall remain the property of the State. Day care homes shall comply with the reasonable minimum standards for health, safety, and sanitation adopted by the Commission. Each day care home shall be located in a residence or other building which meets the requirements of the North Carolina Building Code under standards developed by the Building Code Council in consultation with the Division of Facility Services, and subject to adoption by the Commis-

sion, specifically for day care homes. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 156(i), (j); 1987, c. 788, s. 11.)

Schedule of Applicability of Amendment by Session Laws 1985, c. 757, s. 156(i) and (j), as Amended. — Session Laws 1985, c. 757, s. 156(n), as amended by Session Laws 1987, c. 788, s. 22, provides:

"Subsections (i) through (m) of this section apply to child day care homes in existence or seeking registration according to the following schedule:

"(1) For day care homes in counties with populations of 100,000 or more, on and after January 1, 1987;

"(2) For day care homes in counties with populations of 50,000 or more, but less than 100,000, on or after January 1, 1988;

"(3) For day care homes in counties with populations of less than 50,000, on or after July 1, 1988.

"The 1980 census shall provide the population data.

"Upon ratification of this act, the North Carolina Child Day Care Commission shall adopt regulations and standards to implement this section, which regulations and standards shall be effective on January 1, 1986, and apply to day-care plans according to the schedule set out in this subsection. Those building standards adopted by units of local government shall not be a cause to penalize those day care centers which have been built according to those building standards or regulations which may be imposed pursuant to this Article."

Editor's Note. — Section 97 of Session Laws 1985, c. 479, as amended by s. 130(a) of Session Laws 1985 (Reg. Sess., 1986), c. 1014, effective July 1, 1986, provides:

"(a) Rules for the monthly schedule of payments for the purchase of day care services for low income children shall be established by the Social Services Commission pursuant to G.S. 143B-153(8)a., in accordance with the following requirements:

"(1) Effective July 1, 1986, for facilities in which fewer than fifty percent (50%) of the enrollees are subsidized by State or federal funds, the State shall continue to pay the same fee paid by private paying parents for a child in the same age group in the same facility.

"(2) Effective July 1, 1986, facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds shall be reimbursed at the facilities' fiscal year 1985-86 payment rate.

"(3) Effective January 1, 1987, facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds may choose annually one of the following payment options:

"a. The facility's payment rate for fiscal year 1985-86; or

"b. The county market rate, as calculated annually by the Department of Human Resources' Office of Child Day Care Services. A market rate shall be calculated for each county and for each age group of enrollees, and shall be the county average of all fees charged to unsubsidized private paying parents for each age group of enrollees. In fiscal year 1986-87, the county market rates shall be calculated from data collected by the Department of Human Resources' Office of Child Day Care Services in its 1986 Survey of Market Rates. Effective July 1, 1987, the county market rates shall be calculated from facility fee schedules collected by the Office of Child Day Care Services during its annual inspection visits.

"(b) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes may participate in the program that provides for the purchase of slots in day care facilities, for minor children of needy families. No separate licensing requirements may be used to select facilities to participate.

"Effective July 1, 1986, day care plans from which the State purchases day care services shall meet the standards established by the Child Day Care Commission pursuant to G.S. 110-101 and G.S. 110-105.1. Until it can demonstrate that it meets the standards adopted by the Child Day Care Commission, a day care plan from which the State purchases day care services for minor children of needy families shall meet all certification standards adopted by the Department of Human Resources' Office of Child Day Care Services. The fee for the purchase of care from a day care plan is one hundred fifty dollars ($150.00) per month.

The fee for the purchase of care from individual Child Caring Providers is one hundred dollars ($100.00) per month.

"(c) Effective January 1, 1986, providers whose programs exceed licensing standards may modify their programs to standards consistent with licensing standards.

"(d) Any savings that result by reason of this schedule shall be used by the Department to provide for payment of the costs of necessary day care for more minor children of needy families.

"(e) County departments of social services shall continue to negotiate with day care providers for day care services below those rates prescribed by subsection (a) of this section. County departments are directed to purchase day care services so as to serve the greatest number of children possible with existing resources."

Effect of Amendments. — The 1985 amendment by c. 757, s. 156(i) and (j), effective Jan. 1, 1986, and applicable according to the schedule set out in the note above, added the former last two sentences, which read "A registration certificate shall be issued and remain valid for a two-year period unless revoked or modified. Each plan shall display its current registration certificate in a prominent place." See now the present third and fourth sentences. In addition, the amendment inserted "minimum standards for plans" in the catchline.

The 1987 amendment, effective August 12, 1987, rewrote this section.

§ 110-102. Information for parents.

The Secretary of Human Resources shall provide to each operator of a day-care facility a summary of this Article for the parents, guardian, or full-time custodian of each child receiving day care in the facility to be distributed by the operator. The summary shall include the name and address of the Secretary of Human Resources and the address of the Commission. The summary shall also include a statement regarding the mandatory duty prescribed in G.S. 7A-543 of any person suspecting child abuse or neglect has taken place in day care, or elsewhere, to report to the county Department of Social Services. The statement shall include the definitions of child abuse and neglect described in the Juvenile Code in G.S. 7A-517 and of child abuse described in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress that this reporting law does not require that the person reporting reveal his identity. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 1011, s. 3; 1985, c. 757, ss. 155(o), 156(v).)

Effect of Amendments. — The 1985 amendment by c. 757, s. 155(o), effective July 1, 1985, substituted "Human Resources" for "Administration" in the first and second sentences.

The 1985 amendment by c. 757, s. 156(v), effective Oct. 1, 1985, added the last three sentences.

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

§ 110-102.1. Reporting of missing or deceased children.

(a) Operators and staff, as defined in G.S. 110-86(7), 110-90.1 and 110-91(8), or any adult present with the approval of the care provider in a day-care facility or home, as defined in G.S. 110-86(3), (4) and 110-106, upon learning that a child which has been placed in their care or presence is missing, shall immediately report the missing child to law enforcement. For purposes of this Article, a child is anyone under the age of 18.

(b) If a child dies while in day care, or of injuries sustained in day care, a report of the death must be made by the day care operator to the Secretary within 24 hours of the child's death or on the next working day. (1985, c. 392; 1987, c. 788, s. 12.)

Editor's Note. — Session Laws 1985, c. 392, s. 2 makes this section effective Oct. 1, 1985.

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, inserted "or deceased" in the catchline, designated the first paragraph as subsection (a) and in that subsection substituted "home" for "plan", added subsection (b).

§ 110-102.2. Administrative penalties.

For failure to comply with this Article, the Secretary may:

(1) Issue a written warning and a request for compliance;

(2) Issue an official written reprimand;

(3) Place a licensee upon probation until his compliance with this Article has been verified by the Commission or its agent;

(4) Order suspension of a license for a specified length of time not to exceed one year;

(5) Permanently revoke a license issued under this Article.

The issuance of an administrative penalty may be appealed as provided in G.S. 110-90(5) and G.S. 110-90(9). (1985, c. 757, s. 156(ff); 1987, c. 788, s. 13; c. 827, s. 235.)

Editor's Note. — Session Laws 1985, c. 757, s. 156(*ll*) makes this section effective Oct. 1, 1985.

Effect of Amendments. — Session Laws 1987, c. 788, s. 13, effective August 12, 1987, rewrote the introductory language of the first sentence, deleted a former final sentence, which read "The Secretary shall implement the decision of the hearing officer or officers," and added the present final sentence.

Session Laws 1987, c. 827, s. 235, effective August 13, 1987, again rewrote the introductory language of the first sentence, and also deleted the last sentence of the section, which read "The Secretary shall implement the decision of the hearing officer or officers."

The introductory language of the first sentence is set out as rewritten by Session Laws 1987, c. 827, s. 235, at the direction of the Revisor of Statutes.

§ 110-103. Criminal penalty.

Any person who violates the provisions of G.S. 110-98 through G.S. 110-100 or G.S. 110-102 shall be guilty of a general misdemeanor. Any person who violates G.S. 110-101 shall be guilty of a misdemeanor punishable by a fine not to exceed three hundred dollars ($300.00), imprisonment for not more than 30 days, or both. (1971, c. 803, s. 1; 1983, c. 297, s. 3; 1985, c. 757, s. 156(gg).)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, rewrote this section.

The 1985 amendment, effective Oct. 1, 1985, inserted "Criminal" at the beginning of the catchline.

The 1987 amendment, effective August 12, 1987, substituted "three hundred dollars ($300.00)" for "fifty dollars ($50.00)."

§ 110-103.1. Civil penalty.

(a) A civil penalty of not more than one thousand dollars ($1,000) may be levied against any licensee who violates any provision of this Article. Every licensee shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article.

(b) In determining the amount of the penalty, the threat of or extent of harm to children in care as well as consistency of violations shall be considered, and no penalty shall be imposed under this section unless there is a specific finding that this action is reasonably necessary to enforce the provisions of this Article or its rules.

(c) A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Secretary shall refer the matter to the Attorney General for collection. (1985, c. 757, s. 156(gg); 1987, c. 788, s. 15; c. 827, s. 236.)

Editor's Note. — Session Laws 1985, c. 757, s. 156(*ll*) makes this section effective Oct. 1, 1985.

Effect of Amendments. — Session Laws 1987, c. 788, s. 15, effective August 12, 1987, in subsection (c) as it read prior to amendment by Session Laws 1987, c. 827, s. 236, deleted "After a hearing as provided in G.S. 110-90(5)" at the beginning of the first sentence, added a second sentence, reading "The issuance of an assessment may be appealed as provided in G.S. 110-90(9)," substituted "If after receipt of the notice, the licensee fails to exercise his appeal rights in accordance with G.S. 110-90(9) or" for "If the licensee assessed" at the beginning of the third sentence, and substituted "Chapter 150B" for "Chapter 150A" in the last sentence.

Session Laws 1987, c. 827, s. 236, effective August 13, 1987, rewrote subsection (c).

The section has been set out above as rewritten by Session Laws 1987, c. 827, s. 236, at the direction of the Revisor of Statutes.

§ 110-104. (Effective until February 1, 1988) Injunctive relief.

The Secretary or his designee may seek injunctive relief in the district court of the county in which a day-care facility or day-care home is located against the continuing operation of that day-care facility or day-care home at any time, whether or not any administrative proceedings are pending. The district court may grant injunctive relief, temporary, preliminary, or permanent, when there is any violation of this Article or of the rules promulgated by the Commission that threatens serious harm to children in the day-care facility or day-care home, or when a final order to deny or revoke a license or registration has been violated, or when a day-care facility is operating without a license or a day-care home is operating without being registered, or when a day-care facility or day-care home repeatedly violates the provisions of this Article or rules adopted pursuant to it after having been notified of the violation. (1977, c. 4, s. 5; c. 929, s. 3; c. 1011, s. 1; 1985, c. 757, s. 156(hh); 1987, c. 788, s. 16; 827, s. 237.)

Section Set Out Twice. — The section above is effective until February 1, 1988. For this section as amended effective February 1, 1988, see the following section, also numbered § 110-104.

Effect of Amendments. — The 1985

§ 110-104 is set out twice. See headings for effective dates.

amendment, effective Oct. 1, 1985, rewrote this section.

Session Laws 1987, c. 788, s. 16, effective August 12, 1987, substituted "home" for "plan" throughout the section.

Session Laws 1987, c. 827, s. 237, effective August 13, 1987, deleted "and regulations" following "rules" in the second sentence.

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

CASE NOTES

Action for Declaratory Judgment Not Barred. — The spirit and intent of this section do not permit, much less compel, a conclusion that the Day-Care Facilities Act is intended to restrict the general statewide jurisdiction of the superior court or to limit the scope of relief normally available in declaratory judgment actions. The mere existence of an alternate adequate remedy under this section will not be held to bar an appropriate action for declaratory judgment. State, Child Day-Care Licensing Comm'n v. Fayetteville St. Christian School, 299 N.C. 351, 261 S.E.2d 908, appeal dismissed, 449 U.S. 807, 101 S. Ct. 55, 66 L. Ed. 2d 11 (1980).

Preliminary injunction serves to place the parties in the position they were before the dispute between them arose. State v. Fayetteville St. Christian School, 299 N.C. 731, 265 S.E.2d 387, appeal dismissed, 449 U.S. 807, 101 S. Ct. 55, 66 L. Ed. 2d 11 (1980).

Defendants' compliance with preliminary injunction does not moot issues raised by defendants' assertions of constitutional defenses to the State's action. The preliminary injunction requires defendants to comply with the statutory licensing requirements until a final determination can be made on fully developed facts of the ultimate question in the case, i.e., whether the licensing statutes can be constitutionally applied to these defendants. Until such a determination is made the statutes, conceded to be facially valid, are presumably applicable to defendants and defendants must perforce comply with them. State v. Fayetteville St. Christian School, 299 N.C. 731, 265 S.E.2d 387, appeal dismissed, 449 U.S. 807, 101 S. Ct. 55, 66 L. Ed. 2d 11 (1980).

Preliminary injunction under this section is not immediately appealable. State v. Fayetteville St. Christian School, 299 N.C. 731, 265 S.E.2d 387, appeal dismissed, 449 U.S. 807, 101 S. Ct. 55, 66 L. Ed. 2d 11 (1980).

§ 110-104. (Effective February 1, 1988) Injunctive relief.

The Secretary or his designee may seek injunctive relief in the district court of the county in which a day-care facility or day-care home is located against the continuing operation of that day-care facility or day-care home at any time, whether or not any administrative proceedings are pending. The district court may grant injunctive relief, temporary, preliminary, or permanent, when there is any violation of this Article or of the rules promulgated by the Commission or the Commission for Health Services that threatens serious harm to children in the day-care facility or day-care home, or when a final order to deny or revoke a license or registration has been violated, or when a day-care facility is operating without a license or a day-care home is operating without being registered, or when a day-care facility or day-care home repeatedly violates the provisions of this Article or rules adopted pursuant to it after having been notified of the violation. (1977, c. 4, s. 5; c. 929, s. 3; c. 1011, s. 1; 1985, c. 757, s. 156(hh); 1987, c. 543, s. 7; c. 788, s. 16; c. 827, s. 237.)

§ 110-104 is set out twice. See headings for effective dates.

Section Set Out Twice. — The section above is effective February 1, 1988. For this section as in effect until February 1, 1988, see the preceding section, also numbered § 110-104.

Editor's Note. —

Session Laws 1987, c. 543, which inserted a reference to the Commission for Health Services in the second sentence, provides in s. 8 that the act is effective February 1, 1988, but that upon ratification of the act (July 3, 1987), the Commission for Health Services is authorized to adopt rules pursuant to authority granted under the act, and that these rules shall not be effective before February 1, 1988.

Effect of Amendments. —

Session Laws 1987, c. 788, s. 16, effective August 12, 1987, substituted "home" for "plan" throughout the section.

Session Laws 1987, c. 827, s. 237, effective August 13, 1987, deleted "and regulations" following "rules" in the second sentence.

Session Laws 1987, c. 543, s. 7, effective February 1, 1988, inserted "or the Commission for Health Services" in the second sentence.

§ 110-105. Authority to inspect facilities.

(a) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

(1) An initial licensing or certification inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection or certification visit;

(2) A plan for routine inspections of all facilities, which shall be confidential unless a court orders its disclosure, and which shall be conducted without prior notice to the facility;

(3) An inspection that may be conducted without notice, if there is probable cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child abuse or neglect in a day-care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the day-care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant additional visits, the second inspection shall be conducted within one month of the first visit.

The Secretary or his designee, upon presenting appropriate credentials to the operator of the day-care facility, is authorized to perform inspections in accordance with the standards and rules promulgated under this subsection.

(b) If an operator refuses to allow the Secretary or his designee to inspect the day-care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2. (1983, c. 261, s. 1; 1985, c. 757, s. 156(ii); 1987, c. 788, s. 17; c. 827, s. 238.)

Editor's Note. — Session Laws 1983, c. 261, s. 2, makes this section effective Oct. 1, 1983.

Effect of Amendments. — The 1985 amendment, effective Oct. 1, 1985, added the last two sentences of subdivision (a)(3).

Session Laws 1987, c. 788, s. 17, effective August 12, 1987, substituted "Department" for "Commission" in two places in the second sentence of subdivision (a)(3), substituted "an inspection" for "at least two mandatory inspections" and substituted "the day-care facility"

for "any day-care facility" in that sentence, deleted "and whether the operator of the day-care facility caused, or had knowledge of, or through the exercise of reasonable care and diligence should have had knowledge of the child abuse or neglect" at the end of that sentence, and rewrote the third sentence of subdivision (a)(3).

Session Laws 1987, c. 827, s. 238, effective August 13, 1987, substituted "and rules" for "rules and regulations" throughout subsection (a).

§ 110-105.1. Authority to inspect child day care homes.

(a) The Commission shall adopt standards, rules, and regulations under this section that provide for the following:

(1) An initial registration inspection, for which the person requesting registration as a child day care home operator has prior notice, to certify that all mandatory standards are met;

(2) A plan for announced inspections of randomly-selected registered homes prior to registration renewal;

(3) A plan for unannounced inspections of randomly-selected registered homes, which plan shall be confidential unless a court orders its disclosure; and

(4) An inspection that may be conducted without notice if there is probable cause to believe that an emergency situation exists or if there is a complaint alleging a violation of registration law. When the Department is notified by any person that alleged abuse or neglect has occurred in a child day care home, the Commission's rules shall provide for an inspection conducted without notice to the home to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report; and when circumstances warrant additional visits, the second inspection shall be conducted within one month of the first visit.

The Secretary or his designee, upon presenting appropriate credentials to the operator of the child day care home, may perform inspections in accordance with the standards, rules, and regulations promulgated under this subsection.

(b) If an operator refuses to allow the Secretary or his designee to inspect the child day care home, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2. (1985, c. 757, s. 156(jj); 1987, c. 788, s. 18.)

Editor's Note. — Session Laws 1985, c. 757, s. 156(*II*) makes this section effective Oct. 1, 1985.

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, substituted "child day care homes" for "plans" in the catchline, substituted "child day care home operator" for "plan provider" in subdivision (a)(1), rewrote subdivision (a)(2), deleted "routine" preceding "unannounced inspections" and substituted "of randomly-selected registered homes" for "at regular intervals" in subdivision (a)(3), rewrote the second and third sentences of subdivision (a)(4), and substituted "child day care home" for "day-care plan" throughout the section.

§ 110-105.2. Abuse and neglect violations.

For purposes of this Article, child abuse and neglect, as defined in G.S. 7A-517 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in day-care facilities and homes, are violations of the licensure and registration standards and of the licensure and registration law. (1985, c. 757, s. 156(w); 1987, c. 788, s. 19.)

Editor's Note. — Session Laws 1985, c. 757, s. 156(y) makes this section effective Oct. 1, 1985.

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, substituted "homes" for "plans" in this section.

§ 110-106. (For schedule of applicability see note) Religious sponsored day-care facilities.

(a) The term "church day-care facility" as used herein shall include any day-care facility or summer day camp operated by a church, synagogue or school of religious charter.

(b) Reporting Procedure of Church Day-Care Facilities. —

(1) Church day care facilities shall file with the Department a notice of intent to operate a day care facility and the date it will begin operation at least 30 days prior to that date. Within 30 days after beginning operation, the facility shall provide to the Department written reports and supporting data which show the facility is in compliance with applicable provisions of G.S. 110-91. After the church day care facility has filed this information with the Department, the facility shall be visited by a representative of the Department to assure compliance with the applicable provisions of G.S. 110-91.

(2) Each church day-care facility shall annually file with the Department a report indicating that it meets the minimum standards for facilities as provided in the applicable provisions of G.S. 110-91. The reports shall be in accordance with rules adopted by the Commission. Each church day-care facility shall be responsible for accompanying its report with the necessary supporting data to show conformity with those minimum standards, including reports from the local and district health departments, local building inspectors, local firemen, volunteer firemen, and other, on forms which shall be provided by the Department.

(3) It shall be the responsibility of the Department to notify the facility if it fails to meet the minimum requirements. The Secretary shall be responsible for carrying out the enforcement provisions provided by the General Assembly in Article 7 of Chapter 110 including inspection to insure compliance. The Secretary shall be empowered to issue an order requiring a church day-care facility which fails to meet the standards established pursuant to this Article to cease operating. A church day-care facility may request a hearing to determine if it is in compliance with the applicable provisions of G.S. 110-91. If the Secretary determines that it is not, it may order the facility to cease operation until it is in compliance.

(4) Church day-care facilities including summer day camps shall be exempt from the requirement that they obtain a license and that the license be displayed and shall be exempt from any subsequent rule or regulatory program not dealing specifically with the minimum standards as provided in the applicable provisions of G.S. 110-91. Nothing in this Article shall be interpreted to allow the State to regulate or otherwise interfere with the religious training offered as a part of any church day-care program. Nothing in this Article shall prohibit any church-operated, synagogue-operated, or religious affiliated facility from becoming licensed by the State if it so chooses.

(5) Church day-care facilities found to be in violation of the applicable provisions of G.S. 110-91 shall be subject to the injunctive provisions of G.S. 110-104, except that they may not be enjoined for operating without a license. The Secretary is empowered to seek an injunction against any such facility under the conditions specified in G.S. 110-104 with the above exception and when any such facility operates without submitting the required forms and following the procedures required by this Article.

(c) G.S. 110-91(11), G.S. 110-91(12), and the second paragraph of G.S. 110-91(8) do not apply to religious sponsored day-care facilities, and these facilities are exempt from any requirements prescribed by subsection (b) of this section that arise out of these provisions. No staff qualifications other than those prescribed by the first paragraph of G.S. 110-91(8) shall apply to religious sponsored day care facilities. (1983, c. 283, ss. 1, 2; 1985, c. 757, ss. 155(p), 156(k); 1987, c. 788, s. 20.)

Editor's Note. — Session Laws 1983, c. 283, s. 3, makes this section effective upon ratification. The act was ratified May 9, 1983.

Session Laws 1987, c. 788, s. 27 provides: "All child day care facilities and homes currently registered or licensed, or seeking licensing or registration, or operating in accordance with G.S. 110-106 or G.S. 110-106.1, shall comply with all current regulations applicable to the type of facility or home until such time as the Commission has adopted regulations adjusted for size of facility pursuant to Sections 2(b) and 6(f), (g), (h) and (j) of this act and appropriate implementation procedures. The Commission's rules shall become effective on or before July 1, 1988."

Schedule of Applicability of Amendment by Session Laws 1985, c. 757, s. 156(k), as Amended. — Session Laws 1985, c. 757, s. 156(n), as amended by Session Laws 1987, c. 788, s. 22, provides:

"Subsections (i) through (m) of this section apply to child day care homes in existence or seeking registration according to the following schedule:

"(1) For day care homes in counties with populations of 100,000 or more, on or after January 1, 1987;

"(2) For day care homes in counties with populations of 50,000 or more, but less than 100,000, on or after January 1, 1988;

"(3) For day care homes in counties with populations of less than 50,000, on or after July 1, 1988.

"The 1980 census shall provide the population data.

"Upon ratification of this act, the North Carolina Child Day Care Commission shall adopt regulations and standards to implement this section, which regulations and standards shall be effective on January 1, 1986, and apply to day-care plans according to the schedule set out in this subsection. Those building standards adopted by units of local government shall not be a cause to penalize those day care centers which have been built according to those building standards or regulations which may be imposed pursuant to this Article."

Effect of Amendments. — The 1985

amendment by c. 757, s. 155(p), effective July 1, 1985, deleted "Licensing" preceding "Commission" in the first sentence of subdivision (b)(1).

The 1985 amendment by c. 757, s. 156(k), effective Jan. 1, 1986, and applicable according to the schedule in the note set out above, substituted "the applicable provisions of G.S. 110-91" for "G.S. 110-91" throughout the section and added subsection (c).

The 1987 amendment, effective August 12, 1987, inserted "or summer day camp" in subsection (a), rewrote subdivision (b)(1), substituted "Department" for "Commission" and deleted "G.S. 110-90.1 and" preceding "the applicable provisions" in the first sentence of subdivision (b)(2), rewrote the second sentence of that subdivision, substituted "Department" for "Commission" in the last sentence of subdivision (b)(2), substituted "Department" for "Commission" following "It shall be the responsibility of the" at the beginning of the first sentence of subdivision (b)(3), substituted "Secretary" for "Commission" in three places in that subdivision, deleted "After a hearing" at the beginning of the fourth sentence of subdivision (b)(3), and in that sentence deleted "the provisions of G.S. 110-90.1 and" preceding "the applicable provisions," deleted "G.S. 110-90.1 and" preceding "the applicable provisions" in the first sentence of subdivisions (b)(4) and (b)(5), inserted "including summer day camps" in the first sentence of subdivision (b)(4), and inserted the second sentence of subsection (c).

§ 110-106.1. (For schedule of applicability see note) Religious sponsored day-care plans.

The requirements and exemptions that apply to religious sponsored day-care facilities pursuant to G.S. 110-106 apply to religious sponsored child day care homes, except that the religious sponsored child day care homes shall also comply with the minimum standards of health, sanitation, and safety prescribed by G.S. 110-88(3) and 110-101, and with the minimum requirements for staff in a child day care home prescribed by G.S. 110-90.1. (1985, c. 757, s. 156(*l*); 1987, c. 788, s. 21.)

Editor's Note. — Session Laws 1985, c. 757, s. 156(p) makes this section, which was enacted by 757, s. 156(*l*), effective Jan. 1, 1986. For schedule of applicability, see the note below.

Session Laws 1987, c. 788, s. 27 provides: "All child day care facilities and homes currently registered or licensed, or seeking licensing or registration, or operating in accordance with G.S. 110-106 or G.S. 110-106.1, shall comply with all current regulations applicable to the type of facility or home until such time as the Commission has adopted regulations adjusted for size of facility pursuant to Sections 2(b) and 6(f), (g), (h) and (j) of this act and appropriate implementation procedures. The Commission's rules shall become effective on or before July 1, 1988."

Schedule of Applicability of Section. — Session Laws 1985, c. 757, s. 156(n), as amended by Session Laws 1987, c. 788, s. 22, provides:

"Subsections (i) through (m) of this section apply to child day care homes in existence or seeking registration according to the following schedule:

"(1) For day care homes in counties with populations of 100,000 or more, on or after January 1, 1987;

"(2) For day care homes in counties with populations of 50,000 or more, but less than 100,000, on or after January 1, 1988;

"(3) For day care homes in counties with populations of less than 50,000, on or after July 1, 1988.

"The 1980 census shall provide the population data.

"Upon ratification of this act, the North Carolina Child Day Care Commission shall adopt regulations and standards to implement this section, which regulations and standards shall be effective on January 1, 1986, and apply to day-care plans according to the schedule set out in this subsection. Those building standards adopted by units of local government shall not be a cause to penalize those day care centers which have been built according to those building standards or regulations which may be imposed pursuant to this Article."

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, substituted "child day care homes" for "day-care plans" throughout the section, and added "and 110-101, and with the minimum requirements for staff in a child day care home prescribed by G.S. 110-90.1" at the end of the section.

§§ 110-107 to 110-114: Reserved for future codification purposes.

Article 8.

Child Abuse and Neglect.

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

Cross References. — 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 enforce spousal support when a child support order is being enforced; 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; 1985, c. 506, s. 2.)

Effect of Amendments. — 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."

The 1985 amendment, effective July 1, 1985, inserted "to enforce spousal support when a child support order is being enforced" near the beginning of this section.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Assignment of Support Rights to State. — Based on federal and State law, by accepting public assistance, the recipient assigns all rights to support owed for the child to the State, including claims which had accrued when the assignment was made. Once public assistance payments terminate, any rights to support assigned to the State revert back to the recipient. State ex rel. Pender County Child Support Enforcement Agency v. Parker, 82 N.C. App. 419, 346 S.E.2d 270, cert. granted, 318 N.C. 420, 349 S.E.2d 605 (1986), holding that the trial court properly denied mother's motion to intervene to seek retroactive child support in proceedings brought by the State against father.

Applied in Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983); In re Ballard, 311 N.C. App. 708, 319 S.E.2d 227 (1984).

Quoted in State ex rel. Terry v. Marrow, 71 N.C. App. 170, 321 S.E.2d 575 (1984).

Cited in Durham County Dep't of Social Servs. v. Williams, 52 N.C. App. 112, 277 S.E.2d 865 (1981); Wake County ex rel. Carrington v. Townes, 53 N.C. App. 649, 281 S.E.2d 765 (1981); Wake County ex rel. Denning v. Ferrell, 71 N.C. App. 185, 321 S.E.2d 913 (1984).

OPINIONS OF ATTORNEY GENERAL

This Article Provides Statutory Basis for North Carolina Child Support Enforce- ment 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:

(2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the armed forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c).

(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.

(6) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Aid for

Dependent Children, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means "wage" as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits.

(7) "IV-D case" means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.

(8) "Non-IV-D case" means any case, other than a IV-D case, in which child support is legally obligated to be paid.

(9) "Initiating party" means the party, the attorney for a party, a child support enforcement agency, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

(10) "Mistake of fact" means that the obligor:

(a) is not in arrears in an amount equal to the support payable for one month; or

(b) did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or

(c) is not the person subject to the court order of support for the chid named in the advance notice of withholding.

(11) "Obligee", in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support is owed or the individual's legal representative.

(12) "Obligor" means the individual who owes a duty to make child support payments under a court order.

(13) "Payor" means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 2, 3; 1985, c. 592; 1985 (Reg. Sess., 1986), c. 949, s. 1; 1987, c. 764, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted." The act becomes effective October 1, 1986, pursuant to s. 10 of c. 949.

Effect of Amendments. — 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).

The 1985 amendment, effective July 4, 1985, added "or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c)" at the end of subdivision (2).

The 1985 (Reg. Sess., 1986) amendment, effective October 1, 1986, added subdivisions (6) through (13).

The 1987 amendment, effective September 1, 1987, inserted "unemployment compensation benefits" in the first sentence of subdivision (6) and added the last sentence of that subdivision.

CASE NOTES

Responsible Parent Remains Liable for Future Support. — Section 49-7, read together with § 50-13.7, clearly contemplates a continuing obligation on the part of the parents of an illegitimate child to provide support, including when necessary the modification or increase of payments ordered to satisfy this obligation. Having been conclusively determined a "responsible parent," as that term is defined in this section, the father of an illegitimate child must necessarily remain liable for the future support of his minor child. Nations v. Gentry, 311 N.C. 580, 319 S.E.2d 224 (1984).

Plea of guilty may be considered as evidentiary admission by defendant on issue of paternity, where defendant makes no attempt to refute or explain this evidence and it is therefore uncontroverted. It is unnecessary to determine whether defendant's plea of guilty to an earlier criminal charge of nonsupport must be given collateral estoppel effect. Nations v. Gentry, 311 N.C. 580, 319 S.E.2d 224 (1984).

The credible, uncontroverted evidence of defendant's plea of guilty to a criminal charge of nonsupport of the minor child is sufficient to establish paternity so as to bring defendant within the definition of "responsible parent" under this section. That definition includes "the father of an illegitimate child." Nations v. Gentry, 311 N.C. 580, 319 S.E.2d 224 (1984).

Stated in Durham County Dep't of Social Servs. v. Williams, 52 N.C. App. 112, 277 S.E.2d 865 (1981).

Cited in Wilkes County ex rel. Nations v. Gentry, 63 N.C. App. 432, 305 S.E.2d 207 (1983).

§ 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 institute civil or criminal proceedings against the responsible parent of the child, or may take up and pursue any paternity and/or support action commenced by the mother, custodian or guardian of the child. 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; 1985, c. 410.)

Effect of Amendments. — 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.

The 1985 amendment, effective June 17, 1985, rewrote the first sentence, which formerly read "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."

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

For a note on spousal testimony in criminal proceedings, see 17 Wake Forest L. Rev. 990 (1981).

CASE NOTES

County has the authority and the duty to pursue an action against the responsible parent for the maintenance of the child and recovery of amounts paid by the county for support of the child. The county may bring the action in the name of the mother or in its own name. She is in either case required to cooperate with the county in the trial of the action. Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

County is the real party in interest in an action to recover amounts paid by the county for support of a child. The child's mother is not the real party in interest. By accepting public assistance, she assigned her right to child support to the county. Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

Enforcement Action Against Member of Cherokee Indians. — A State court lacked the necessary subject matter jurisdiction in a civil action brought by a county child support enforcement agency against a member of the Eastern Band of Cherokee Indians who resided within the exterior boundaries of the reservation, in light of the well established rule of federal preemption, in conjunction with the specific federal regulations involved. The county had to litigate the matter in the court of Indian offenses. Jackson County ex rel. Child Support Enforcement Agency v. Swayney, 75 N.C. App. 629, 331 S.E.2d 145 (1985).

§ 110-130.1. Non-AFDC services.

(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of an appropriate nonrefundable application fee. For applicants whose gross household income is equal to or less than two hundred percent (200%) of the then currently established poverty level applicable to the applicant's household size, the application fee shall be five dollars ($5.00). For applicants whose gross household income exceeds such poverty level, the application fee shall be twenty-five dollars ($25.00).

For purposes of this section, "household income" means the sum of the gross amount of periodically recurring income which accrues to the members of a collective group of individuals living in one residence consisting of a natural or adoptive parent who has custody of a dependent child or children whose other natural or adoptive parent is absent from the residence, the custodial parent's current spouse, and all other dependent children. "Household size" means the sum of the persons specified as living in the residence as described above.

(b) Except for the application fee, the State shall not recover the costs or fees of providing services to a non-AFDC client whose household income is equal to or less than two hundred percent (200%) of the federal poverty guidelines.

(b1) The State shall recover the actual costs of providing services to a non-AFDC client whose gross household income exceeds two hundred percent (200%) of the then currently established federal poverty level applicable to the client's household size until all costs incurred on the client's behalf have been recovered. The rate of accrual of such costs shall be computed annually by the Department of Human Resources and disclosed at the time of application to the client as an hourly dollar amount for administrative services and an hourly dollar amount for attorney's services. Incurred costs may be recovered by any or all of the following means:

(1) a ten percent (10%) deduction from any support received;
(2) voluntary payments from either the responsible parent or client;
(3) payments by the responsible parent which the court may order, only if such payments do not reduce the responsible parent's ability to pay current support and arrears.

The appropriate judicial official shall be informed of the available cost recovery methods at the time a support order is sought.

A client from whom costs can be recovered pursuant to this subsection shall be liable for prepayment of any necessary court filing fees and paternity blood testing fees.

In all cases where ongoing enforcement services are being provided to a client from whom costs can be recovered pursuant to this subsection, or in cases in which ongoing enforcement services are no longer being provided but for whom costs were incurred and can be recovered pursuant to this subsection, or in cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

Any costs incurred pursuant to this section shall constitute a debt owed to the State by the client. Any costs ordered by the court under subdivision (3) above shall constitute a debt owed to the State by the responsible parent. Payment may be demanded from either or both of them.

(c) Actions or proceedings to establish or enforce a duty of support initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for such separate proceedings.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-AFDC arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State

owed by the client. (1983, c. 527, s. 1; 1985, c. 781, ss. 1-5; 1985 (Reg. Sess., 1986), c. 931, ss. 1, 2.)

Editor's Note. — Session Laws 1983, c. 527, s. 3, makes this section effective 30 days after ratification. The act was ratified June 15, 1983.

Session Laws 1985, c. 781, which amended this section, initially provided in s. 6 that the act would expire June 30, 1987.

However, Session Laws 1985 (Reg. Sess., 1986), c. 931, s. 3 deleted the language of Session Laws 1985, c. 781, s. 6 providing that c. 781 would expire June 30, 1987.

Effect of Amendments. — The 1985 amendment, effective July 17, 1985, substituted "Non-AFDC" for "Nonrecipient" in the catchline, substituted "ten dollar ($10.00)" for "twenty dollar ($20.00)" in subsection (a), rewrote subsection (b), inserted "or proceedings" following "Actions" at the beginning of subsection (c), and added subsection (d). As to the expiration of this amendment, see the Editor's note above.

The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, substituted "an appropriate nonrefundable application fee" for "a ten dollar ($10.00) application fee" at the end of the first sentence of the first paragraph of subsection (a), added the second and third sentences of the first paragraph of subsection (a), added the second paragraph of subsection (a), rewrote subsection (b), and inserted subsection (b1).

§ 110-130.2. Collection of spousal support.

Spousal support shall be collected for a spouse or former spouse with whom the absent parent's child is living when a child support order is being enforced under this Article. However, the spousal support shall be collected: (i) only if there is an order establishing the support obligation with respect to such spouse; and (ii) only if an order establishing the support obligation with respect to the child is being enforced under this Article. The Child Support Enforcement Program is not authorized to assist in the establishment of a spousal support obligation. (1985, c. 506, s. 1.)

Editor's Note. — Session Laws 1985, c. 506, s. 3 makes this section effective upon ratification. The act was ratified July 1, 1985.

§ 110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.

CASE NOTES

Applied in Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

Stated in Wake County ex rel. Carrington v. Townes, 53 N.C. App. 649, 281 S.E.2d 765 (1981).

§ 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 as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect 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 before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, 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; 1981, c. 275, s. 8.)

Effect of Amendments. — 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."

The 1981 amendment, effective October 1, 1981, substituted "as provided herein," for "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" near the end of the first sentence of subsection (a), deleted a comma and "retroactively or prospectively, in accordance with the terms of said agreement," following "the same force and effect" near the end of that sentence, and inserted "before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made," in the second sentence of subsection (a).

CASE NOTES

Legislative Intent. — Judgments of paternity clearly impact heavily on the property interests, liberty interests, and family relationships of the purported father. If the General Assembly intends that such judgments, once entered, are unalterable, regardless of the circumstances, it should expressly so state. The courts are unwilling, by judicial fiat in the process of statutory interpretation, to impose a rule so inflexible and with such potential for manifestly unjust results. Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983).

The apparent legislative purpose in enactment of the "shall be res judicata ... and shall not be reconsidered" provision in the portion of the statute relating solely to support proceedings (subsection (b)) was to avert costly consumption of the finite time resources of the trial courts by relitigation, in proceedings relating solely to support, of the underlying paternity issue. The absence of such a provision from the portion of the statute relating to the paternity issue (subsection (a)) itself, together with the manifest potential for substantial injustice which would result from inability, regardless of the circumstances, to obtain relief from an acknowledgment of paternity, indicates that the General Assembly did not intend to render court approved acknowledgments of paternity a unique category of judgments, peculiarly immune from the grand reservoir of equitable power to do justice in a particular case provided by 1A-1, Rule 60(b)(6). If such were the case, relief would not be possible, for example, even from an acknowledgment entered under extreme duress, such as a threat of death issued with the apparent means and intent to effectuate it. Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983).

The purpose of a child support proceeding is to determine the nature and extent of the support required. The initial determination is subject to modification or vacation at any time upon motion and a showing of changed circumstances. The support issue thus may be before the court on numerous occasions during a child's minority. Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983).

Effect of Subsection (a). — Subsection (a) makes a father's voluntary written acknowledgment of paternity and agreement to support his illegitimate child a binding and fully enforceable substitute for a judicial determination of paternity and order of support. Durham County Dep't of Social Servs. v. Williams, 52 N.C. App. 112, 277 S.E.2d 865 (1981).

Father's Acknowledgment Must Be Accompanied by Mother's. — The court may not approve defendant's voluntary agreement for support of an illegitimate child where defendant's acknowledgment of paternity is not simultaneously accompanied by a sworn affirmation of paternity by the child's mother as required by this section. Durham County Dep't of Social Servs. v. Williams, 52 N.C. App. 112, 277 S.E.2d 865 (1981).

Standing of County in Action to Modify Support Order. — Where plaintiff mother, who received public assistance under the Aid to Families with Dependent Children Program, assigned to a county her right to receive any support on behalf of her children, the county, by virtue of the assignment pursuant to this section, had an interest in the order for the support of plaintiff's children. Therefore, under § 50-13.7(a), the county had standing to make a motion in an action between plaintiff mother and defendant father to modify a child support order to require that the support be paid to the county. Cox v. Cox, 44 N.C. App. 339, 260 S.E.2d 812 (1979).

A trial court had no authority to dis-

miss a county's action to show cause for nonpayment of child support, where the putative father had earlier acknowledged paternity under oath and had entered into a voluntary support agreement. Holt v. Shoffner, 63 N.C. App. 381, 304 S.E.2d 787 (1983).

Relitigation of Paternity Precluded in Support Proceeding. — A voluntary support agreement may, upon motion and a showing of changed circumstances, be modified or vacated at any time. It cannot, however, be modified or vacated on the basis of relitigation, in a proceeding related solely to the order for support, of the paternity issue. That issue is res judicata and shall not be reconsidered by the court in such a proceeding. Person County ex rel. Lester v. Holloway, 74 N.C. App. 734, 329 S.E.2d 713 (1985).

Applied in Beaufort County v. Hopkins, 62 N.C. App. 321, 302 S.E.2d 662 (1983).

Stated in Wake County ex rel. Carrington v. Townes, 53 N.C. App. 649, 281 S.E.2d 765 (1981).

§ 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.)

Effect of Amendments. — 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."

CASE NOTES

The purpose of a child support proceeding is to determine the nature and extent of the support required. The initial determination is subject to modification or vacation at any time upon motion and a showing of changed circumstances. The support issue thus may be before the court on numerous occasions during a child's minority. Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983).

Modification or Vacation of Agreement. — The voluntary support agreement may, upon motion and a showing of changed circumstances, be modified or vacated at any time. It cannot, however, be modified or vacated on the basis of relitigation, in a proceeding related solely to the order for support, of the paternity issue; that issue is res judicata and shall not be reconsidered by the court in such a proceeding. Beaufort County v. Hopkins, 62 N.C. App. 321, 302 S.E.2d 662 (1983).

Relitigation of Paternity Precluded in Support Proceeding. — A voluntary support agreement may, upon motion and a showing of changed circumstances, be modified or vacated at any time. It cannot, however, be modi-

fied or vacated on the basis of relitigation, in a proceeding related solely to the order for support, of the paternity issue. That issue is res judicata and shall not be reconsidered by the court in such a proceeding. Person County ex rel. Lester v. Holloway, 74 N.C. App. 734, 329 S.E.2d 713 (1985).

Stated in Durham County Dep't of Social Servs. v. Williams, 52 N.C. App. 112, 277 S.E.2d 865 (1981).

Cited in Lee v. Lee, 78 N.C. App. 632, 337 S.E.2d 690 (1985).

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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.)

Effect of Amendments. — 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.)

Effect of Amendments. — 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.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

For note on a default not constituting an admission of facts for purposes of summary judgment, see 17 Wake Forest L. Rev. 49 (1981).

CASE NOTES

This section provides that an action to compel reimbursement of debt created must be commenced within "five years subsequent to the receipt of the last grant of public assistance." An action to collect a public assistance debt, if timely filed, may claim all public assistance granted subsequent to June 30, 1975, provided there is no five year gap in payments. State ex rel. Terry v. Marrow, 71 N.C. App. 170, 321 S.E.2d 575 (1984).

The only limitations in this section on the extent of reimbursement for which judgment may be obtained relate to the defendant's financial ability to furnish support during the relevant period of time. State ex rel. Terry v. Marrow, 71 N.C. App. 170, 321 S.E.2d 575 (1984).

The trial court erred in ruling that the State was not entitled to recover from defendant for benefits paid for the benefit of his minor illegitimate son before he had any knowledge of the birth of his son and before demand was made upon him to support the child. State ex rel. Terry v. Marrow, 71 N.C. App. 170, 321 S.E.2d 575 (1984).

Assignment of Support Rights to State. — Based on federal and State law, by accepting public assistance, the recipient assigns all rights to support owed for the child to the State, including claims which had accrued when the assignment was made. Once public assistance payments terminate, any rights to support assigned to the State revert back to the recipient. State ex rel. Pender County Child Support Enforcement Agency v. Parker, 82 N.C. App. 419, 346 S.E.2d 270, cert. granted, 318 N.C. 420, 349 S.E.2d 605 (1986), holding that the trial court properly denied mother's motion to intervene to seek retroactive child support in proceedings brought by the State against father.

Applied in Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983); Nations v. Gentry, 311 N.C. 580, 319 S.E.2d 224 (1984).

Cited in Cox v. Cox, 44 N.C. App. 339, 260 S.E.2d 812 (1979); Wake County ex rel. Carrington v. Townes, 53 N.C. App. 649, 281 S.E.2d 765 (1981); Wilkes County ex rel. Nations v. Gentry, 63 N.C. App. 432, 305 S.E.2d 207 (1983); Davis v. Taylor, 81 N.C. App. 42, 344 S.E.2d 19 (1986).

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Application of Last Sentence. — The last sentence applies to all proceedings brought by or on behalf of the State under this section and § 110-137. See opinion of Attorney General to Mr. David R. Johnson, Staff Attorney, The North Carolina State Bar, 50 N.C.A.G. 70 (1981).

§ 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 is 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 par-

ent'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, retirement, or other deferred compensation 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 amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the employer for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 11, 12; 1979, c. 386, ss. 1-8; 1983 (Reg. Sess., 1984), c. 1047, s. 1; 1985, c. 660, s. 2.)

Only Part of Section Set Out. — As subsections (d) and (e) were not changed by the amendments, they are not set out.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1047, s. 3, makes the act effective 30 days after ratification. The act was ratified July 2, 1984.

Effect of Amendments. — 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).

The 1983 (Reg. Sess., 1984) amendment added the next-to-last sentence of subsection (c).

The 1985 amendment, effective July 9, 1985, substituted "pension, retirement, or other deferred compensation program" for "pension or retirement program" in the second sentence of subsection (a).

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

For survey of 1978 Family Law, see 57 N.C.L. Rev. 1084 (1979).

CASE NOTES

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), modified on other grounds, 295 N.C. 168, 244 S.E.2d 668 (1978).

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), modified on other grounds, 295 N.C. 168, 244 S.E.2d 668 (1978).

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 amendment).

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).

Petition Need Not Be Served on Responsible Parent's Employer in Advance of Hearing. — This section does require a copy of the petition for garnishment to be served on the responsible parent's employer in advance of the hearing thereon, such notice is for the benefit of the employer, rather than the debtor, and can be waived by the party entitled to it. Champion v. Champion, 64 N.C. App. 606, 307 S.E.2d 827 (1983).

Cited in Sturgill v. Sturgill, 49 N.C. App. 578, 272 S.E.2d 423 (1980); Durham County v. Riggsbee, 56 N.C. App. 744, 289 S.E.2d 579 (1982); Stevens v. Stevens, 68 N.C. App. 234, 314 S.E.2d 786 (1984); McMahan v. McMahan, 68 N.C. App. 777, 315 S.E.2d 536 (1984).

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A city does not have immunity from garnishment proceedings brought for child support under this section. See opinion of Attorney General to Mr. Rufus C. Boutwell, Jr., Assistant City Attorney, City of Durham, Oct. 9, 1979.

§ 110-136.1. Assignment of wages for child support.

Pursuant to G.S. 50-13.4(f) (1), the court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court. The amount assigned shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the employer for each payment under the order. (1981, c. 275, s. 7; 1983 (Reg. Sess., 1984), c. 1047, s. 2.)

Editor's Note. — Session Laws 1981, c. 275, s. 11, makes this section effective October 1, 1981.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective 30 days after ratification, added the last sentence. The act was ratified July 2, 1984.

§ 110-136.2. Use of unemployment compensation benefits for child support.

(a) A responsible parent may voluntarily assign unemployment compensation benefits to a child support agency to satisfy a child support obligation or a child support enforcement agency may request a responsible parent to voluntarily assign unemployment benefits to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b) Upon notification of a voluntary assignment by the Department of Human Resources, the Employment Security Commission shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the Employment Security Commission to the Department of Human Resources for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the Employment Security Commission receives notification from the Department of Human Resources of an express written revocation by the responsible parent.

(e) The Department of Human Resources shall ensure that payments received under this section are properly credited against the responsible parent's child support obligation.

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Human Resources shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Human Resources pursuant to G.S. 96-17. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Human Resources, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8. (1983, c. 33, s. 1; 1987, c. 764, ss. 1, 2.)

Editor's Note. — Session Laws 1983, c. 33, s. 2, makes this section effective upon ratification. The act was ratified on Feb. 24, 1983.

Effect of Amendments. — The 1987 amendment, effective September 1, 1987, added "or a child support enforcement agency may request a responsible parent to voluntarily assign unemployment benefits to satisfy a child support obligation" at the end of the first sentence of subsection (a), and rewrote subsection (f).

§ 110-136.3. Income withholding procedures; applicability.

(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State beginning October 1, 1986, shall:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of his current residence and mailing address;

(2) Include a provision that an obligor will be subject to income withholding under a separate order if arrearages equal to the support payable for one month accumulate or upon request of the obligor;

(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of his disposable income;

(4) Require the obligee or custodial party to keep the obligor informed of the current residence and mailing address of the child; and

(5) If the case is a IV-D case, require the obligor to keep the IV-D agency informed of the name and address of any payor of his disposable income and of the amount and effective date of any substantial change in his disposable income.

(b) When obligor subject to withholding. An obligor shall become subject to income withholding on the earliest of:

(1) The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

(2) The date on which the obligor requests withholding.

(c) Applicability. Notwithstanding any other provision of law, the income withholding provisions of this Article shall apply to any civil or criminal child support order, entered or modified before, on, or after October 1, 1986.

(d) Interstate cases. An interstate case is one in which a child support order of one state is to be enforced in another state.

(1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:

a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;

b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that such jurisdiction has a withholding law;

c. A sworn statement of arrearages;

d. The name, address, and social security number of the obligor, if known;

e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and

f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding.

(2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.

(3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.

(4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(e) Procedures and regulations. Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Human Resources or his designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 1.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, deleted "and of the name and address of any payor of his disposable income and of the amount and effective date of any substantial change in his disposable income, and" at the end of subdivision (a)(1), rewrote subdivision (a)(2), which read "Provide for implementation of income withholding procedures as provided in this Article," and added subdivisions (a)(3) through (a)(5).

§ 110-136.4. Implementation of withholding in IV-D cases.

(a) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(b) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

(1) Whether the proposed withholding is based on the obligor's failure to make legally obligated payments in an amount equal to the support payable for one month or on the obligor's request for withholding;

(2) The amount of overdue support, the total amount to be withheld, and when the withholding will occur;

(3) The name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child;

(4) The amount and sources of disposable income;

(5) That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

(6) An explanation of the obligor's rights and responsibilities pursuant to this section;

(7) That withholding will be continued until terminated pursuant to G.S. 110-136.10.

(c) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee

shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(d) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(e) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(f) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(g) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(h) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(i) Applicability of section. The provisions of this section apply to IV-D cases only. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

§ 110-136.5. Implementation of withholding in non-IV-D cases.

(a) Withholding Based on Arrearage. Notwithstanding any other provision of law, when an obligor is delinquent in an amount equal to the support payable for one month, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

(1) The motion or complaint shall be verified and state, to the extent known:

a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
b. That the obligor is delinquent in an amount equal to the support payable for one month;
c. The amount of overdue support and the total amount sought to be withheld;
d. The name of each child for whose benefit support is due; and
e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

(2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

(1) A written request for withholding shall state:
a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
b. Whether the obligor is delinquent and the amount of any overdue support;
c. The name of each child for whose benefit support is payable;
d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar ($2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
forty percent (40%) if there is only one order for withholding;
forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2) A written request for withholding shall be filed in the office of the clerk of superior court to which the obligor is directed to make child support payments. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments in an amount equal to the support payable for one month or that the obligor has requested that income withholding begin, the court shall enter an order for income withholding, unless:

(1) The obligor proves a mistake of fact; or

(2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or

(3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served by certified mail, return receipt requested, on the payor or payors and the obligor.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 60.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, rewrote subsections (a) and (b).

§ 110-136.6. Amount to be withheld.

(a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

(1) An amount sufficient to pay current child support; and

(2) An additional amount toward liquidation of arrearages; and

(3) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

(1) Forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or

(2) Fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b). (1985 (Reg. Sess., 1986), c. 949, s. 2.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

§ 110-136.7. Multiple withholding.

When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

§ 110-136.8. Notice to payor; payor's responsibilities.

(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

(b) Payor's Responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. If there is more than one child support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.

(c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and

(1) In a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;

(2) In a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withhold-

ing order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.

(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to each clerk of superior court if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor.

(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty to be paid to the county school fund. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

(f) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 2.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10 makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, added "and" at the end of paragraph (b)(5)c and added subdivision (b)(6).

§ 110-136.9. Payment of withheld funds.

In IV-D cases, when required by federal or State law or regulations or by court order, the clerk of superior court shall transmit payments received from payors to the Department of Human Resources for appropriate distribution. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

§ 110-136.10. Termination of withholding.

A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

(1) The child support order has expired or become invalid; or

(2) The initiating party, the obligor, and the district court judge agree to termination because there is another adequate means to collect child support or arrearages; or

(3) The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 949, s. 10, makes this section effective October 1, 1986.

Section 9 of Session Laws 1985 (Reg. Sess., 1986), c. 949, provides: "Nothing in this act shall be construed as affecting any garnishment proceeding heretofore or hereafter instituted."

§ 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.)

Effect of Amendments. — 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.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Limitation of Assignment to Amount of Assistance Paid. — There is no conflict between the federal guidelines and the provision of this section which limits the assignment to the amount of public assistance paid. State ex rel. Crews v. Parker, — N.C. —, 354 S.E.2d 501 (1987).

Assignment of Support Rights to State. — Based on federal and State law, by accepting public assistance, the recipient assigns all right to support owed for the child to the State, including claims which had accrued when the assignment was made. Once public assistance payments terminate, any rights to support assigned to the State revert back to the recipient. State ex rel. Pender County Child Support Enforcement Agency v. Parker, 82 N.C. App. 419, 346 S.E.2d 270, cert. granted, 318 N.C. 420, 349 S.E.2d 605 (1986), holding

that the trial court properly denied mother's motion to intervene to seek retroactive child support in proceedings brought by the State against father.

Past Public Assistance Debt Owed By Indian. — The exercise of state court jurisdiction over paternity actions, where the mother, the child, and the putative father are all Indians living on the reservation, unduly infringes on tribal self-governance. However, once paternity is established, the State courts have subject matter jurisdiction over causes of action brought by the state pursuant to requirements of the Aid to Families with Dependent Children program to collect a debt owed to the State for past public assistance and to obtain a judgment for future child support. Jackson County ex rel. Child Support Enforcement Agency ex rel. Jackson v. Swayney, — N.C. —, 352 S.E.2d 413 (1987).

Applied in Nations v. Gentry, 311 N.C. 580, 319 S.E.2d 224 (1984); Cartrette v. Cartrette, 73 N.C. App. 169, 325 S.E.2d 671 (1985).

Cited in Jolly v. Wright, 300 N.C. 83, 265 S.E.2d 135 (1980); Durham County v. Riggsbee, 56 N.C. App. 744, 289 S.E.2d 579 (1982); Wilkes County ex rel. Nations v. Gentry, 63 N.C. App. 432, 305 S.E.2d 207 (1983).

§ 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.)

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

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

County has the authority and the duty to pursue an action against the responsible parent for the maintenance of the child and recovery of amounts paid by the county for support of the child. The county may bring the action in the name of the mother or in its own name. She is in either case required to cooperate with the county in the trial of the action. Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

County is the real party in interest in an action to recover amounts paid by the county for support of a child. The child's mother is not the real party in interest. By accepting public assistance, she assigned her right to child support to the county. Settle ex rel. Sullivan v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983).

Cited in Wake County ex rel. Carrington v. Townes, 53 N.C. App. 649, 281 S.E.2d 765 (1981); State ex rel. Pender County Child Support Enforcement Agency v. Parker, 82 N.C. App. 419, 346 S.E.2d 270 (1986).

§ 110-138.1. Duty of judicial officials to assist in obtaining support.

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to a magistrate for issuance of criminal process against the responsible parent for violation of G.S. 14-322. If the magistrate determines that the applicant has failed to receive the ordered support for two consecutive months, and that the responsible parent has willfully neglected or refused to make such payments, he shall make a finding of probable cause and issue criminal process for violation of G.S. 14-322. It shall be the duty of the District Attorney to prosecute such charges according to law. It shall be the duty of the Clerk of Superior Court to assist the applicant in making such application to the magistrate for the issuance of criminal process, and to supply such necessary child support records as are in his possession to the magistrate, District Attorney, and the Court. (1981, c. 613, s. 4.)

Editor's Note. — Session Laws 1981, c. 613, s. 2, provides: "This act shall apply to all hearings and trials conducted after the date of ratification and shall not affect the validity of any existing order or judgment." The act was ratified June 18, 1981.

§ 110-139. Location of absent parents.

(a) 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.

(b) 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.

(c) Notwithstanding any other provision of law making such information confidential, a business doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support: full name, social security ac-

count number, date of birth, home address, wages, and number of dependents listed for tax purposes. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 15; 1987, c. 591.)

Effect of Amendments. — The 1977, 2nd Sess., amendment inserted "nonjudicial" near the beginning of the last sentence of present subsection (b).

The 1987 amendment, effective July 10, 1987, designated the first paragraph as subsection (a) and the second paragraph as subsection (b), and added subsection (c).

CASE NOTES

Applied in Bell v. Martin, 43 N.C. App. 134, 258 S.E.2d 403 (1979).

Cited in State ex rel. Pender County Child Support Enforcement Agency v. Parker, 82 N.C. App. 419, 346 S.E.2d 270 (1986).

OPINIONS OF ATTORNEY GENERAL

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. 85 (1979).

§ 110-139.1. Access to federal parent locator service; parental kidnapping and child custody cases.

(a) The parent locator service of the Department of Human Resources shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any absent parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody determination.

(b) For the purpose of this section, custody determination means a judgment, decree, or other order of the court providing for the custody or visitation of a child and includes permanent or temporary orders, and initial orders and modifications.

(c) All nonjudicial records maintained by the Department pertaining to the unlawful taking or restraint of a child or child custody determinations shall be confidential, and only individuals directly connected with the administration of the child support enforcement program and those authorized herein shall have access to these records. (1983, c. 15, s. 1.)

Editor's Note. — Session Laws 1983, c. 15, s. 2, makes this section effective upon ratification. The act was ratified on Feb. 17, 1983.

§ 110-140. Conformity with federal requirements.

CASE NOTES

Cited in State ex rel. Pender County Child Support Enforcement Agency v. Parker, 82 N.C. App. 419, 346 S.E.2d 270 (1986).

§ 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.

Effective July 1, 1986, the entity, whether the board of county commissioners or the Department of Human Resources, that is administering, or providing for the administration of, this program in each county on June 30, 1986, shall continue to administer, or provide for the administration of, this program in that county, with one exception. If a county program is being administered by the Department of Human Resources on June 30, 1986, and if the board of county commissioners of this county desires on or after that date to assume responsibility for the administration of the program, the board of county commissioners shall notify the Department of Human Resources between July 1 and September 1 of the current fiscal year. The obligations of the board of county commissioners to assume responsibility for the administration of the program shall not commence prior to July 1 of the subsequent fiscal year. Until that time, it is the responsibility of the Department of Human Resources to administer or provide for the administration of the program in the county.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 16; 1979, c. 488; 1983 (Reg. Sess., 1984), c. 1034, s. 76; 1985, c. 244; c. 479, s. 103; 1985 (Reg. Sess., 1986), c. 1014, s. 129.)

Editor's Note. — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, Session Laws 1985, c. 479, s. 230 and Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243 contain severability clauses.

Effect of Amendments. — 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.

The 1983 (Reg. Sess., 1984) amendment, as amended by Session Laws 1985, c. 479, s. 103, effective July 1, 1986, rewrote the second paragraph, which formerly read "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 Sept. 1 of the current fiscal year. The obligation of the Department to as-

sume 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."

The 1985 amendment by c. 244, effective July 1, 1985, added the second sentence of the second paragraph.

The 1985 amendment by c. 479, s. 103, effective June 30, 1985, changed the effective date of the amendment by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 76 from July 1, 1985, to July 1, 1986.

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted a former second paragraph, pertaining to responsibility for administration of this program in a county, and added the present second and third paragraphs.

§§ 110-142 to 110-146: Reserved for future codification purposes.

Article 10.

Prevention of Child Abuse and Neglect.

§ 110-147. Purpose.

It is the expressed intent of this Article to make the prevention of child abuse and neglect as defined in G.S. 7A-517, a priority of this State and to establish the Children's Trust Fund as a means to that end. (1983, c. 894, s. 1.)

Cross References. — As to Juvenile Code, see § 7A-516 et seq.

Editor's Note. — Session Laws 1983, c. 894, s. 6, makes this Article effective Oct. 1, 1983.

§ 110-148. Council on Prevention of Child Abuse and Neglect.

(a) For purposes of implementing this program, the State Board of Education shall designate the Interagency Advisory Council on Community Schools in the Department of Public Instruction as the Advisory Council on Prevention of Child Abuse and Neglect, hereinafter called the Council.

(b) Staff and support services for implementing this program shall be provided by the Division of Community Schools in the Department of Public Instruction.

(c) In order to carry out the purposes of this Article:

(1) The Council shall, with the assistance of the Division of Community Schools, review applications and make recommendations to the State Board of Education concerning the awarding of contracts pursuant to this Article.

(2) The State Board of Education shall contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of child abuse and neglect. Every contract entered into by the State Board of Education shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the admin-

istering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the Council for funding pursuant to this Article shall include assurances that the proposal has been forwarded to the local Department of Social Services for comment so that the Council may consider coordination and duplication of effort on the local level as criteria in making recommendations to the State Board of Education.

(3) The State Board of Education shall, with the assistance of the Division of Community Schools, develop appropriate guidelines and criteria for awarding contracts pursuant to this Article. These criteria shall include, but not be limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded pursuant to this Article; demonstrated effectiveness of the proposed strategy or program for preventing child abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data; plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.

(4) The State Board of Education shall, with the assistance of the Division of Community schools, develop guidelines for regular monitoring of contracts awarded pursuant to this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.

(5) The State Board of Education shall, with the assistance of the Division of Community Schools, report to the General Assembly at the time of its convening on odd-numbered years the use of these funds and shall develop a State plan for the prevention of child abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House no later than January 1, 1987.

(d) To assist in implementing this Article, the State Board of Education may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All moneys received by the State Board of Education from contributions, grants or gifts and not through appropriation by the legislature shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the State Board of Education or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to State law and regulations, but no appropriation shall be required to permit expenditure of the funds. (1983, c. 894, s. 1.)

§ 110-149. Programs.

(a) Programs contracted for under this Article are intended to prevent child abuse and neglect. Child abuse and neglect prevention programs are defined to be those programs and services which impact on children and families before any substantiated incident of child abuse or neglect has occurred. Such programs may include, but are not limited to:

(1) Community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, and coping with family stress; and

(2) Community-based programs relating to crisis care, aid to parents, and support groups for parents and their children experiencing stress within the family unit.

(b) No more than twenty percent (20%) of each year's total awards may be utilized for funding State level programs to coordinate community-based programs. (1983, c. 894, s. 1.)

§ 110-150. Children's Trust Fund.

There is established a fund to be known as the "Children's Trust Fund," in the State Treasurer's office, which shall be funded pursuant to G.S. 161-11.1, and which shall be used by the State Board of Education to fund child abuse and neglect prevention programs so authorized by this Article. (1983, c. 894, s. 1.)

Chapter 111.

Aid to the Blind.

Article 1.

General Duties of Department of Human Resources.

§§ 111-1 to 111-3: Repealed by Session Laws 1973, c. 476, s. 143.

Cross References. — As to certain financial assistance and in-kind goods not being considered in determining assistance paid under Chapters 108A and 111, see § 108A-26.

§ 111-11. Definition of visually handicapped person.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Applicability. — The restrictive definition of "visually handicapped" in this section should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. Rather, the General Assembly intended that the definition in this section would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

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.

CASE NOTES

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

§ 111-15. Eligibility for relief.

Blind persons having the following qualifications shall be eligible for relief under the provisions of this Article:

(5) Who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose. (1937, c. 124, s. 4; 1951, c. 319, s. 3; 1961, c. 666, s. 1; 1971, c. 1215, s. 1; 1981, c. 131.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1981 amendment deleted "are not publicly soliciting alms in any part of the State, and who" between "Who" and "are not" near the beginning of subdivision (5).

OPINIONS OF ATTORNEY GENERAL

Amount of Funds Appropriated Does Not Affect Duty of Department and County Board to Accept All Qualified Blind Applicants. — The requirement upon the Department of Human Resources and the boards of county commissioners of the individual counties to accept all duly qualified and otherwise eligible applicants for special assistance to the blind remains the same and is not reduced or limited by the amount of funds appropriated by a county or by the General Assembly for that specific purpose. See opinion of Attorney General to L. Earl Jennings, Jr., Director, Division of Services for the Blind, Dep't of Human Resources, 49 N.C.A.G. 110 (1980).

§ 111-18. Payment of awards.

Legal Periodicals. — For article analyzing North Carolina's exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

§ 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.

§ 111-27.1. Department of Human Resources authorized to conduct certain business operations.

For the purpose of assisting blind persons to become self-supporting the Department of Human Resources is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day-by-day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the Department of Human Resources. All of the business operations under this law, however, shall be subject to regular audits by the State Auditor.

After September 30, 1983, Randolph-Sheppard vendors will no longer be State employees. Blind licensees operating vending facilities under contract with the North Carolina Department of Human Resources, Division of Services for the Blind, are independent contractors. (1945, c. 72, s. 2; 1971, c. 1025, s. 1; 1973, c. 476, s. 143; 1983, c. 867, s. 1.)

Effect of Amendments. — The 1983 amendment, effective July 20, 1983, deleted the last sentence of the first paragraph which read "Blind or visually handicapped employees or vending-stand operators employed by the Department of Human Resources are hereby declared to be State employees" and added the second paragraph.

Article 3.

Operation of Vending Facilities on State Property.

§ 111-41. Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Human Resources.

Editor's Note. — Session Laws 1985, c. 730, ss. 1 to 3 provide:

"Section 1. Notwithstanding Article III of Chapter 111 of the General Statutes, with the approval of the Department of Cultural Resources, the Friends of Elizabeth II, Incorporated, may operate vending machines on the site grounds of the Elizabeth II.

"Sec. 2. Eighty percent (80%) of the profits from activities authorized by Section 1 of this act shall be used to support the Elizabeth II, the ship's boat, and related activities. The remainder of the profits shall be used for the activities of the Roanoke Voyages and Elizabeth II Commission.

"Sec. 3. This act is effective upon ratification."

The act was ratified July 12, 1985.

Chapter 112.

Confederate Homes and Pensions.

Article 1.

Confederate Woman's Home.

§ 112-1: Repealed by Session Laws 1981, c. 462, s. 1, effective July 1, 1981.

§ 112-3: Repealed by Session Laws 1981, c. 462, s. 1, effective July 1, 1981.

Article 2.

Pensions.

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-18. Classification of pensions for soldiers and widows.

There shall be paid out of the treasury of the State, on the warrant of the Auditor, to every person who has been for 12 months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the War between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the War between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in G.S. 112-17, who are now disabled from any cause to perform manual labor, twelve hundred dollars ($1200).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, four hundred and fifty-six dollars ($456.00).

Widows

Class "A." To the widows of ex-Confederate soldiers, who are blind in both eyes or totally helpless, eighteen hundred dollars ($1800).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January 1, 1880, and to such widows who were married to such soldiers subsequent to January 1, 1880, and who are now on the pension rolls, by virtue of previous statutes, four hundred ninety-two dollars ($492.00). Provided, that the State Board of Pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year 1899 and who are now more than 60 years of age, as in the judgment of the State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; C.S., s. 5168(j); Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4; 1953, c. 1225; 1957, c. 1395, s. 1; 1985, c. 184.)

Editor's Note. —

Session Laws 1985, c. 184, s. 2, had provided that c. 184 would be effective upon ratification (May 16, 1985), but would remain effective after June 30, 1985, only if funds were appropriated for the purposes contained in the act. However, Session Laws 1985, c. 757, s. 199(a), deleted such provision of Session Laws 1985, c. 184, s. 2.

Section 112-17, referred to in this section, was repealed by Session Laws 1945, c. 699, s. 2.

Effect of Amendments. — The 1985 amendment, effective May 16, 1985, increased the pension for widows of ex-Confederate soldiers who are blind in both eyes or totally helpless from $900.00 to $1800.00.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1987

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative 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.

LACY H. THORNBURG

Attorney General of North Carolina