

Chapter 106.

Agriculture.

Article 1.

Department of Agriculture and Consumer Services.

Part 1. Board of Agriculture.

§ 106-1: Repealed by Session Laws 1995, c. 509, s. 52.

§ 106-2. Department of Agriculture and Consumer Services established; Board of Agriculture, membership, terms of office, etc.

(a) Department and Board Established. – The Department of Agriculture and Consumer Services is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be established and named "The Board of Agriculture."

(b) Membership; Qualifications. – The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be an ex officio member and chairman thereof and shall preside at all meetings, and of 12 other members from the State, so distributed as to reasonably represent the different sections and agriculture of the State. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practicing farmers engaged in their profession. The members of the Board shall be appointed by the Governor by and with the consent of the Senate. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint members with the following qualifications:

- (1) One member who shall be a practicing tobacco farmer to represent the tobacco farming interest.
- (2) One member who shall be a practicing cotton grower to represent the cotton interest.
- (3) One member who shall be a practicing fruit or vegetable farmer to represent the fruit and vegetable farming interest.
- (4) One member who shall be a practicing dairy farmer to represent the dairy and cattle interest of the State.
- (5) One member who shall be a practicing poultryman to represent the poultry interest of the State.
- (6) One member who shall be a practicing peanut grower to represent the peanut interests of the State.
- (7) One member who shall be experienced in marketing to represent the marketing of products of the State.
- (8) One member who shall be actively involved in forestry to represent the forestry interests of the State.
- (9) One member who shall be actively involved in the nursery business to represent the nursery industry of the State.
- (10) One member who shall be a practicing general farmer to represent the general farming interest.
- (11) One member who shall be a practicing pork farmer to represent the swine interest of the State.

(12) One member who shall be actively involved in the equine industry to represent the equine industry of the State.

(c) Terms. – The term of office of members of the Board shall be six years and until their successors are duly appointed and qualified.

(d) Vacancies. – Vacancies in the Board shall be filled by the Governor for the unexpired term. (Code, s. 2184; 1901, c. 479, ss. 2, 4; Rev., s. 3931; 1907, c. 497, s. 1; C.S., s. 4667; 1931, c. 360, s. 1; 1937, c. 174; 1995, c. 509, s. 53; 1997-261, ss. 15, 16; 2011-145, s. 13.22A(dd); 2013-99, s. 1; 2013-342, s. 1; 2023-63, s. 1.3.)

§ 106-3: Repealed by Session Laws 1995, c. 509, s. 54.

§ 106-4. Meetings of Board.

The Board of Agriculture, herein established, hereafter called "the Board," shall meet for the transaction of business in the City of Raleigh at least twice a year, and oftener, if called by the Commissioner of Agriculture. (1901, c. 479, s. 3; Rev., s. 3935; C.S., s. 4669; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2.)

§ 106-5: Repealed by Session Laws 1997-74, s. 1.

§ 106-6: Repealed by Session Laws 1995, c. 509, s. 54.

§ 106-6.1. Fees.

(a) A board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for the services it provides. 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 and Consumer Services.

(b) Repealed by Session Laws 2011-145, s. 11.2, effective July 1, 2011. (1981, c. 495, s. 10; 1987, c. 827, s. 25; 1997-261, s. 109; 1999-413, s. 5; 2009-451, s. 11.3; 2011-145, s. 11.2.)

§ 106-6.2. Create special revenue funds for certain agricultural centers.

(a) The Eastern North Carolina Agricultural Center Fund is created within the Department of Agriculture and Consumer Services as a special revenue fund. This Fund shall consist of receipts from the sale of naming rights to any facility located at the Eastern North Carolina Agricultural Center at Williamston, investments earnings on these monies, and any gifts, devises, or grants from any source for the benefit of the Eastern North Carolina Agricultural Center. All interest that accrues to this Fund shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to promote, improve, repair, maintain, or operate the Eastern North Carolina Agricultural Center.

(b) The Southeastern North Carolina Agricultural Center Fund is created within the Department of Agriculture and Consumer Services as a special revenue fund. This Fund shall consist of receipts from the sale of naming rights to any facility located at the Southeastern North Carolina Agricultural Center at Lumberton, investments earnings on these monies, and any gifts, devises, or grants from any source for the benefit of the Southeastern North Carolina Agricultural Center. All interest that accrues to this Fund shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to

promote, improve, repair, maintain, or operate the Southeastern North Carolina Agricultural Center. (1998-212, s. 13.2; 2011-284, s. 72.)

§ 106-6.3. Create special revenue fund for research stations.

The Research Stations Fund is established as a special revenue fund within the Department of Agriculture and Consumer Services, Division of Research Stations. This Fund shall consist of receipts from the sale of timber and other commodities produced on the Department's research stations and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance exceeding one million dollars (\$1,000,000) in this Fund at the end of any fiscal year shall revert to the General Fund. The Department shall use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in research stations operated by the Department's Research Stations Division. (2012-142, s. 11.4; 2014-100, s. 13.8; 2021-180, s. 10.4(b).)

§ 106-6.4. Create special revenue fund for certain facilities.

The Agricultural Marketing Facilities Fund is established as a special revenue fund within the Department of Agriculture and Consumer Services, Marketing Division. This Fund shall consist of receipts from the lease or rental of property or facilities, admissions, fees, and any gifts, bequests, or grants collected at the Department's farmers markets and agricultural centers. The Department shall use this Fund to develop, improve, repair, maintain, operate, expand, or otherwise invest in the Department's farmers markets and agricultural centers. (2021-180, s. 10.5A.)

§§ 106-7 through 106-8: Repealed by Session Laws 1995, c. 509, s. 54.

§ 106-9: Repealed by Session Laws 1997-74, s. 2.

§ 106-9.1: Repealed by Session Laws 1995, c. 509, s. 54.

Part 1A. Collection and Refund of Fees and Taxes.

§ 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance.

(a) Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture and Consumer Services under the provisions of this Chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person failing to comply with or violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this Chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this Article. (1963, c. 458; 1993, c. 539, s. 736; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

§ 106-9.3. Procedure for assessment of fees and taxes.

(a) If the Commissioner of Agriculture discovers from the examination of any report filed by a taxpayer or otherwise that any fee or tax or additional fee or tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of fee or tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a rehearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Commissioner is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Commissioner or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed, in which event the taxpayer shall be heard by the Commissioner in all respects as if he had made timely application.

(c) Any taxpayer who objects to a proposed assessment of fee or tax or additional fee or tax shall be entitled to a hearing before the Commissioner of Agriculture, provided application therefor is made in writing within 30 days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Commissioner of Agriculture shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of fee or tax or additional fee or tax due from the taxpayer as finally determined by the Commissioner shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Commissioner at any time within 30 days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Commissioner of Agriculture shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have 30 days after the receipt of the same from the Commissioner of Agriculture to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(d) If no timely application for a hearing is made within 30 days after notice of a proposed assessment of fee or tax or additional fee or tax is given pursuant to subsection (a), such proposed fee or tax or additional fee or tax assessment shall become final without further notice and shall be immediately due and collectible.

(e) Where a proper report has been filed by a taxpayer and in the absence of fraud, the Commissioner of Agriculture shall assess any fee or tax or additional fee or tax due from the taxpayer within three years after the date upon which such report is filed or within three years after the date upon which such report was required by law to be filed, whichever is the later. If no report has been filed, and in the absence of fraud, any fee or tax or additional fee or tax due from a taxpayer may be assessed at any time within five years after the date upon which such report was required by law to be filed. In the event a false and fraudulent report has been filed or there has been an attempt in any manner to fraudulently defeat or evade a fee or tax, any fee or tax or additional fee or tax due from the taxpayer may be assessed at any time.

(f) Except as hereinafter provided in subsection (g), the Commissioner of Agriculture shall have no authority to assess any fee or tax or additional fee or tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Commissioner's decision has been given to the taxpayer, provided, however that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Commissioner of Agriculture shall have authority at any time within the applicable period of limitations to proceed at once to assess any fee or tax or additional fee or tax which he finds is due from a taxpayer if, in his opinion, the collection of such fee or tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within 30 days after the date of such assessment.

(h) All assessments of fees or taxes or additional fees or taxes (exclusive of penalties assessed thereon) shall bear interest at the rate of one half of one percent (0.5%) per month or fraction thereof from the time said fees or taxes or additional fees or taxes were due to have been paid until paid. (1963, c. 458.)

§ 106-9.4. Collection of delinquent fees and taxes.

(a) If any fee or tax imposed by this Chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture and Consumer Services, or any portion of such fee or tax, be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to

become due to any taxpayer subject to any of the provisions of this Chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Agriculture shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Agriculture or by any officer having authority to serve summonses. Said notice shall show:

- (1) The name of the taxpayer and his address, if known;
- (2) The nature and amount of the fee or tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
- (3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Agriculture by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Agriculture by default or after hearing, the garnishee shall become liable for the fee or taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Agriculture or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment

or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said fees or taxes, interest, and penalties shall be those provided in this Article, as now or hereinafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said fees or taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars (\$200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Agriculture is authorized and empowered to make a certificate setting forth the essential particulars relating to the said fee or tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the fee or tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and in personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said fees and taxes. (1963, c. 458; 1997-261, s. 109.)

§ 106-9.5. Refund of overpayment.

If the Commissioner of Agriculture discovers from the examination of any report, or otherwise, that any taxpayer has overpaid the correct amount of any fee or tax (including penalties, interest and costs, if any), such overpayment shall be refunded to the taxpayer within 60 days after it is ascertained together with interest thereon at the rate of six percent (6%) per annum: Provided, that interest on any such refund shall be computed from a date 90 days after date tax was originally paid by the taxpayer. Provided, further, that demand for such refund is made by the taxpayer within

three years from the date of such overpayment or the due date of the report, whichever is later. (1963, c. 458.)

§ 106-9.6. Suits to prevent collection prohibited; payment under protest and recovery of fee or tax so paid.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any fee or tax imposed in this Chapter. Whenever a person shall have a valid defense to the enforcement of the collection of a fee or tax assessed or charged against him or his property, such person shall pay such fee or tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Agriculture; and if the same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides. (1963, c. 458.)

Part 2. Commissioner of Agriculture.

§ 106-10. Election; term; vacancy.

The Commissioner of Agriculture shall be elected at the general election for other State officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such Commissioner shall be filled by the Governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (1901, c. 479, s. 4; Rev., s. 3938; C.S., s. 4675.)

§ 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 North Carolina Human Resources 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); 2013-382, s. 9.1(c).)

§§ 106-12 through 106-13: Repealed by Session Laws 1997-74, ss. 3, 4.

§ 106-14. To establish regulations for transportation of livestock.

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§§ 106-15 through 106-19: Repealed by Session Laws 1997-74, s. 5.

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

§ 106-21: Repealed by Session Laws 1997-74, s. 7.

§ 106-21.1. Feed Advisory Service; fee.

The Department of Agriculture and Consumer Services shall operate 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 ten dollars (\$10.00) shall accompany each feed sample sent to the Department for testing. A fee of seventy-five dollars (\$75.00) shall accompany each feed sample which is to be tested for the presence of fumonisin. (1979, c. 1026; 1989, c. 544, s. 9; 1991, c. 649, s. 1; 1997-261, s. 21.)

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

The Department of Agriculture and Consumer Services 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; 1997-261, s. 22.)

§ 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:

- (1) General. – Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged:
- (2) Commercial Fertilizers. – With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to district attorneys and to the General Assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this State, whereby the interests of the farmers may be injuriously affected, and shall publish such information in the Bulletin of the Department;
- (3) Cattle and Cattle Diseases. – With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this State, or from one section of it to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil

- action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a Class 1 misdemeanor;
- (4) Honey and Bee Industry. – With investigations adapted to promote the improvement of the honey and bee industry in this State, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the State to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining quarantine lines or districts. The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the Commissioner of Agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations;
 - (5) Insect Pests. – With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a Class 1 misdemeanor;
 - (6) New Agricultural Industries. – With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the State, especially the culture of truck and market gardens, the grape and other fruits;
 - (7) Drainage and Irrigation; Fertilizer Sources. – With the investigations of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulae for composting adapted to the different crops, soils, and materials;
 - (8) Farm Fences. – With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;
 - (9) Sales of Fertilizers, Seeds, and Food Products. – With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, with the authority to make regulations concerning the same;
 - (10) Inducement of Capital and Immigration. – With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this State, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be

offered the Department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring homeseekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

- (11) Diversified Farming. – With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;
- (12) Farmers' Institutes. – With the holding of farmers' institutes in the several counties of the State, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the State. He may secure such assistants as may be necessary or beneficial in holding such institutes;
- (13) Publication of Bulletin. – The Commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The Department may determine the number of bulletins which shall be issued each year;
- (14) Reports to Legislature. – He shall transmit to the General Assembly at each session a report of the operations of the Department with suggestions of such legislation as may be deemed needful;
- (15) Repealed by Session Laws 1993, c. 561, s. 116.
- (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, nematode testing, in-State soil testing during peak season, out-of-state soil testing, and expedited soil testing. The Board shall charge at least four dollars (\$4.00) for plant analysis, at least two dollars (\$2.00) for nematode testing, at least four dollars (\$4.00) for in-State soil testing during peak season, at least five dollars (\$5.00) for out-of-state soil testing, and at least two hundred dollars (\$200.00) for expedited soil testing. As used in this subdivision, "peak season" includes at a minimum the four-month period beginning no later than December 1 of any year and extending until at least March 31 of the following year. The Board may modify the meaning of peak season by starting a peak season earlier in any year or ending it later the following year or both.
- (18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

- (19) State forests. – Have charge of all State forests and measures for forest fire prevention.
- (20) Property for State forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the Department under subdivision (19) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department.
- (21) State recreational forests. – Have charge of all State recreational forests.
- (22) Property for State recreational forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the Department under subdivision (21) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department.
- (23) Administration of North Carolina Century Farms Program. – Administer the North Carolina Century Farms Program, which recognizes farms in the State that have been continuously owned by the same family for at least 100 years.
- (24) Markets Operated by the Department. – Adopt rules and make policies related to markets operated by the Department. All rules in Title 2, Chapter 43, Subchapter L of the North Carolina Administrative Code adopted under the authority of Article 47 of this Chapter, as repealed by S.L. 2021-90, shall remain in full force and effect unless repealed or amended by the Commissioner.
- (25) Metrology Fees. – Set reasonable fees for calibration services and adjustments performed by the Metrology Laboratory Section of the Standards Division. (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; 1989, c. 544, s. 4; 1993, c. 539, ss. 737, 738; c. 561, s. 116(d); 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, ss. 13.25(i), (l), 31.7; 2011-201, s. 1; 2011-391, s. 33(a); 2013-360, s. 13.1(a); 2023-63, s. 5.2.)

§ 106-22.1. State farms.

State-owned farmland, including timberland, allocated to the Department of Agriculture and Consumer Services for the State Farm Program, shall be managed by the Department for research, teaching, and demonstration in agriculture, forestry, and aquaculture. Research projects on the State farms shall be approved by the Department. The Department may sell surplus commodities produced on the farms. (1989, c. 500, s. 107(c); 1997-261, s. 23.)

§ 106-22.2: Recodified as § 143B-344.23 by Session Laws 1998-212, s. 21(a).

§ 106-22.3. Organic Production Program.

(a) The Board of Agriculture may establish rules, standards, guidelines, and policies for the establishment and implementation of a voluntary program for the certification of organically produced agricultural products.

(b) The Commissioner of Agriculture may enter into agreements with the United States Department of Agriculture and may apply for approval, accreditation, certification, or similar authority as may be necessary to comply with the requirements of the Organic Foods Production Act of 1990, Public Law 101-624. (1993, c. 147.)

§ 106-22.4. Llamas as livestock.

Any rules adopted by the Board of Agriculture that affect llamas shall not refer to llamas as exotic or wild animals. It is the intent of the General Assembly that llamas be treated as domesticated livestock in order to promote the development and improvement of the llama industry in the State. This section does not prohibit the Board of Agriculture from classifying llamas for animal health purposes in accordance with generally accepted standards of veterinary medicine. For purposes of the section, "llama" means a South American camelid that is an animal of the genus llama. Llama includes llamas, alpacas, and guanacos. Llama does not include vicunas. (1997-84, s. 3.)

§ 106-22.5. Agricultural tourism signs.

(a) The Department of Agriculture and Consumer Services shall work with the Department of Transportation to provide directional signs on major highways at or in reasonable proximity to the nearest interchange leading to an agricultural facility that promotes tourism by providing tours and on-site sales or samples of North Carolina agricultural products to area tourists. The Department shall follow the sign location and placement rules of the Department of Transportation's Tourist-Oriented Directional Signs and Logo Signs programs.

(b) An agricultural facility must be open for business at least four days a week, 10 months of the year in order to qualify for the directional signs provided for in this section. The Department shall assess the facility the actual reasonable costs of the sign and its installation. (1999-356, s. 1; 2014-58, s. 2.)

§ 106-22.6. Exercise of enforcement powers.

When any board, commission, or official within the North Carolina Department of Agriculture and Consumer Services has the authority to assess civil penalties, such authority shall not be construed to require the issuance of a monetary penalty when the board, commission, or official determines that nonmonetary sanctions, education, or training are sufficient to address the underlying violation. (2013-265, s. 5.)

§ 106-22.7. New and emerging crops program.

The Department of Agriculture and Consumer Services is authorized to create a program to advance and promote new and emerging crops. If the Department creates a new and emerging crops program, the Department shall merge its research initiative in bioenergy research into the program. (2018-5, s. 12.5(a).)

Part 4. Cooperation of Federal and State Governments in Agricultural Work.

§ 106-23. Legislative assent to Adams Act for experiment station.

Legislative assent be and the same is hereby given to the purpose of an act of Congress approved March 16, 1906, entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams Act, and the money appropriated by this act be and the same is hereby accepted on the part of the State for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the act of Congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C.S., s. 4689.)

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.

(a) The Department of Agriculture and Consumer Services 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.

(b) The Department of Agriculture and Consumer Services shall biennially collect information on water use by persons who withdraw 10,000 gallons per day or more of water from the surface or groundwater sources of the State for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. The information shall be collected by survey conducted pursuant to subsection (a) of this section and in accordance with Title 7 United States Code Section 2276 (Confidential Information Protection and Statistical Efficiency Act). The Department shall develop the survey form in consultation with the Department of Environmental Quality. The Department shall report the results of the water use survey to the Environmental Review Commission no later than July 1 of each year in which the survey was collected and shall provide a copy of the report to the Department of Environmental Quality. The report shall include recommendations about modifications to the survey, including changes in the gallons per day threshold for water use data collection. The report shall provide agricultural water use data by county. If the county is located in more than one river basin, the report shall separate the county data to show agricultural water use by river basin within the county. If publication of county or watershed data would result in disclosure of an individual operation's water use, the data will be combined with data from another county or watershed. (1921, c. 201, s. 1; C.S., s. 4689(a); 1941, c. 343; 1975, c. 611, s. 1; 1979, c. 228, s. 1; 1997-261, s. 25; 2008-143, s. 2(a); 2013-265, s. 6; 2015-241, s. 14.30(u).)

§ 106-24.1. Confidentiality of information collected and published.

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information generated by any federal agency received pursuant to this Chapter that is confidential under federal law shall be held confidential by the Department and its employees, unless confidentiality is waived by the federal agency. All information collected by the Department from farm owners or animal owners, including, but not limited to, certificates of veterinary inspection, animal medical records, laboratory reports received or generated from samples submitted for analysis, or other records that may be used to identify a person or private

business entity subject to regulation by the Department shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health, or the disclosure is necessary in the implementation of these animal health programs. (1979, c. 228, s. 3; 1993, c. 5, s. 1; 1997-261, s. 26; 2002-179, s. 8; 2013-265, s. 7; 2015-263, s. 31; 2018-113, s. 2.)

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

§ 106-26.3. Declaration of policy supporting sound science in agriculture.

The General Assembly hereby finds and declares that it shall be the policy of this State to support and promote sound science in agriculture. For purposes of this section, "sound science in agriculture" means the use of science-based agricultural practices, technologies, or biological systems supported by research or otherwise demonstrated to lead to broad outcomes-based improvements, including such critical outcomes as increasing agricultural productivity and improving human health through access to safe, nutritious, affordable food and other agricultural products, including organically produced foods and products, while enhancing agricultural and surrounding environmental conditions through the stewardship of water, soil, air quality, biodiversity, and wildlife habitat. Further, the General Assembly finds and declares that it is in the interest of the people of this State to use sound science in agriculture to meet the needs of the present and to improve the ability of future generations to meet their own needs, while advancing progress toward environmental and economic goals and the well-being of agricultural producers and rural communities. (2015-263, s. 3.)

§§ 106-26.4 through 106-26.6. Reserved for future codification purposes.

Article 1A.

State Farm Operations Commission.

§§ 106-26.7 through 106-26.12. Repealed by Session Laws 1977, c. 1122, s. 10.

Article 1B.

State Farm Operations Commission.

§§ 106-26.13 through 106-26.21: Repealed by Session Laws 1989, c. 500, s. 107(a).

Article 2.

North Carolina Fertilizer Law of 1947.

§§ 106-27 through 106-50: Superseded by G.S. 106-50.1 through 106-50.22.

§§ 106-50.1 through 106-50.22. Repealed by Session Laws 1977, c. 303, s. 24.

§§ 106-50.23 through 106-50.27. Reserved for future codification purposes.

Article 2A.

North Carolina Soil Additives Act of 1977.

§ 106-50.28. Short title.

This Article shall be known as the North Carolina Soil Additives Act of 1977. (1977, c. 233, s. 1.)

§ 106-50.29. Administration of Article.

This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina. (1977, c. 233, s. 2.)

§ 106-50.30. Definitions.

Words used in this Article shall be defined as follows:

- (1) "Adulterated" means any soil additive:
 - a. Which contains any deleterious substance in sufficient quantity to be injurious to desirable terrestrial or aquatic organisms when applied in accordance with the directions for use shown on the label; or
 - b. Whose composition differs from that offered in support of registration or shown on the label; or
 - c. Which contains noxious weed seed.
- (2) "Bulk" means in nonpackaged form.
- (3) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina or his designated agent.
- (4) "Distribute" means to import, consign, offer for sale, sell, barter, exchange, or to otherwise supply soil additives to any person in this State.
- (5) "Distributor" means any person who imports, consigns, sells, offers for sale, barter, exchanges, or otherwise supplies soil additives in this State.
- (6) "Label" means the display of written, printed, or graphic matter upon the immediate container of, or accompanying soil additives.
- (7) "Labeling" means all written, printed, or graphic matter accompanying any soil additive and all advertisements, brochures, posters, television, radio or oral claims used in promoting its sale.
- (8) "Percent" or "percentage" means the parts per hundred by weight.
- (9) "Person" means individuals, partnerships, associations, corporations or other legal entity.
- (10) "Product name" means the designation under which a soil additive is offered for distribution.
- (11) "Registrant" means any person who registers a soil additive under the provisions of this Article.
- (12) "Sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditioned 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 the bailor, borrower, lessee, or licensee.
- (13) "Sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.

- (14) "Soil additive" means any substance intended for changing the characteristics of soil or other growth medium for purposes of:
- a. Increasing the biological population, or
 - b. Increasing penetrability of water or air, or
 - c. Increasing water holding capacity, or
 - d. Increasing root development, or
 - e. Alleviating or decreasing soil compaction, or
 - f. Otherwise altering the soil or other medium in such manner that the physical and biological properties are materially enhanced.
 - g. The term "soil additive" does not include any substance for which nutritional claims are made, such as, but not limited to, commercial fertilizers, liming materials, or unmanipulated vegetable or animal manures. It also specifically does not include rhizobial inoculants, pine bark, peat moss, other unfortified mulches, or pesticides. (1977, c. 233, s. 3.)

§ 106-50.31. Registration of additives.

Every soil additive distributed in North Carolina shall be registered with the Commissioner by the person whose name appears on the label on forms furnished by the Commissioner. The applicant shall furnish such information as the Commissioner may require. In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the soil additive. If no specific claims are made, the Commissioner may require proof of usefulness and value of the soil additive. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that such data be developed by a recognized research or experimental institution. The Commissioner may further require that such data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under such conditions and may rely on the advice of the Director of the North Carolina Agricultural Experiment Station in evaluating data for registration.

The registration fee shall be one hundred dollars (\$100.00) per year for each product. Registration shall expire on December 31, annually, unless an application for renewal has been received prior to the expiration date.

The application for registration shall include the following:

- (1) The name and address of the registrant;
- (2) Product name;
- (3) Guaranteed analysis;
 - a. Active ingredients (name of each ingredient and percent)
 - b. Inert ingredients (name of each ingredient and percent)
- (4) Directions for use;
- (5) Purpose of product.

The application shall be accompanied by the label for the product and all advertisements including brochures, posters, or other information promoting the product. The registrant is responsible for all guaranteed analysis and claims appearing on the label. (1977, c. 233, s. 4; 1989, c. 544, s. 8.)

§ 106-50.32. Labeling of containers.

Every soil additive container shall be labeled on the face or display side in readable and conspicuous form showing:

- (1) The product name;
- (2) The guaranteed analysis;
- (3) A statement of claim or purpose;
- (4) Adequate directions for use;
- (5) Net weight or volume;
- (6) Name and address of registrant. (1977, c. 233, s. 5.)

§ 106-50.33. When additive considered misbranded.

A soil additive shall be considered misbranded if:

- (1) Its label or labeling is false or misleading in any particular;
- (2) It is distributed under the name of another soil additive;
- (3) It is represented as a soil additive or is represented to contain a soil additive unless such soil additive conforms to the soil additive definition in this Article. (1977, c. 233, s. 6.)

§ 106-50.34. Records and reports of registrants.

Each registrant shall keep accurate records of his sales, and shall file a semiannual report covering the periods January 1 through June 30, and July 1 through December 31. Such reports shall be due within 30 days from the close of each period. If the report is not filed within the 30-day period or is false in any respect, the Commissioner may revoke the registration. For the purpose of auditing reports, each registrant shall make his records available for audit from time to time as the Commissioner may deem necessary. (1977, c. 233, s. 7.)

§ 106-50.35. Violations of Article.

It shall be a violation of this Article for any person:

- (1) To distribute an unregistered soil additive;
- (2) To distribute an unlabeled soil additive;
- (3) To distribute a misbranded soil additive;
- (4) To distribute an "adulterated" soil additive;
- (5) To fail to comply with a "stop sale, use or removal" order; or
- (6) To fail to submit semiannual reports. (1977, c. 233, s. 8.)

§ 106-50.36. Inspection and sampling of additives.

The Commissioner is authorized to enter upon any public or private property with permission or with a proper court order during normal business hours for the purpose of inspecting or sampling any soil additive to determine if such additive is being distributed in compliance with the provisions of this Article. In the examination of such samples, the Commissioner may rely on such tests as he may establish as necessary for the enforcement of this Article. (1977, c. 233, s. 9.)

§ 106-50.37. Stop sale, etc., 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 soil additive, and hold at a designated place, any such lot of soil additive which the Commissioner determines does not comply with the provisions of this

Article. When such soil additive has been made to comply with the provisions of this Article, it shall then be released in writing by the Commissioner. (1977, c. 233, s. 10.)

§ 106-50.38. Injunctions.

The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this Article or regulations adopted hereunder, in the Superior Court of Wake County, or in the superior court of the county in which such violation occurs or is about to occur. (1977, c. 233, s. 11.)

§ 106-50.39. Refusal or revocation of registration.

The Commissioner shall refuse to register any soil additive which fails to comply with the provisions of this Article, and may revoke, after opportunity for a hearing, any registration, upon sufficient evidence that the registrant or any of his designated agents has used misleading, fraudulent, or deceptive practices in the distribution of any soil additive. (1977, c. 233, s. 12.)

§ 106-50.40. Rules and regulations.

The Board of Agriculture is authorized to promulgate and adopt, pursuant to Chapter 150B of the General Statutes of North Carolina, such rules and regulations as may be necessary to enforce the provisions of this Article. Such regulations may relate to, but shall not be limited to:

- (1) Methods of inspection and sampling;
- (2) Examination and analysis of samples;
- (3) Designation of ingredients;
- (4) Identity of product;
- (5) Monetary penalties for samples not meeting guarantees;
- (6) Acceptable ingredients for registration;
- (7) Labeling format. (1977, c. 233, s. 13; 1987, c. 827, s. 1.)

§ 106-50.41. Penalties.

Any person violating the provisions of this Article or the regulations adopted thereunder, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1977, c. 233, s. 14; 1993, c. 539, s. 739; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 3.

Fertilizer Laboratories.

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

Article 4.

Insecticides and Fungicides.

§§ 106-52 through 106-65: Repealed by Session Laws 1971, c. 832, s. 4.

Article 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§§ 106-65.1 through 106-65.12: Repealed by Session Laws 1971, c. 832, s. 4.

Article 4B.

Aircraft Application of Pesticides.

§§ 106-65.13 through 106-65.21: Repealed by Session Laws 1971, c. 832, s. 4.

Article 4C.

Structural Pest Control Act.

§ 106-65.22. Title.

This Article shall be known by the title of "Structural Pest Control Act of North Carolina of 1955." It is declared to be the policy of this State that the regulation of persons, corporations and firms engaged in the business of structural pest control in this State, as defined in G.S. 106-65.25, is in the public interest in order to ensure a high quality of workmanship and in order to prevent deception, fraud and unfair trade practices in the conduct of said business. The General Assembly finds that quality of structural pest control work is not easily determined by the general public due to the inaccessibility of the areas treated and the complexity of the methods of treatment. (1955, c. 1017; 1977, c. 231, s. 1.)

§ 106-65.23. Structural Pest Control and Pesticides Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control and Pesticides Division. The Commissioner of Agriculture may appoint a Director of the Division, chosen from a list of nominees submitted to him or her by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control and Pesticides Division. The Director shall act as secretary to the Structural Pest Control Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

- (1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest Control and Pesticides Division the powers and duties assigned to him or her under this Article.
- (2) To assign the administrative and enforcement duties assigned to him or her in this Article.
- (3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.

- (4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.
- (5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.
- (6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.
- (7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.
- (8) To perform such other duties as may be assigned to him or her by the Structural Pest Control Committee.

(c) There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the 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 the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the 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 the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the 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 Governor's initial appointees from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. 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.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be actively engaged in the pest control industry, licensed in at least

two phases of structural pest control as provided under G.S. 106-65.25(a), and a resident of the State of North Carolina but not an affiliate of the same company as either of the two members from the industry appointed by the Governor. Appointments made by the General Assembly shall be for terms of four years. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

- (d) The Structural Pest Control Committee shall have the following powers and duties:
 - (1) To adopt rules and make policies as provided in this Article.
 - (2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.
 - (3) Repealed by Session Laws 2013-265, s. 8, effective July 17, 2013.

(e) 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.

Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four 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 four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, 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; 1989, c. 238; c. 727, s. 219(30); 1997-261, s. 27; 1997-443, s. 11A.40; 1998-224, s. 19(a); 1999-381, s. 1; 2000-175, s. 1; 2013-265, s. 8.)

§ 106-65.24. Definitions.

As used in this Article:

- (1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.
- (1a) "Applicant for a certified applicator's identification card" means any person making application to use restricted use pesticides in any phase of structural pest control.
- (2) "Applicant for a license" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.
- (3) "Attractants" means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

- (3a) Repealed by Session Laws 1989, c. 725.
- (3b) "Branch Office" means any office under the management of a licensee that is not a home office.
- (4) "Certified applicator" means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.
- (5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.
- (6) "Committee" means the Structural Pest Control Committee.
- (6a) "Deviation" means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.
- (7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
- (8) Repealed by Session Laws 1975, c. 570, s. 4.
- (8a) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture and Consumer Services.
- (9) "Employee" means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.
- (9a) "Enforcement agency" means the Structural Pest Control and Pesticides Division of the Department of Agriculture and Consumer Services.
- (10) "Fumigants" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.
- (11) "Fungi" means wood-decaying fungi.
- (11a) "Home office" means the office identified to the enforcement agency by a licensee as his or her principal place of business.
- (12) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.
- (13) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.
- (14) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

- (14a) The term "labeling" means all labels and other written, printed, or graphic matter:
- a. Upon the pesticide (or device) or any of its containers or wrappers;
 - b. Accompanying the pesticide (or device) at any time;
 - c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.
- (15) "Licensee" means any person qualified for and holding a license for any phase of structural pest control pursuant to this Article.
- (16) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
- (17) "Pest" means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.
- (18) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
- (19) "Registered pesticide" means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.
- (19a) "Registered technician" means any individual who is required to be registered with the Structural Pest Control and Pesticides Division under G.S. 106-65.31.
- (20) "Repellents" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.
- (21) "Restricted use pesticide" means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.
- (22) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.
- (23) "Structural pest control" means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

- (24) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3; 1973, c. 556, s. 2; 1975, c. 570, ss. 3, 4; 1977, c. 231, ss. 3-5; 1989, c. 725, s. 1; 1997-261, ss. 28, 29; 1999-381, s. 2; 2013-265, s. 9.)

§ 106-65.25. Phases of structural pest control; prohibited acts; license required; exceptions.

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

- (1) Control of household pests by any method other than fumigation ("P" phase);
- (2) Control of wood-destroying organisms by any method other than fumigation ("W" phase); and
- (3) Fumigation ("F" phase).

(b) It shall be unlawful for any person to:

- (1) Advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control or otherwise act in the capacity of a structural pest control licensee unless the person is licensed pursuant to this Article or has engaged the services of a licensee as a full-time regular employee who is responsible for the structural pest control performed by the company. A license is required for each phase of structural pest control.
- (2) Hold more than one license for each phase of structural pest control.
- (3) Use a restricted use pesticide in any phase of structural pest control, whether it be on the person's own property or on the property of another, unless the person:
 - a. Qualifies as a certified applicator for that phase of structural pest control; or
 - b. Is under the direct supervision of a certified applicator who possesses a valid certified applicator's identification card for that phase of structural pest control.
- (4) Use or supervise the use of restricted use pesticides in demonstrating or supervising a demonstration to the public of the proper use and techniques of the application of pesticides or conducting field research with pesticides unless:
 - a. The person possesses a valid certified applicator's identification card;
 - b. The person is conducting laboratory research involving restricted use pesticides; or
 - c. The person is a doctor of medicine or a doctor of veterinary medicine applying restricted use pesticides as drugs or medication during the course of his or her normal professional practice.

This subdivision applies to all persons, including cooperative extension specialists demonstrating pesticide products, individuals demonstrating

methods used in public programs, and local, State, federal, commercial, and other persons conducting field research on or using restricted use pesticides.

- (c) It shall be unlawful for any licensee to do any of the following:
- (1) Establish, be in charge of, or manage any branch office in excess of the number of branch offices that may be established, supervised, or managed by a licensee as set forth in rules adopted by the Committee.
 - (2) Fail to supervise the structural pest control performed out of the licensee's home office or any branch office under the licensee's management.
 - (3) Allow his or her license to be used by any person or company for which he or she is not a full-time regular employee actively and personally engaged in the supervision of the structural pest control performed under the license.
 - (4) Use any pesticide, material, or device prohibited by the Committee or use any approved pesticide, material, or device in a manner prohibited by the Committee.
 - (5) Use or supervise the use of restricted use pesticides in a phase of structural pest control for which the person is not licensed or qualified as a certified applicator unless the person's use is under the supervision of a licensee or certified applicator certified in that phase of structural pest control.

(c1) The Committee shall adopt rules that permit a licensee to establish branch offices in addition to a home office. In no event shall the rules adopted restrict the number of branch offices a licensee can establish, supervise, or manage to fewer than two branch offices. The rules shall include provisions to ensure that the licensee can adequately supervise all structural pest control performed from the offices and under his or her license.

(d) A license is not required for any person (or the person's full-time regular employees) doing structural pest control on the person's own property. No fee may be charged for structural pest control performed by any such person.

(e), (f) Repealed by Session Laws 1999-381, s. 3.

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a "certified applicator" to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the phase of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of the individual's business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify. (1955, c. 1017; 1957, c. 1243, s. 3; 1967, c. 1184, s. 4; 1973, c. 556, s. 3; 1975, c. 570, s. 5; 1989, c. 725, s. 2; 1999-381, s. 3.)

§ 106-65.26. Qualifications for certified applicator and licensee; applicants for certified applicator's identification card and license.

(a) An applicant for a certified applicator's identification card or license must present satisfactory evidence to the Committee concerning his qualifications for such card or license.

(b) Certified Applicator. – Each applicant for a certified applicator's identification card must demonstrate that he possesses a practical knowledge of the pest problems and pest control practices associated with the phase or phases of structural pest control for which he is seeking certification.

- (c) Licensee. – The basic qualifications for a license shall be:
- (1) Qualify as a certified applicator for the phase or phases of structural pest control for which he is making application; and
 - (2) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied; or
 - (3) One or more years' training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination; or
 - (4) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination.

(d) All applicants for license must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms, or fumigation. No applicant is entitled to take an examination for the issuance of a license pursuant to this Article who has within five years of the date of application been convicted, entered a plea of guilty or of nolo contendere, or forfeited bond in any State or federal court for a violation of G.S. 106-65.25(b), any felony, or any crime involving moral turpitude.

(e) The Department of Public Safety may provide a criminal record check to the Committee for a person who has applied for a new or renewal license through the Committee. The Committee shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Committee shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. (1955, c. 1017; 1967, c. 1184, s. 5; 1973, c. 556, s. 4; 1975, c. 570, s. 6; 1999-381, s. 4; 2002-147, s. 13; 2014-100, s. 17.1(o).)

§ 106-65.27. Examinations of applicants; fee; license not transferable.

(a) Certified Applicator. – All applicants for a certified applicator's identification card shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Competency shall be determined on the basis of written examinations to be provided and administered by the Committee and, as appropriate, performance testing. Testing shall be based upon examples of problems and situations appropriate to the particular phase or subphase of

structural pest control for which application is made and shall include, where relevant, the following areas of competency:

- (1) Label and labeling comprehension.
- (2) Safety factors associated with pesticides – toxicity, precautions, first aid, proper handling, etc.
- (3) Influence of and on the environment.
- (4) Pests – identification, biology, and habits.
- (5) Pesticides – types, formulations, compatibility, hazards, etc.
- (6) Equipment – types and uses.
- (7) Application techniques.
- (8) Laws and regulations.

An applicant for a certified applicator's identification card shall submit an examination fee of twenty-five dollars (\$25.00) for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase may be taken at the same time at any regularly scheduled examination. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made.

(b) License. – Each applicant for an original license must demonstrate upon written examination, to be provided and administered by the Committee, his competency as a structural pest control operator for the phase or subphase in which he is applying for a license. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations shall be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made. All applicants for a license shall register with the Division on a prescribed form. A license examination fee of fifty dollars (\$50.00) shall be charged for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase of structural pest control may be taken at the same time.

(c) A license, certified applicator's identification card or registered technician's identification card is not transferable from one person to another. A licensee or certified applicator may change the name of his business or employer's business on his license certificate or certified applicator's identification card upon application to the Division.

(c1) When there is a transfer of ownership, management, operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to it; provided that, in the event of the death or disability of a licensee, the Committee shall have the authority to grant up to an additional 90 days within the 12-month period in which a business may operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge of the structural pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

- (d) The Committee shall by regulation provide for:
- (1) Establishing categories of certified applicators, along with such appropriate subcategories as are necessary, to meet the requirements of this Article;
 - (2) All licensees licensed prior to October 21, 1976, to become qualified as certified applicators; and
 - (3) Requalifying certified applicators thereafter as required by the federal government at intervals no more frequent than that specified by federal law and federal regulations. (1955, c. 1017; 1967, c. 1184, s. 6; 1973, c. 556, ss. 5, 6; 1975, c. 570, s. 7; 1977, c. 231, s. 6; 1989, c. 725, s. 3; 1999-381, s. 5; 2010-31, s. 11.2(a).)

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

(a) Any license or certified applicator's identification card or registered technician'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 licensee 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 registered technician'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, certified applicator's identification card or registered technician's identification card, to be used by any person other than the individual to whom it has been issued.
- (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 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.
- (12) Failure of a licensee or certified applicator to pay the original or renewal license or identification card fee when due and continuing to operate as a licensee or a certified applicator.
- (13) Conviction of a felony or conviction of a violation of G.S. 106-65.28 within five years preceding the date of application for a license or a certified applicator's identification card or conviction of any said crimes while such license or card is in effect.
- (14) Applying any substance that:
 - a. Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, but
 - b. Is not registered as a pesticide pursuant to G.S. 143-442.
- (15) Combining any substance whose application is prohibited under subdivision (14) of this subsection with any other substance to apply as a pesticide or to apply for any other reason, whether the combination occurs before, during, or after the application.

(b) Suspension of any license or certified applicator's identification card or registered technician's identification card under the provisions of this Article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

(c) If a license or certified applicator's identification card or registered technician's identification card is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Commissioner or his authorized representative.

(d) Any licensee whose license or certified applicator or operator whose identification card is revoked under the provisions of this Article shall not be eligible to apply for a new license or certified applicator's identification card or registered technician's identification card hereunder until two years have elapsed from the date of the order revoking said license or certified applicator's identification card or registered technician's identification card or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation.

(e) The lapsing of a State structural pest control license or certified applicator's identification card or registered technician's identification card by operation of law or the voluntary surrender of said license or said card shall not deprive the Committee of jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee or card holder or to render a decision suspending or revoking such license or card.

(f) The Committee may deny an application for a license, a certified applicator's identification card or a registered technician's identification card of any person whose license, certified applicator's identification card or equivalent thereto has been suspended or revoked in another state within two years prior to the application.

(g) Any pesticide, material, or device for which such information is requested by the Committee pursuant to G.S. 106-65.29(9a) and denied by the registrant or manufacturer shall not be used in any structural pest control performed for compensation and may only be used by an individual performing structural pest control on the individual's own property. (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; 1989, c. 725, s. 4; 1995, c. 478, s. 2; 1999-381, s. 6.)

§ 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 may adopt rules 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 a registered technician'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 necessary 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 deviation, 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.
- (9a) Efficacy data and other technical information to be submitted by registrants and manufacturers of pesticides and other materials or devices for review and approval, in order for the Committee and the enforcement agency to ensure the efficacy of pesticides and other materials or devices used in structural pest control in this State. This subdivision does not require either the Committee or the enforcement agency to disclose any information that is confidential information within the meaning of G.S. 132-1.2.
- (10) The policies and programs set forth in this Article. (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; 1989, c. 725, s. 5; 1999-381, s. 7.)

§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.

(a) For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner may enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by

licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

(b) Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

(c) The Commissioner shall have authority to appoint personnel of the Structural Pest Control and Pesticides Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively. (1955, c. 1017; 1967, c. 1184, s. 9; 1973, c. 556, s. 9; 1975, c. 570, s. 15; 1977, c. 231, s. 10; 1989, c. 725, s. 6; 1999-381, s. 8; 2013-265, s. 10.)

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

(a) Certified Applicator's Identification Card. – The fee for issuance or renewal of a certified applicator's identification card shall be fifty dollars (\$50.00). Within 75 days after the employment of a certified applicator, the licensee shall apply to the Division for the issuance of a certified applicator's identification card. A certified applicator's identification card shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their card on or before June 30 but make application before January 1 of the following year may have their card renewed without having to be reexamined unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). All applicants submitting applications for the renewal of their cards after June 30 shall not use or supervise the use of restricted use pesticides until a new card has been issued.

Any certified applicator whose employment is terminated with a licensee or agent prior to the end of any license year may at any time prior to the end of the 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). The licensee shall notify the Division of the termination or change in status of any certified applicator.

Any certified applicator whose identification card is lost or destroyed or changed in any way may be reissued a new card for the remainder of the license year for a fee of five dollars (\$5.00).

(b) License. – The fee for the issuance or renewal of a license for any one phase of structural pest control shall be two hundred dollars (\$200.00). Each additional phase shall be seventy-five dollars (\$75.00). The fee for each subphase shall be fifteen dollars (\$15.00). Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars (\$10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars (\$10.00).

(b1) Registration. – Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of forty dollars (\$40.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of forty dollars (\$40.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five dollars (\$5.00). The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires.

When a license is reissued, the licensee shall be responsible for registering and securing identification cards for all existing employees who engage in structural pest control within 10 days of the reissuance of the license.

A certified applicator who is not an employee of a licensed individual shall register the names of all employees under his supervision who are engaged in the performance of structural pest control with the Division and shall purchase a registered technician's identification card for each such employee.

(b2) No person shall act as an estimator, serviceman, salesman, solicitor, or agent for any licensee under this Article nor shall any such person be issued an identification card by the Committee who has within three years of the date of application for an identification card been convicted of, plead guilty or nolo contendere, or forfeited bond in any State or federal court for a felony or any violation of the North Carolina Structural Pest Control Act or any regulation promulgated by the Committee. This provision shall not apply to any person whose citizenship has been restored as provided by law.

(b3) No person or business shall advertise as a contractor for structural pest control services nor actually contract for such services unless that person or business advertises or contracts in the

name of the company shown on the license certificate of the licensee or identification card of the certified applicator who will perform the services.

(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 registered technician'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; 1989, c. 544, s. 16; c. 725, s. 7; 1991, c. 636, s. 7; 1999-381, s. 9; 2010-31, s. 11.2(b); 2011-145, s. 31.8(b).)

§ 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.)

§ 106-65.33. Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor.

(a) Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed to require the Committee or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for a minor violation of this Article whenever the Committee or Commissioner determines that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12; 1977, c. 231, s. 11; 1993, c. 539, s. 740; 1994, Ex. Sess., c. 24, s. 14(c); 1999-381, s. 10.)

§ 106-65.34. Repealed by Session Laws 1967, c. 1184, s. 13.

§ 106-65.35. Repealed by Session Laws 1973, c. 556, s. 12.

§ 106-65.36. Reciprocity; intergovernmental cooperation.

The Committee may 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 enforcing any of the provisions of this Article. (1973, c. 556, s. 13.)

§ 106-65.37. Financial responsibility.

(a) The Committee may require by regulation from a licensee or certified applicator or an applicant for a license or certified applicator's identification card under this Article evidence of his financial ability to properly indemnify persons suffering from the use or application of pesticides in the form of liability insurance or other means acceptable to the Committee. The amount of this insurance or financial ability shall be determined by the Committee.

(b) Any regulation adopted by the Committee pursuant to G.S. 106-65.29 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Committee deems necessary including but not limited to notice or reduction or cancellation of coverage and deductible provisions. Such regulations may classify financial responsibility requirements according to the separate license classifications and subclassifications as may be prescribed by the Committee. (1975, c. 570, s. 18.)

§ 106-65.38. Disposition of fees and charges.

Except as otherwise provided in G.S. 106-65.41, all fees and charges received by the Division under this Article shall be deposited in the Department of Agriculture and Consumer Services General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts. (1977, c. 231, s. 12; 1997-261, s. 109; 1998-215, s. 5(b).)

§ 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.)

§ 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.)

§ 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 (12) and G.S. 106-65.28(a)(14) and (15), or who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article. 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.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987, c. 368, s. 1; 1989, c. 725, s. 8; 1998-215, s. 5(a); 1999-381, s. 11.)

Article 4D.

North Carolina Biological Organism Act.

§ 106-65.42. Short title.

This Article shall be known as the "North Carolina Biological Organism Act." (1973, c. 713, s. 2.)

§ 106-65.43. Purpose.

The purpose of this Article is to regulate the production, sale, use and distribution of biological organisms that may have an adverse effect on the environment. (1973, c. 713, s. 1.)

§ 106-65.44. Definitions.

For the purposes of this Article, unless the context clearly requires otherwise:

- (1) The term "biological organism" means any plant, lower animal, virus or disease causal agent intended for release into the environment; or, an organism which affects the environment by its presence or absence.
- (2) The term "Board" means North Carolina Board of Agriculture.
- (3) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
- (4) The term "Division of Entomology" means the Division of the Department of Agriculture and Consumer Services. (1973, c. 713, s. 3; 1997-261, s. 30.)

§ 106-65.45. Authority of the Board to adopt regulations.

The Board of Agriculture is hereby authorized to adopt regulations to implement and carry out the purposes of this Article so as to protect the environment from detrimental importation, rearing, sale, and/or release of insects, parasites, predators and other biological organisms in North Carolina, and to protect organisms that are beneficial to man and/or his environment. No viable biological organism shall be brought into North Carolina, reared, collected, propagated or offered for sale or released except under such conditions as are prescribed by regulations adopted under the provisions of this Article. (1973, c. 713, s. 4.)

§ 106-65.46. Commissioner of Agriculture to enforce Article; further authority of Board.

It shall be the duty of the Commissioner to exercise the powers and duties imposed upon him by this Article and such regulations as shall be adopted under these provisions for the purpose of protecting the environment from adverse effects of biological organisms released into the environment of North Carolina and to protect beneficial biological organisms in the State. The Board is hereby authorized to cause importation, collection, release, destruction and propagation of beneficial organisms when such action is deemed to be in the best interest of North Carolina and its environment. The Board is authorized to promote and/or regulate businesses, persons or agencies engaged in the importation, collection, rearing, sales, release, or use of biological organisms. The Board is authorized to establish standards of positive identification, purity of culture or colony, freedom from disease and hyperparasites of biological organisms and to establish standards of competence and responsibility for the private practitioner engaged in the propagation, use, distribution, release or sale of biological organisms.

The Commissioner is hereby authorized to cause or cooperate in management or mitigation programs to be conducted against such plant, environmental, or nuisance pests as can be controlled in an economically, ecologically, and biologically sound manner. The Board is authorized to cause use of pesticides, parasites, predators, pheromones, genetic material, and other control techniques which are consistent with the pesticide, environmental and other laws applicable in the State of North Carolina.

The Commissioner shall have authority to designate such employees of the North Carolina Department of Agriculture and Consumer Services and/or to enter into cooperative agreements with other governmental agencies as may be needed to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be

designated by the Commissioner as agents for the purpose of this Article. (1973, c. 713, s. 5; 1997-261, s. 109.)

§ 106-65.47. Authority under other statutes not abrogated; memoranda of understanding.

The provisions of this Article shall in no way abrogate the authority as defined in other Articles of the General Statutes of the State of North Carolina as previously enacted. The Commissioner is hereby authorized to enter into memoranda of understanding with other State and federal agencies and individuals concerning biological organisms or pest mitigation programs when such action is desirable to ensure cooperation and prevent conflicts of interest. (1973, c. 713, s. 6.)

§ 106-65.48. Criminal penalties; violation of law or regulations.

If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provision of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a Class 3 misdemeanor. Each day's violation shall constitute a separate offense. (1973, c. 713, s. 7; 1993, c. 539, s. 741; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-65.49. Article not applicable in certain cases.

The provisions of this Article and/or regulations promulgated hereunder shall not apply to:

- (1) Any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license issued pursuant to section 351 of the Public Health Service Act (42 U.S.C. section 262) and regulations promulgated thereunder;
- (2) Any finished virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or other biological product shipped prior to licensing for development or investigational purposes in compliance with the requirements of the Federal Food, Drug and Cosmetic Act (21 U.S.C. section 301 et seq.) or the Animal Virus, Serum, and Toxin Law of March 4, 1913 (37 Stat. 832; 21 U.S.C. section 151 et seq.), and rules and regulations promulgated thereunder; and
- (3) Any etiological agent shipped in accordance with regulations promulgated under section 361 of the Public Health Service Act (42 U.S.C. section 264). (1973, c. 1091.)

§§ 106-65.50 through 106-65.54. Reserved for future codification purposes.

Article 4E.

Pest Control Compact.

§§ 106-65.55 through 106-65.61: Repealed by Session Laws 2013-265, s. 12, effective July 17, 2013.

§§ 106-65.62 through 106-65.66. Reserved for future codification purposes.

Article 4F.

Uniform Boll Weevil Eradication Act.

§ 106-65.67. Short title.

This Article may be cited as the Uniform Boll Weevil Eradication Act. (1975, c. 958, s. 1.)

§ 106-65.68. Declaration of policy.

The *Anthonomus grandis* Boheman, known as the boll weevil, is hereby declared to be a public nuisance, a pest, and a menace to the cotton industry. The purpose of this Article is to secure the eradication of the boll weevil. (1975, c. 958, s. 2.)

§ 106-65.69. Definitions.

As used in this Article, the following words shall have the meaning stated below, unless the context requires otherwise:

- (1) Boll Weevil. – *Anthonomus grandis* Boheman, the boll weevil, in any stage of development.
- (2) Certificate. – A document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with boll weevils.
- (3) Commissioner. – The Commissioner of Agriculture of this State or any officer or employee of the Department of Agriculture and Consumer Services or designated cooperator to whom authority to act in his stead has been or hereafter may be delegated.
- (4) Cotton. – Any cotton plant or cotton plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.
- (5) Host. – Any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.
- (6) Infested. – Actually infested with a boll weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.
- (7) Permit. – A document issued or authorized by the Commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.
- (8) Person. – Any individual, corporation, company, society, or association, or other business entity.
- (9) Regulated Article. – Any article of any character carrying or capable of carrying the boll weevil, including, but not limited to cotton plants, seed cotton, other hosts, gin trash, and mechanical cotton pickers, as designated by regulations of the Commissioner. (1975, c. 958, s. 3; 1997-261, s. 31.)

§ 106-65.70. Cooperative programs authorized.

The Commissioner is hereby authorized and directed to carry out programs to destroy and eliminate boll weevils in this State. The Commissioner is authorized to cooperate with any agency of the federal government or any state contiguous to this State, any other agency in this State, or any person engaged in growing, processing, marketing, or handling cotton, or any group of such persons, in this State, in programs to effectuate the purposes of this Article, and may enter into written agreements to effectuate such purposes. Such agreements may provide for cost sharing, and for division of duties and responsibilities under this Article and may include other provisions generally to effectuate the purposes of this Article. (1975, c. 958, s. 4.)

§ 106-65.71. Entry of premises; eradication activities; inspections.

The Commissioner, or his authorized representative, shall have authority, as provided in this section, to enter cotton fields and other premises in order to carry out such activities, including but not limited to treatment with pesticides, monitoring, and destruction of growing cotton and/or other host plants, as may be necessary to carry out the provisions of this Article. The Commissioner, or his authorized representative, shall have authority to make inspection of any fields or premises in this State and any property located therein or thereon for the purpose of determining whether such property is infested with the boll weevil. Such inspection and other activities may be conducted at any hour with the permission of the owner or person in charge. If permission is denied the Commissioner or his authorized representative, such inspection and other activities may be conducted without a warrant with respect to any outdoor premises, if conducted in a reasonable manner between the hours of sunrise and sunset. Such inspections and other activities may be conducted in a reasonable manner, with a warrant, with respect to any premises. Any judge of this State may, within his territorial jurisdiction, and upon proper cause to believe that any cotton or other regulated article is in or upon any premises in this State, issue warrants for the purpose of conducting administrative inspections and other activities authorized by this Article. (1975, c. 958, s. 5.)

§ 106-65.72. Reports.

Every person growing cotton in this State shall furnish to the Commissioner, or his authorized representative, on forms supplied by the Commissioner, such information as the Commissioner may require, concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes. (1975, c. 958, s. 6.)

§ 106-65.73. Quarantine.

The Commissioner is authorized to promulgate regulations, quarantining this State, or any portion thereof, and governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas, when he shall determine that such action is necessary, or reasonably appears necessary, to prevent or retard the spread of the boll weevil. The Commissioner is also authorized to promulgate regulations governing the movement of regulated articles from other states or portions thereof into this State when such state is known to be infested with the boll weevil. Before quarantining any area, the Commissioner shall hold a public hearing under such rules as he shall determine, at which hearing any interested party may appear and be heard either in person or by attorney: Provided, however, the Commissioner may promulgate regulations, imposing a temporary quarantine for a period not to exceed 60 days, during which time a public hearing, as herein provided, shall be held if it appears that a quarantine for more than 60 days will be necessary to prevent or retard the spread of the boll weevil. It shall be unlawful for any person to store or handle any regulated article in a quarantined area, or to move into or from a quarantined area any regulated article, except under such conditions as may be prescribed by the regulations promulgated by the Commissioner. (1975, c. 958, s. 7; 1977, c. 507, s. 1.)

§ 106-65.74. Authority to designate elimination zones; authority to prohibit planting of cotton and to require participation in eradication program.

The Commissioner, subject to the provisions of section 13 of this act [Session Laws 1975, chapter 958, section 13] is authorized to designate by regulation one or more areas of this State as

"elimination zones" where boll weevil eradication programs will be undertaken. The Commissioner is authorized to promulgate reasonable regulations regarding areas where cotton cannot be planted within an elimination zone when he has reason to believe it will jeopardize the success of the program or present a hazard to public health or safety. The Commissioner is authorized to issue regulations prohibiting the planting of noncommercial cotton in such elimination zones, and requiring that all growers of commercial cotton in the elimination zones participate in a program of boll weevil eradication including cost sharing as prescribed in the regulations. Notice of such prohibition and requirement shall be given by publication for one day each week for three successive weeks in a newspaper having general circulation in the affected area. The Commissioner is authorized to set by regulation a reasonable schedule of penalty fees to be assessed when growers in designated "elimination zones" do not meet the requirements of (G.S. 106-65.73) and participation in cost sharing as prescribed by regulation. Such penalty fees shall not exceed a charge of twenty-five dollars (\$25.00) per acre. When a grower fails to meet the requirements of regulations promulgated by the Commissioner, the Commissioner shall have authority in elimination zones to destroy cotton not in compliance with such regulations. (1975, c. 958, s. 8; 1977, c. 507, ss. 2, 3.)

§ 106-65.75. Authority for destruction or treatment of cotton in elimination zones; when compensation payable.

The Commissioner or his authorized representative shall have authority to destroy, or in his discretion, to treat with pesticides volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in elimination zones when the Commissioner deems such action necessary to effectuate the purposes of this Article. No payment shall be made by the Commissioner to the owner or lessee for the destruction or injury of any cotton which was planted in an elimination zone after publication of notice as provided in G.S. 106-65.74, or which was otherwise handled in violation of this Article or the regulations adopted pursuant thereto. However, the Commissioner shall pay for losses resulting from the destruction of cotton which was planted in such zones prior to promulgation of such notice. (1975, c. 958, s. 9; 1977, c. 507, ss. 4, 5.)

§ 106-65.76. Authority to regulate pasturage, entry, and honeybee colonies in elimination zones and other areas.

The Commissioner is authorized to promulgate regulations restricting the pasturage of livestock, entry by persons, and location of honeybee colonies in any premises in an elimination zone which have been or are to be treated with pesticides or otherwise treated to cause the eradication of the boll weevil, or in any other area that may be affected by such treatments. (1975, c. 958, s. 10.)

§ 106-65.77. Rules and regulations.

The Commissioner shall have authority to adopt such other rules and regulations as he deems necessary to further effectuate the purposes of this Article. All rules and regulations issued under this Article shall be adopted and published in accordance with any additional requirements prescribed in this Article. (1975, c. 958, s. 11.)

§ 106-65.78. Penalties.

(a) Any person who shall violate any of the provisions of this Article or the regulations promulgated hereunder, or who shall alter, forge or counterfeit, or use without authority, any certificate or permit or other document provided for in this Article or in the regulations promulgated hereunder, shall be guilty of a Class 1 misdemeanor.

(b) Any person who shall, except in compliance with the regulations of the Commissioner, move any regulated article into this State from any other state which the Commissioner found in such regulations is infested by the boll weevil, shall be guilty of a Class 1 misdemeanor. (1975, c. 958, s. 12; 1993, c. 539, s. 742; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 106-65.79 through 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.)

§ 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 and Consumer Services. (1983, c. 136, s. 2; 1997-261, s. 109.)

§ 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 State Budget Act, Chapter 143C of the General Statutes, the assessments collected by the Department under this Article shall not be "State funds". (1983, c. 136, s. 5; 2006-203, s. 25.)

§ 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 and Consumer Services 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; 1997-261, s. 109.)

§ 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.)

§ 106-65.92: Reserved for future codification purposes.

§ 106-65.93: Reserved for future codification purposes.

§ 106-65.94: Reserved for future codification purposes.

Article 4H.

Bedding.

§ 106-65.95. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other padded or stuffed item designed to be or commonly used for reclining or sleeping. This definition includes dual purpose furniture such as studio couches and sofa beds. The term "mattress" does not include water bed liners, bladders or cylinders unless they contain padding or stuffing. The term "mattress" also does not include quilts and comforters made principally by hand sewing or stitching in a home or community workshop.
- (2) "Itinerant vendor" means a person who sells bedding from a movable conveyance.
- (3) "Manufacture" means the making of bedding out of new materials.

- (4) "New material" means any material or article that has not been used for any other purpose and by-products of industry that have not been in human use.
- (5) "Previously used material" means any material of which previous use has been made, but manufacturing processes shall not be considered previous use.
- (6) "Renovate" means the reworking or remaking of used bedding or the making of bedding from previously used materials, except for the renovator's own personal use or the use of the renovator's immediate family.
- (7) "Sanitize" means treatment of secondhand bedding or previously used materials to be used in renovating for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.
- (8) "Secondhand bedding" means any bedding of which prior use has been made.
- (9) "Sell" or "sold" means sell, have to sell, give away in connection with a sale, delivery or consignment; or possess with intent to sell, deliver or consign in sale. (1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1; 1983, c. 891, s. 2; 1987, c. 456, s. 1; 1991, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 647, s. 5; 2011-145, s. 13.3(v), (w).)

§ 106-65.96. Sanitizing.

(a) No person shall sell any renovated bedding or secondhand bedding unless it is sanitized in accordance with rules adopted by the Board of Agriculture.

(b) A sanitizing apparatus or process shall not be used for sanitizing bedding or material required to be sanitized under this Article until the apparatus is approved by the Department of Agriculture and Consumer Services.

(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the Board of Agriculture.

(d) A person who sanitizes material or bedding for another person shall keep a complete record of the kind of material and bedding which has been sanitized. The record shall be subject to inspection by the Department of Agriculture and Consumer Services.

(e) A person who receives used bedding for renovation or storage shall attach to the bedding a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 2; 2011-145, s. 13.3(v), (x).)

§ 106-65.97. Manufacture regulated.

All materials used in the manufacture of bedding in this State or used in manufactured bedding to be sold in this State shall be free of toxic materials and shall be made from new materials. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2011-145, s. 13.3(v).)

§ 106-65.98. Storage of used materials.

No establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by the rules of the Board of Agriculture. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2011-145, s. 13.3(v), (y).)

§ 106-65.99. Tagging requirements.

- (a) A tag of durable material approved by the Board of Agriculture shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size.
- (b) The following shall be plainly stamped or printed upon the tag with ink in English:
 - (1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;
 - (2) A registration number obtained from the Department of Agriculture and Consumer Services; and
 - (3) In letters at least one-eighth inch high the words "made of new material", if the bedding contains no previously used material; or the words "made of previously used materials", if the bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.
 - (4) Repealed by Session Laws 1987, c. 456, s. 4.
- (c) A white tag shall be used for manufactured bedding and a yellow tag for renovated or sanitized bedding.
- (d) The tag must be sewed to the outside covering before the filling material has been inserted. No trade name, advertisement nor any other wording shall appear on the tag. (1937, c. 298, ss. 2, 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476 s. 128; 1983, c. 891, s. 2; 1987, c. 456, ss. 3, 4; 2011-145, s. 13.3(v), (z).)

§ 106-65.100. Altering tags prohibited.

No person, other than one purchasing bedding for personal use or a representative of the Department of Agriculture and Consumer Services shall remove, deface or alter the tag required by this Article. (1937, c. 298, s. 4; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2011-145, s. 13.3(v), (aa).)

§ 106-65.101. Selling regulated.

- (a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, and labeled in the manner required by this Article and which does not otherwise comply with the provisions of this Article.
- (b) This Article shall not apply to bedding sold by the owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use unless the bedding has been exposed to an infectious or communicable disease.
- (c) Possession of any bedding in any store, warehouse, itinerant vendor's conveyance or place of business, other than a private home, hotel or other place where these articles are ordinarily used, shall constitute prima facie evidence that the item is possessed with intent to sell. No secondhand bedding shall be possessed with intent to sell for a period exceeding 60 days unless it has been sanitized. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 5; 2011-145, s. 13.3(v), (bb).)

§ 106-65.102. Registration numbers.

All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the Commissioner of Agriculture. Upon receipt of the completed application and applicable fees, the Department of Agriculture and Consumer Services shall issue to the applicant a certificate of registration showing

the person's name and address, registration number and other pertinent information required by the rules of the Board of Agriculture. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1971, c. 371, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 6; 2011-145, s. 13.3(v), (cc).)

§ 106-65.103. Payment of fees; licenses.

(a) The Department of Agriculture and Consumer Services shall administer and enforce this Article. A person who has done business in this State throughout the preceding calendar year shall obtain a license by paying a fee to the Department of Agriculture and Consumer Services in an amount determined by the total number of bedding units manufactured, sold, or sanitized in this State by the applicant during the calendar year immediately preceding, at the rate of five and two tenths cents (5.2¢) per bedding unit. However, if this amount is less than fifty dollars (\$50.00), a minimum fee of fifty dollars (\$50.00) shall be paid to the Department of Agriculture and Consumer Services.

(b) A person who has not done business in this State throughout the preceding calendar year shall obtain a license by paying an initial fee to the Department of Agriculture and Consumer Services in the amount of seven hundred twenty dollars (\$720.00) for the first year in which business is done in this State, prorated in accordance with the quarter of the calendar year in which the person begins doing business. After submission of proof of business volume in accordance with subsection (h) of this section for the part of the preceding calendar year in which the person did business in this State, the Department of Agriculture and Consumer Services shall determine the amount of fee for which the person is responsible for that time period by using a rate of five and two tenths cents (5.2¢) for each bedding unit. However, if this amount is less than fifty dollars (\$50.00), then the amount of the fee for which the person is responsible shall be fifty dollars (\$50.00). If the person's initial payment is more than the amount of the fee for which the person is responsible, the Department of Agriculture and Consumer Services shall make a refund or adjustment to the cost of the fee due for the next year in the amount of the difference. If the initial payment is less than the amount of the fee for which the person is responsible, the person shall pay the difference to the Department of Agriculture and Consumer Services.

(c) Payments, refunds, and adjustments shall be made in accordance with rules adopted by the Board of Agriculture.

(d) Upon payment of the fees charged pursuant to subsections (c) and (d), or the first installment thereof as provided by rules adopted by the Board of Agriculture, the Department of Agriculture and Consumer Services shall issue a license to the person. Licenses shall be kept conspicuously posted in the place of business of the licensee at all times. The Commissioner of Agriculture may suspend a license for a maximum of six months for two or more serious violations of this Article or of the rules of the Board of Agriculture within any 12-month period.

(e) A maximum fee of seven hundred fifty dollars (\$750.00) shall be charged for units of bedding manufactured in this State but not sold in this State.

(f) For the sole purpose of computing fees for which a person is responsible, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag is defined as one bedding unit; five comforters, pillows or decorative pillows are defined as one bedding unit; and any other item is defined as one bedding unit.

(g) An application for license must be submitted on a form prescribed by the Commissioner of Agriculture. No license may be issued to a person unless the person complies with the rules of the Board of Agriculture governing the granting of licenses.

(h) The Board of Agriculture shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department of Agriculture and Consumer Services in order to establish the number of bedding units that were, during the preceding calendar year:

- (1) Manufactured and sold in this State;
- (2) Manufactured outside of this State and sold in this State; and
- (3) Manufactured in this State but not sold in this State.

(i) The Board of Agriculture may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, s. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 7; 2011-145, s. 13.3(v), (dd).)

§ 106-65.104. Bedding Law Account.

The Bedding Law Account is established as a nonreverting account within the Department of Agriculture and Consumer Services. All fees collected under this Article shall be credited to the Account and applied to the following costs:

- (1) Salaries and expenses of inspectors and other employees who enforce this Article.
- (2) Expenses directly connected with the enforcement of this Article, including attorney's fees, which are expressly authorized to be incurred by the Commissioner of Agriculture without authority from any other source when in the opinion of the Commissioner of Agriculture it is advisable to employ an attorney to prosecute any persons. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, c. 476, s. 128; 1983, c. 891, s. 2; c. 913, s. 23; 1991 (Reg. Sess., 1992), c. 1039, s. 20.2; 2011-145, s. 13.3(v), (ee).)

§ 106-65.105. Enforcement by the Department of Agriculture and Consumer Services.

(a) The Department of Agriculture and Consumer Services shall enforce the provisions of this Article and the rules adopted by the Board of Agriculture.

(b) The Commissioner of Agriculture may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, or tagged as required by this Article and the rules of the Board of Agriculture. The bedding shall not be sold or otherwise removed until the violation is remedied and the Commissioner of Agriculture has reinspected it and removed the "off sale" tag.

(c) A person supplying material to a bedding manufacturer shall furnish an itemized invoice of all furnished material. Each material entering into willowed or other mixtures shall be shown on the invoice. The bedding manufacturer shall keep the invoice on file for one year subject to inspection by the Department of Agriculture and Consumer Services.

(d) When the Commissioner of Agriculture has reason to believe that bedding is not tagged or filled as required by this Article, the Commissioner of Agriculture shall have authority to open a seam of the bedding to examine the filling, and, if unable after this examination to determine if the

filling is of the kind stated on the tag, shall have the authority to examine purchase or other records necessary to determine definitely the kind of material used in the bedding. The Commissioner of Agriculture shall have authority to seize and hold for evidence any records and any bedding or bedding material which in the opinion of the Commissioner of Agriculture is made, possessed or offered for sale in violation of this Article or the rules of the Board of Agriculture. The Commissioner of Agriculture shall have authority to take a sample of any bedding or bedding material for the purpose of examination or for evidence.

(e) The Commissioner of Agriculture shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Article or the rules adopted by the Board of Agriculture. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. (1937, c. 298, s. 6; 1957, c. 1357, s. 1; 1971, c. 371, s. 8; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 8; 2011-145, s. 13.3(v), (ff); 2013-155, s. 25.)

§ 106-65.105A. Detention or embargo of product or item suspected of being adulterated or misbranded.

(a) If an authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe that any bedding, secondhand bedding, material, or other item regulated under this Article is unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or is otherwise in violation of the requirements of this Article, the agent may affix to the item a tag or other appropriate marking giving notice that the item has been detained or embargoed with information identifying the violation(s). It shall be a violation of this Article for any person to remove or alter a tag authorized by this subsection, or to remove or dispose of a detained or embargoed item by sale or otherwise, without such permission, and the tag or marking shall include a warning to that effect.

(b) When an item is detained or embargoed under subsection (a) of this section, an authorized agent of the Department of Agriculture and Consumer Services may petition a judge of the district or superior court in whose jurisdiction the item is detained or embargoed for an order for condemnation of the item. When an authorized agent has found that an item detained or embargoed is not unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or otherwise in violation of the requirements of this Article, the agent shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed item is unsanitary, mislabeled, or contains toxic materials, the item shall, after entry of the decree, be destroyed at the expense of the item's claimant, under the supervision of an authorized agent of the Department of Agriculture and Consumer Services; and all court costs and fees, storage, and other proper expenses shall be levied against the claimant of the item or the claimant's agent; provided, that when the unsanitary condition, mislabeling, safety concerns, or other violation can be corrected by proper labeling or processing of the item, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the item shall be properly labeled or processed, has been executed, may by order direct that the item be delivered to the item's claimant for proper labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Services. The expense of the Department's supervision shall be paid by the claimant. The amount of any bond paid shall be returned to the claimant of the item on representation to the court by the Department of Agriculture and Consumer Services that the item is no longer in violation of this Article and that the expenses of the Department's supervision have been paid. (2016-113, s. 1(a).)

§ 106-65.105B. Injunctions restraining violations.

In addition to any other remedies provided by this Article, the Commissioner 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 this Article or any rule promulgated thereunder, irrespective of whether or not there exists an adequate remedy at law. (2016-113, s. 1(a).)

§ 106-65.105C. Civil penalties.

(a) The Commissioner may assess a civil penalty of not more than two thousand five hundred dollars (\$2,500) per violation against any person, firm, or corporation that violates or directly causes a violation of any provision of this Article, rules, regulations, or standards promulgated thereunder, or lawful order of the Commissioner. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, the Commissioner may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to additional civil penalties. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused or potentially caused by the violation.

(b) Prior to assessing a civil penalty, the Commissioner shall give the person written notice of the violation and a reasonable period of time in which to correct the violation. However, the Commissioner shall not be required to give a person time to correct a violation before assessing a penalty if the Commissioner determines the violation has the potential to cause physical injury or illness.

(c) The Commissioner may consider the training and management practices implemented by the person, firm, or corporation for the purpose of complying with this Article as a mitigating factor when determining the amount of the civil penalty.

(d) The Commissioner shall remit the clear proceeds of civil penalties assessed pursuant to this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2016-113, s. 1(a).)

§ 106-65.105D. Violation a misdemeanor.

(a) Except as otherwise provided, any person, firm, or corporation that violates any of the provisions of this Article, or any of the rules, regulations, or standards promulgated hereunder, shall be deemed guilty of a Class 2 misdemeanor.

(b) Any person, firm, or corporation that provides the Commissioner or a duly authorized agent of the Commissioner with false or misleading information in relation to a license application or renewal, inspection, or investigation authorized by this Article shall be deemed guilty of a Class 2 misdemeanor.

(c) Any person, firm, or corporation that alters or removes a tag indicating that an item has been detained or embargoed pursuant to G.S. 106-65.105A(a) without first receiving permission from the court or a duly authorized agent under this Article shall be deemed guilty of a Class 2 misdemeanor.

(d) Any person, firm, or corporation that removes or disposes of any item detained or embargoed under G.S. 106-65.105A(a) without first receiving permission from the court or a duly authorized agent under this Article shall be deemed guilty of a Class 2 misdemeanor.

(e) Any person who willfully resists, opposes, impedes, intimidates, or interferes with any duly authorized agent while engaged in or on account of the performance of the duly authorized agent's official duties under this Article shall be guilty of a Class 2 misdemeanor. Whoever, in the commission of any such acts, uses a deadly weapon shall be guilty of a Class A1 misdemeanor.

(f) If any person continues to violate or further violates any provision of this Article after receiving written notice from the Commissioner, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation. (2016-113, s. 1(a); 2023-63, s. 5.1(a).)

§ 106-65.105E. Report of minor violations in discretion of Commissioner.

Nothing in this Article shall be construed to require the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (2016-113, s. 1(a).)

§ 106-65.106. Exemptions for blind persons and State institutions.

(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this Article and the rules of the Board of Agriculture. However, the responsible persons at these plants or places of business shall not be required to pay fees in accordance with G.S. 106-65.103.

(b) State institutions engaged in the manufacture, renovation or sanitizing of bedding for their own use or that of another State institution are exempted from all provisions of this Article. (1937, c. 298, s. 11; 1957, c. 1357, s. 1; 1971, c. 371, s. 9; 1983, c. 891, s. 2; 1987, c. 456, s. 9; 2011-145, s. 13.3(v), (gg).)

§ 106-65.107. Rules.

The Board shall adopt rules required by this Article in order to protect the public health. (1983, c. 891, s. 2; 2011-145, s. 13.3(v), (hh).)

Article 5.

Seed Cotton and Peanuts.

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

Article 5A.

Marketing of Farmers Stock Peanuts.

§§ 106-67.1 through 106-67.8: Repealed by Session Laws 1983, c. 248, s. 1.

Article 6.

Cottonseed Meal.

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

Article 7.

Pulverized Limestone and Marl.

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

Article 8.

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

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

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.)

§ 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.)

§ 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.

(c) It is unlawful to make any false or misleading statement or representation with regard to any agricultural liming material or landplaster product 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 may refuse, suspend, revoke, or terminate the registration of any such product for any violation of this section. (1979, c. 590; 1993, c. 144, s. 2.)

§ 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.

(c) In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the product. If no specific claims are made, the Commissioner may require proof of usefulness and value of the product. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that the data be developed by a recognized research or experimental institution. The Commissioner may further require that the data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under those conditions and may rely on advice from sources such as the Cooperative Extension Service of North Carolina State University. (1979, c. 590; 1993, s. 144, s. 1.)

§ 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 and Consumer Services tonnage fees in addition to registration fees as follows: for agricultural liming material, fifty cents (50¢) per ton; for landplaster, fifty cents (50¢) 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 to keep such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and the applicant's agreement for the Commissioner or the Commissioner's authorized representative to examine such records to verify the tonnage statement. If the records are available electronically, the electronic records shall be made available to the Commissioner or the Commissioner's authorized representative. 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; 1997-261, s. 109; 2011-145, s. 31.9; 2021-78, s. 8(a).)

§ 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, the clear proceeds of such refund shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1979, c. 590; 1997-261, s. 109; 1998-215, s. 6.)

§ 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.

If a manufacturer or registrant fails to make a refund as required by G.S. 106-92.11, the Commissioner may stop the sale of any agricultural liming materials or landplaster registered by the manufacturer or registrant and offered for sale in this State. (1979, c. 590; 1993, c. 144, s. 3.)

§ 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 Class 3 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; 1993, c. 539, s. 743; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 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.)

Article 9.

Commercial Feedingstuffs.

§§ 106-93 through 106-110. Repealed by Session Laws 1973, c. 771, s. 19.

Article 10.

Mixed Feed Oats.

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

Article 11.

Stock and Poultry Tonics.

§§ 106-112 through 106-119. Repealed by Session Laws 1975, c. 39.

Article 12.

Food, Drugs and Cosmetics.

§ 106-120. Title of Article.

This Article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

§ 106-121. Definitions and general consideration.

For the purpose of this Article:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(1a) The term "color" includes black, white, and intermediate grays.

(1b) The term "color additive" means a material which:

- a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or
- b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Provided, that such term does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture and Consumer Services, and the term "Board" means the Board of Agriculture.

(2a) The term "consumer commodity" except as otherwise specifically provided by this subdivision means any food, drug, device, or cosmetic as those terms are defined by this Article. Such term does not include:

- a. Any tobacco or tobacco product; or
- b. Any commodity subject to packaging or labeling requirements imposed under the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157) commonly known as the Virus-Serum Toxin Act; or

- c. Any drug subject to the provisions of G.S. 106-134(13) or 106-134.1 of this Article or section 503(b)(1) or 506 of the federal act; or
 - d. Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or
 - e. Any commodity subject to the provisions of the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes of North Carolina.
- (3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.
- (4) The term "cosmetic" means
- a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and
 - b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.
- (4a) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor.
- (5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended
- a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - b. To affect the structure or any function of the body of man or other animals.
- (6) The term "drug" means
- a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
 - b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
 - c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
 - d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.
- (7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

- (8) The term "food" means
 - a. Articles used for food or drink for man or other animals,
 - b. Chewing gum, and
 - c. Articles used for components of any such article.
- (8a) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:
 - a. A pesticide chemical in or on a raw agricultural commodity; or
 - b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - c. A color additive; or
 - d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).
- (9) The term "immediate container" does not include package liners.
- (10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.
- (11) The term "labeling" means all labels and other written, printed, or graphic matter
 - a. Upon an article or any of its containers or wrappers, or
 - b. Accompanying such article.
- (11a) Repealed by Session Laws 1989, c. 226, s. 1.
- (12) The term "new drug" means
 - a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

- b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.
- (12a) Repealed by Session Laws 1989, c. 226, s. 1.
- (13) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.
- (13a) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:
 - a. Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or
 - b. Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.
- (14) The term "person" includes individual, partnership, corporation, and association.
- (14a) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), and which is used in the production, storage, or transportation of raw agricultural commodities.
- (14b) The term "practitioner" means a physician, dentist, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.
- (14c) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.
- (14d) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.
- (14e), (14f) Repealed by Session Laws 1989, c. 226, s. 1.
- (15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to

consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

- (16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.
- (17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment. (1939, c. 320, s. 2; 1975, c. 614, ss. 1, 2; 1987, c. 737, s. 1; 1989, c. 226, s. 1; 1997-261, s. 32.)

§ 106-122. Certain acts prohibited.

The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

- (1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.
- (2) The adulteration or misbranding of any food, drug, device, or cosmetic.
- (3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of G.S. 106-131 or 106-135.
- (5) The dissemination of any false advertisement.
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by G.S. 106-140.
- (7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of North Carolina from whom he received in good faith the food, drug, device or cosmetic.
- (8) The removal or disposal of a detained or embargoed article in violation of G.S. 106-125.
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded or adulterated.
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this Article.

- (11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under G.S. 106-135, or that such drug complies with the provisions of such section.
- (12) The sale at retail of any food for which a definition and standard of identity for enrichment with vitamins, minerals or other nutrients has been promulgated by the Board, unless such food conforms to such definition and standard, or has been specifically exempted from same by the Board.
- (13) The distribution in commerce of a consumer commodity, as defined in this Article, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Article and regulations promulgated under authority of this Article; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:
 - a. Are engaged in the packaging or labeling of such commodities; or
 - b. Prescribe or specify by any means the manner in which such commodities are packaged or labeled.
- (14) The using by any person to his own advantage, or revealing, other than to the Commissioner or authorized officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Article, any information acquired under authority of this Article concerning any method or process which as a trade secret is entitled to protection.
- (15) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug within the normal course of professional practice, who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Article.
- (16)
 - a. Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or
 - b. Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (a) of this section; or
 - c. Making, selling, or disposing of; causing to be made, sold or disposed of; keeping in possession, control or custody; or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce

- the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.
- (17) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing of a counterfeit drug.
 - (18) Dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission of the person ordering or prescribing.
 - (19) The acquiring or obtaining or attempting to acquire or obtain any drug subject to the provisions of G.S. 106-134.1(a)(3) or (4) by fraud, deceit, misrepresentation, or subterfuge, or by forgery or alteration of a prescription, or by the use of a false name, or the giving of a false address. (1939, c. 320, s. 3; 1975, c. 614, ss. 3-5.)

§ 106-123. Injunctions restraining violations.

In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such 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. 106-122, irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ 106-124. Violations made misdemeanor.

(a) Any person, firm or corporation violating any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated G.S. 106-122, subdivision (1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in the State of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5; 1975, c. 614, s. 6; 1993, c. 539, s. 744; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-124.1. Civil penalties.

(a) The Commissioner may assess a civil penalty of not more than two thousand dollars (\$2,000) against any person who violates a provision of this Article or any rule adopted pursuant to

this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

(b) Prior to assessing a civil penalty, the Commissioner shall give the person written notice of the violation and a reasonable period of time in which to correct the violation. However, the Commissioner shall not be required to give a person time to correct a violation before assessing a penalty if the Commissioner determines the violation is likely to cause future physical injury or illness.

(c) The Commissioner shall consider the training and management practices implemented by the person for the purpose of complying with this Article as a mitigating factor when determining the amount of the civil penalty.

(d) The Commissioner shall remit the clear proceeds of civil penalties assessed pursuant to this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2003-389, s. 1.)

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.

(a) Whenever a duly authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe, that any food, drug, device, cosmetic or consumer commodity is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this Article or is in violation of G.S. 106-131 or 106-135 of this Article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded or to be in violation of G.S. 106-131 or 106-135 of this Article, he shall petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Services. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agriculture and Consumer Services that the article is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture and Consumer Services shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any

filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6; 1973, c. 108, s. 53; 1975, c. 614, ss. 7-9; 1997-261, s. 109.)

§ 106-126. Prosecutions of violations.

It shall be the duty of the solicitors and district attorneys of this State to promptly prosecute all violations of this Article. (1939, c. 320, s. 7; 1973, c. 47, s. 2; c. 108, s. 54; 1975, c. 614, s. 10.)

§ 106-127. Report of minor violations in discretion of Commissioner.

Nothing in this Article shall be construed as requiring the Commissioner of Agriculture to report for the institution of proceedings under this Article, minor violations of this Article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ 106-128. Establishment of reasonable standards of quality by Board of Agriculture.

Whenever in the judgment of the Board of Agriculture such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Commissioner of the Federal Food and Drug Administration under authority conferred by section 401 of the federal act.

Temporary permits now or hereafter granted for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this State under the conditions provided in such permits. In addition, the Board of Agriculture may cause to be issued additional permits where they are necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded. Such permits are subject to the terms and conditions the Board of Agriculture may prescribe by regulation. (1939, c. 320, s. 9; 1975, c. 614, ss. 11, 12.)

§ 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
 - 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.
- (2) a. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or
 - b. If any substance has been substituted wholly or in part therefor; or
 - c. If damage or inferiority has been concealed in any manner; or
 - d. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.
- (3) If it is confectionery, and:

- a. Has partially or completely imbedded therein any nonnutritive object: Provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the Board of Agriculture as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; or
 - b. Bears or contains more than five percent (5%) alcohol by volume. Confectionery that contains more than five-tenths of one percent (0.5%) alcohol by volume shall conspicuously bear a label indicating alcohol content; or
 - c. Bears or contains any nonnutritive substance: Provided, that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Article; and provided further, that the Board may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances.
- (4) If it is or bears or contains any color additive which is unsafe within the meaning of G.S. 106-132. (1939, c. 320, s. 10; 1975, c. 614, ss. 13-16; 1985, c. 399; 2011-26, s. 1.)

§ 106-130. Foods deemed misbranded.

A food shall be deemed to be misbranded:

- (1)
 - a. If its labeling is false or misleading in any particular, or
 - b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.
- (2) If it is offered for sale under the name of another food.
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.
- (4) If its container is so made, formed or filled as to be misleading.
- (5) If in package form, unless it bears a label containing
 - a. The name and place of business of the manufacturer, packer, or distributor; and
 - b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label:

Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.
- (6) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon

with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

- (7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by G.S. 106-128, unless
 - a. It conforms to such definition and standard, and
 - b. Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.
- (8) If it purports to be or is represented as
 - a. A food for which a standard of quality has been prescribed by regulations as provided by G.S. 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or
 - b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by G.S. 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.
- (9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears
 - a. The common or usual name of the food, if any there be, and
 - b. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each:

Provided, that, to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.
- (10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board of Agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.
- (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that to the extent that compliance with the requirements of this subdivision are impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture. The provisions of this subdivision and subdivisions (7) and (9) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this subdivision with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the product of the soil.

- (12) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical: Provided, however, that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.
- (13) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.
- (14) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of G.S. 106-132 of this Article.
- (15) If the labeling provided by the manufacturer, packer, distributor, or retailer on meat, meat products, poultry, or seafood includes a "sell-by" date or other indicator of a last recommended day of sale, and the date has been removed, obscured, or altered by any person other than the customer. This subdivision does not prohibit the removal of a label for the purpose of repackaging and relabeling a food item so long as the new package or new label does not bear a "sell-by" date or other indicator of a last recommended day of sale later than the original package. This subdivision does not prohibit relabeling of meat, meat products, poultry, or seafood that has had its shelf life extended through freezing, cooking, or other additional processing that extends the shelf life of the product. (1939, c. 320, s. 11; 1975, c. 614, ss. 17-20; 2000-67, s. 7.10.)

§ 106-131. Permits governing manufacture of foods subject to contamination with microorganisms.

(a) Whenever the Commissioner of Agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality in this State, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the Commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner of Agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate

measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Agriculture shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner of Agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 106-132. Additives, etc., deemed unsafe.

Any added poisonous or added deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of G.S. 106-129(1), paragraphs b and g and 106-129(4) with respect to any food, 106-133(1) with respect to any drug or device, or 106-136(1) and (5) with respect to any cosmetic, unless there is in effect a regulation pursuant to G.S. 106-139 of this Article limiting the quantity of substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a food, drug, or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations be considered adulterated within the meaning of G.S. 106-129(1)a, 106-133(1) and 106-136(1). (1939, c. 320, s. 13; 1975, c. 614, s. 21.)

§ 106-133. Drugs deemed to be adulterated.

A drug or device shall be deemed to be adulterated:

- (1)
 - a. If it consists in whole or in part of any filthy, putrid or decomposed substance; or
 - b. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or
 - c. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
 - d. If
 1. It is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of G.S. 106-132, or
 2. If it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of G.S. 106-132;
 - e. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Article as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.
- (2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity

falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

- (3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.
- (4) If it is a drug and any substance has been
 - a. Mixed or packed therewith so as to reduce its quality or strength; or
 - b. Substituted wholly or in part therefor. (1939, c. 320, s. 14; 1975, c. 614, ss. 22-24.)

§ 106-134. Drugs deemed misbranded.

A drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of G.S. 106-139 or 106-139.1 of this Article.
- (2) If in package form unless it bears a label containing
 - a. The name and place of business of the manufacturer, packer, or distributor; and
 - b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, except as exempted with respect to this clause by G.S. 106-121(2a)c of this Article; provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.
- (3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis,

carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this Article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning – May be habit forming."

- (5) a. If it is a drug, unless:
1. Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula),
 - I. The established name (as defined in paragraph b of this subdivision) of the drug, if such there be, and
 - II. In case it is fabricated from two or more ingredients the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs; and
 2. For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of 1 II or 2 of this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the Board.
- b. As used in this subdivision (5), the term "established name," with respect to a drug or ingredient thereof, means:
1. The applicable official name designated pursuant to section 508 of the federal act, or
 2. If there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof, in such compendium, or
 3. If neither 1 nor 2 of this paragraph applies, then the common or usual name, if any, of such drug or of such ingredient:

Provided further, that where 2 of this sub-subdivision applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

- (6) Unless its labeling bears
 - a. Adequate directions for use; and
 - b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.
- (8) If it has been found by the Department of Agriculture and Consumer Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (9)
 - a. If it is a drug and its container is so made, formed, or filled as to be misleading; or
 - b. If it is an imitation of another drug; or
 - c. If it is offered for sale under the name of another drug.
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.
- (11), (12) Repealed by Session Laws 1975, c. 614, s. 28.
- (13) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:
 - a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act, and

- b. Such certificate or release is in effect with respect to such drug.
- (14) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless
 - a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act, and
 - b. Such certificate or release is in effect with respect to such drug: Provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).
- (15) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of G.S. 106-132 of this Article.
- (16) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of
 - a. The established name, as defined in G.S. 106-134(5)b of this Article, printed prominently and in type at least half as large as that used for any trade or brand name thereof,
 - b. The formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act, and
 - c. Such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.
- (17) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.
- (18) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970. (1939, c. 320, s. 15; 1949, c. 370; 1973, c. 831, s. 1; 1975, c. 614, ss. 25-28, 30; 1997-261, s. 33.)

§ 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."

(c) The Board may, by regulation, remove drugs subject to G.S. 106-134(4) and G.S. 106-135 from the requirements of subsection (a) of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder shall also, by regulations issued by the Board, be removed from the requirement of subsection (a).

(d) A drug which is subject to subsection (a) of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription." A drug to which subsection (a) of this section

does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

(e) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classification of "controlled substances" as this term is defined in applicable federal and State controlled substance acts. (1975, c. 614, s. 29; 1977, c. 421; 1979, c. 626; 1981, c. 75, s. 2.)

§ 106-135. Regulations for sale of new drugs.

(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:

- (1) An application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act, or
- (2) When not subject to the federal act, by virtue of not being a drug in interstate commerce, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner an application setting forth
 - a. Full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;
 - b. A full list of the articles used as components of such drug;
 - c. A full statement of the composition of such drug;
 - d. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;
 - e. Such samples of such drug and of the articles used as components thereof as the Commissioner may require; and
 - f. Specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subdivision (a)(2) of this section shall become effective on the one hundred eightieth day after the filing thereof, except that if the Commissioner finds, after due notice to the applicant and giving him an opportunity for hearing,

- (1) That the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof; or
- (2) The methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug is inadequate to preserve its identity, strength, quality, and purity; or
- (3) Based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner.

(d) The Commissioner shall promulgate regulations for exempting from the operation of the foregoing subsections and subdivisions of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, within the discretion of the Commissioner among

other conditions relating to the protection of the public health, provide for conditioning such exemption upon

- (1) The submission to the Commissioner, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing;
- (2) The manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and
- (3) The establishment and maintenance of such records, and the making of such reports to the Commissioner, by the manufacturer or the sponsor of the investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drug, as the Commissioner finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application pursuant to subsection (b).

Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible, or, in their professional judgment, contrary to the best interests of such human beings. Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Commissioner reports on the investigational use of drugs; provided, that regulations adopted under section 505(i) of the federal act may be adopted by the Commissioner as the regulations in this State.

- (e)
 - (1) In the case of any drug for which an approval of an application filed pursuant to this section is in effect, the applicant shall establish and maintain such records, and make such reports to the Commissioner, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug, as the Commissioner may by general regulation, or by order with respect to such application, prescribe: Provided, however, that regulations and orders issued under this subsection and under subsection (d) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Commissioner deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Commissioner.
 - (2) Every person required under this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Commissioner, permit such officer or employee at all reasonable times to have access to and copy and certify such records.

(f) The Commissioner may, after affording an opportunity for public hearing, revoke an application approved pursuant to this section if he finds that the drug, based on evidence acquired after such approval, may not be safe or effective for its intended use, or that the facilities or controls used in the manufacture, processing, or labeling of such drug may present a hazard to the public health.

(g) This section shall not apply:

- (1) To a drug sold in this State or introduced into interstate commerce at any time prior to the enactment of the federal act, if its labeling contained the same representations concerning the conditions of its use; or
- (2) To any drug which is licensed under the Public Health Service Act of July 1, 1944 (58 Stat. 682, as amended; 42 U.S.C. 201 et seq.) or under the Animal Virus-Serum-Toxin Act of March 4, 1913 (13 Stat. 832; 21 U.S.C. 151 et seq.); or
- (3) To any drug which is subject to G.S. 106-134 (14) of this Article. (1939, c. 320, s. 16; 1975, c. 614, s. 31.)

§ 106-136. Cosmetics deemed adulterated.

A cosmetic shall be deemed to be adulterated:

- (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution – This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subdivision and subdivision (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.
- (2) If it consists in whole or in part of any filthy, putrid, or decomposed substance.
- (3) 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 injurious to health.
- (4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
- (5) If it is not a hair dye and it is, or it bears or contains a color additive which is unsafe within the meaning of G.S. 106-132. (1939, c. 320, s. 17; 1975, c. 614, s. 32.)

§ 106-137. Cosmetics deemed misbranded.

A cosmetic shall be deemed to be misbranded:

- (1)
 - a. If its labeling is false or misleading in any particular; or
 - b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.
- (2) If in package form unless it bears a label containing

- a. The name and place of business of the manufacturer, packer, or distributor; and
 - b. An accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label: Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Board of Agriculture.
- (3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
 - (4) If its container is so made, formed, or filled as to be misleading.
 - (5) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of G.S. 106-132 of this Article. This subdivision shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of G.S. 106-136(1)). (1939, c. 320, s. 18; 1975, c. 614, ss. 33-35.)

§ 106-138. False advertising.

(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this Article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture and Consumer Services determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19; 1997-261, s. 109.)

§ 106-139. Regulations by Board of Agriculture.

(a) The authority to promulgate regulations for the efficient enforcement of this Article is hereby vested in the Board of Agriculture, except the Commissioner of Agriculture is hereby authorized to promulgate regulations under G.S. 106-131 and 106-135. The Board and Commissioner are hereby authorized to make the regulations promulgated under this Article conform, insofar as practicable, with those promulgated for foods, drugs, devices, cosmetics and consumer commodities under the federal act, including but not limited to pesticide chemical residues on or in foods, food additives, color additives, special dietary foods, labeling of margarine for retail sale or distribution, nutritional labeling of foods, the fair packaging and labeling of consumer commodities and new drug clearance. Notwithstanding the provisions of subsection (e) of this section, a federal regulation adopted by the Board or Commissioner pursuant to this Article shall take effect in this State on the date it becomes effective as a federal regulation.

(b) The Board may promulgate regulations exempting from any affirmative labeling requirement of this Article consumer commodities which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such consumer commodities are not adulterated or misbranded under the provisions of this Article upon removal from such processing, labeling or repacking establishment. The Board may additionally promulgate regulations exempting from any labeling requirement of this Article foods packaged or dispensed at the direction of the retail purchaser at the time of sale, whether or not for immediate consumption by the purchaser on the premises of the seller.

(c) Whenever the Board determines that regulations containing prohibitions or requirements other than those prescribed by G.S. 106-139.1(a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the Board shall promulgate with respect to that commodity regulations effective to:

- (1) Establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation of the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;
- (2) Regulate the placement upon any package containing any commodity or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;
- (3) Require that the label on each package of a consumer commodity bear
 - a. The common or usual name of such consumer commodity, if any, and
 - b. In case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or
- (4) Prevent the nonfunctional slack-fill of packages containing consumer commodities.

For the purposes of subdivision (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than

- a. Protection of the contents of such package, or
- b. The requirements of machines used for enclosing the contents in such package;

provided, the Board may adopt any regulations promulgated pursuant to the Federal Fair Packaging and Labeling Act which shall have the force and effect of law in this State.

(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 (1939, c. 320, s. 20; 1973, c. 476, s. 128; 1975, c. 614, s. 36; 1987, c. 827, s. 30.)

§ 106-139.1. Declaration of net quantity of contents.

(a) All labels of consumer commodities, as defined by this Article, shall conform with the requirement for the declaration of net quantity of contents of section 4 of the Federal Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.) and the regulations promulgated pursuant thereto: Provided, that consumer commodities exempted from such requirements of section 4 of the Federal Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: Provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package. (1975, c. 614, s. 37.)

§ 106-140. Further powers of Commissioner of Agriculture for enforcement of Article; report by inspector to owner of establishment.

(a) For purposes of enforcement of this Article, the Commissioner or any of his authorized agents, are authorized upon presenting appropriate credentials and a written notice to the owner, operator or agent in charge,

- (1) To enter at reasonable times any factory, warehouse or establishment in which food, drugs, devices or cosmetics are manufactured, processed, or packed or held for introduction into commerce or after such introduction or to enter any vehicle being used to transport or hold such food, drugs, devices or cosmetics in commerce; and
- (2) To inspect at reasonable times and in a reasonable manner such factory, warehouse, establishment or vehicle and all pertinent equipment, finished or unfinished materials, containers and labeling therein, and to obtain samples necessary to the endorsement of this Article. In the case of any factory,

warehouse, establishment, or consulting laboratory in which any food, drug, device or cosmetic is manufactured, processed, analyzed, packed or held, the inspection shall extend to all things therein (including records, files, papers, processes, controls and facilities) bearing on whether any food, drug, device or cosmetic which is adulterated or misbranded within the meaning of this Article or which may not be manufactured, introduced into commerce or sold or offered for sale by reason of any provision of this Article, has been or is being manufactured, processed, packed, transported or held in any such place or otherwise bearing on violation of this Article. No inspection authorized by the preceding sentence shall extend to

- a. Financial data,
- b. Sales data other than shipment data,
- c. Personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Article),
- d. Pricing data, and
- e. Research data (other than data relating to new drugs and antibiotic drugs, subject to reporting and inspection under lawful regulations issued pursuant to section 505(i) or (j) or section 507 (d) or (g) of the federal act, and data, relating to other drugs, which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j) of the federal act).

Such inspection shall be commenced and completed with reasonable promptness. The provisions of the second sentence of this subsection shall not apply to such classes of persons as the Board may by regulation exempt from the application of this section upon a finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

- (3) To have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof: Provided, that evidence obtained under this subsection shall not be used in a criminal prosecution of the person from whom obtained; and provided further, that carriers shall not be subject to the other provisions of this Article by reason of their receipt, carriage, holding, or delivery of food, drugs, devices or cosmetics in the usual course of business as carriers.

(b) Upon completion of any such inspection of a factory, warehouse, consulting laboratory or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent-in-charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food, drug, device or cosmetic in such establishment:

- (1) Consists in whole or in part of any filthy, putrid, or decomposed substance; or
- (2) Has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

(c) If the authorized agent making any such inspection of a factory, warehouse or other establishment has obtained any salable product samples in the course of the inspection, upon

completion of the inspection and prior to leaving the premises he shall offer reasonable payment for any such product samples.

(d) It shall be the duty of the Commissioner of Agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this Article is being violated. (1939, c. 320, s. 21; 1975, c. 614, s. 38.)

§ 106-140.1. 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, manufacturer, outsourcing facility, or repackager, as those terms are defined in subsection (j) of this section, 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, outsourcing facility, 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, outsourcing facility, or repackager.

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

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

(f) The following classes of people are exempt from the registration requirements of this section:

- (1) Pharmacists as defined in G.S. 90-85.3(q) holding a valid permit as defined in G.S. 90-85.3(m).
- (2) 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) Persons who manufacture, prepare, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale.
- (4) Other classes of persons the Commissioner may by rule 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.
- (5) Wholesale distributors of prescription drugs licensed under G.S. 106-145.3.

(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 adopt rules to implement the registration requirements of this section. These rules shall provide for an annual registration fee of one thousand dollars (\$1,000) for companies operating as manufacturers, outsourcing facilities, or repackagers and seven hundred dollars (\$700.00) for companies operating as wholesalers. The Department of Agriculture and Consumer Services 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.

(j) As used in this section:

(1) 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.

(1a) The term "outsourcing facility" means a manufacturer at a single geographic location or address that is engaged in the compounding of sterile drugs, has elected to register as an outsourcing facility with the Food and Drug Administration, and complies with the requirements as provided in 21 U.S.C. § 353b. Exemptions provided by 21 U.S.C. § 353b(a) with respect to labeling, new drug registration, and distribution supply chain requirements shall also apply to compounded drugs distributed in North Carolina by an outsourcing facility.

(2) 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."

(3) 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. 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.

(4) 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. (1987, c. 737, s. 2; 1989, c. 226, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 20; 1991, c. 699, ss. 3, 4; 1997-261, s. 109; 2015-241, s. 13.4(a); 2015-263, s. 32; 2015-268, s. 5.1.)

§ 106-141. Examinations and investigations.

(a) Repealed by Session Laws 1975, c. 614, s. 39.

(b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this Article through officers and employees of the Department or through any health, food or drug officer or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture and Consumer Services the arrangements for such examinations and investigations shall be approved by the directing head of such agency.

(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 Health and Human Services and to local health directors. (1939, c. 320, s. 22; 1975, c. 614, s. 39; 1983, c. 891, s. 12; 1997-261, s. 109; 1997-443, s. 11A.118(a).)

§ 106-141.1. Inspections of donated food.

(a) The Department of Agriculture and Consumer Services 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 and Consumer Services 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 Public Health or the local boards of health. (1979, 2nd Sess., c. 1188, s. 3; 1997-261, s. 34; 2007-182, s. 2.)

§ 106-142. Publication of reports of judgments, decrees, etc.

(a) The Commissioner of Agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Article, including the nature of the charge and the disposition thereof.

(b) The Commissioner of Agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department. (1939, c. 320, s. 23.)

§ 106-143. Article construed supplementary.

Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Public Health or the Department of Environmental Quality or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, or other foods, or food products, or the production, handling, or processing of these items. (1939, c. 320, s. 241/2; 1973, c. 476, s. 128; 1975, c. 19, s. 31; 1997-443, s. 11A.41; 2007-182, s. 2; 2011-145, s. 13.3(u); 2015-241, s. 14.30(u).)

§ 106-144. Exemptions.

Meats and meat products subject to the Federal Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.), and poultry and poultry products subject to the Federal Poultry Products Inspection Act (21 U.S.C. 451 et seq.) are exempted from the provisions of this Article so long as such meat, meat products, poultry, and poultry products remain in the possession of the processor. (1939, c. 320, s. 24 2/3; 1975, c. 614, s. 40.)

§ 106-145. Effective date.

This Article shall be in full force and effect from and after January 1, 1940: Provided, that the provisions of G.S. 106-139 shall become effective on April 3, 1939, and thereafter the Commissioner of Agriculture is authorized hereby to conduct hearings, and the Board is authorized to promulgate regulations which shall become effective on and after the effective date of this Article as the Board shall direct. (1939, c. 320, s. 25.)

Article 12A.

Wholesale Prescription Drug Distributors.

§ 106-145.1. Purpose and interpretation of Article.

This Article establishes a State licensing program for wholesale distributors to enable wholesale distributors to comply with federal law. This Article shall be construed to do only that required for compliance with 21 U.S.C. § 353(e) and 21 C.F.R. Part 205. This Article shall be interpreted to be consistent with 21 C.F.R. Part 205, Guidelines for State Licensing of Wholesale Prescription Drug Distributors. In the event of a conflict, the federal law controls. (1991, c. 699, s. 2.)

§ 106-145.2. Definitions.

The following definitions apply in this Article:

- (1) Blood. – Whole blood collected from a single donor and processed either for transfusion or further manufacturing.
- (2) Blood component. – That part of blood separated by physical or mechanical means.
- (3) Commissioner. – The Commissioner of Agriculture.
- (4) Common control. – The power to direct or cause the direction of the management and policies of a person, whether by ownership of stock, by voting rights, by contract, or otherwise.
- (5) Department. – The Department of Agriculture and Consumer Services.
- (6) Drug sample. – A unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
- (7) Manufacturer. – A person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.
- (8) Person. – An individual, a corporation, a partnership, or any other entity.
- (9) Prescription drug. – A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b). Only for the purposes of the provisions of this Article, the term "prescription drug" shall include pseudoephedrine products as defined in G.S. 90-113.51 that may be dispensed without a prescription.
- (10) Wholesale distribution. – Distribution of a prescription drug to a person who is not a consumer or patient, other than any of the following types of distributions:
 - a. Intracompany sales. An intracompany sale is a transaction or transfer between any divisions, subsidiary and parent companies, or affiliated companies under common control of the same corporate entity.
 - b. The purchase or other acquisition of a prescription drug by a hospital or other health care entity that is a member of a group purchasing organization for its own use from the group purchasing organization or from other hospitals or other health care entities that are members of these organizations.
 - c. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

- d. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control.
 - e. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons. Emergency medical reasons include transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage when the gross dollar value of the transfers does not exceed five percent (5%) of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12-consecutive-month period.
 - f. The sale, purchase, or trade of a prescription drug; an offer to sell, purchase, or trade a prescription drug; or the dispensing of a prescription drug pursuant to a prescription.
 - g. The distribution of drug samples by a representative of a manufacturer or a wholesale distributor.
 - h. The sale, purchase, or trade of blood and blood components intended for transfusion.
- (11) Wholesale distributor. – A person who is engaged in the wholesale distribution of prescription drugs. The term includes manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions. The term does not include a person who acquires prescription drugs commingled with other goods as part of a recovery operation and who disposes of such drugs under the supervision of the Department. A warehouse includes a warehouse of a manufacturer or wholesale distributor, a chain drug warehouse, and a wholesale drug warehouse. (1991, c. 699, s. 2; 1997-261, s. 35; 2005-434, s. 2.)

§ 106-145.3. Wholesale distributor must have license.

(a) Requirement. – Every wholesale distributor engaged in the wholesale distribution of prescription drugs in interstate commerce in this State shall obtain a license from the Commissioner for each location from which prescription drugs are distributed and shall renew each license annually. A license may cover multiple buildings and multiple operations at a single location, at the wholesale distributor's discretion. A license expires on December 31 of the year in which it is issued. A wholesale distributor licensed under this section is not required to register under G.S. 106-140.1. In lieu of licensing under this section, a wholesale distributor who has no facilities in this State may register under G.S. 106-140.1 if the wholesale distributor possesses a valid license granted by another state that has requirements substantially similar to this Article.

(b) Reciprocity. – The Commissioner may license an out-of-State wholesale distributor on the basis of reciprocity with another state when the following conditions apply:

- (1) The out-of-State wholesale distributor possesses a valid license granted by another state pursuant to requirements substantially equivalent to the license requirements of this State.
- (2) The other state extends reciprocal treatment under its own laws to wholesale distributors licensed in this State. (1991, c. 699, s. 2.)

§ 106-145.4. Application and fee for license.

(a) Application. – An application for a wholesale distributor license or for renewal of a wholesale distributor license shall be on a form prescribed by the Commissioner and shall include the following information:

- (1) The name, full business address, and telephone number of the applicant.
- (2) All trade or business names used by the applicant.
- (3) Addresses, telephone numbers, and names of contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs.
- (4) The type of ownership or operation of the applicant, such as a partnership, a corporation, or a sole proprietorship.
- (5) The name of each owner and operator of the applicant, including:
 - a. If the applicant is an individual, the individual's name.
 - b. If the applicant is a partnership, the name of each partner and the name of the partnership.
 - c. If the applicant is a corporation, the name and title of each corporate officer and director, the corporate name of the corporation, and the state of incorporation.
 - d. If the applicant is a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
- (6) Any other information required by the Commissioner to determine if the applicant is qualified to receive a license.

When a change occurs in any information listed in this subsection after a license is issued, the license holder shall report the change to the Commissioner within 90 days after the change.

(b) Fee. – An application for an initial license or a renewed license as a wholesale distributor shall be accompanied by a nonrefundable fee of one thousand dollars (\$1,000) for a manufacturer or seven hundred dollars (\$700.00) for any other person. (1991, c. 699, s. 2; 2015-241, s. 13.4(b); 2015-268, s. 5.1.)

§ 106-145.5. Review of application and qualifications of applicant.

The Commissioner shall determine whether to issue or deny a wholesale distributor license within 90 days after an applicant files an application for a license with the Commissioner. The Commissioner shall have authority to review an application and issue or deny a license, grant reciprocity under G.S. 106-145.3(b), or accept registration under G.S. 106-140.1, that is conditioned upon approval of a prescription drug under section 505 of the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. § 301 et seq.; 52 Stat. 1040 et seq.) while the federal approval process is pending. In reviewing an application, the Commissioner shall consider the factors listed in this subsection. In the case of a partnership or corporation, the Commissioner shall consider the factors as applied to each individual whose name is required to be included in the license application.

The factors to be considered are:

- (1) Any convictions of the applicant under any federal, state, or local law relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances.
- (2) Any felony convictions of the applicant under federal, state, or local law.

- (3) The applicant's past experience in the manufacture or distribution of controlled substances and other prescription drugs.
- (4) Whether the applicant has previously given any false or fraudulent information in an application made in connection with drug manufacturing or distribution.
- (5) Suspension or revocation by the federal government or a state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any controlled substances or other prescription drugs.
- (6) Compliance with the licensing requirements under any previously granted license.
- (7) Compliance with the requirements to maintain or make available to the Commissioner or to a federal, state, or local law enforcement official those records required under G.S. 106-145.8.
- (8) Whether the applicant requires employees of the applicant who are involved in any prescription drug wholesale distribution activity to have education, training, experience, or any combination of these factors sufficient to enable the employee to perform assigned functions in a manner that ensures that prescription drug quality, safety, and security will be maintained at all times as required by law.
- (9) Any other factors or qualifications the Commissioner considers relevant to and consistent with the public health and safety.

The Commissioner shall inspect the facility of an applicant at which prescription drugs will be stored, handled, or distributed before issuing the applicant a license. (1991, c. 699, s. 2; 2021-135, s. 1.)

§ 106-145.6. Denial, revocation, and suspension of license; penalties for violations.

(a) Adverse Action. – The Commissioner may deny a license to an applicant if the Commissioner determines that granting the applicant a license would not be in the public interest. Public interest considerations shall be limited to factors and qualifications that are directly related to the protection of public health and safety. The Commissioner may deny, suspend, or revoke a license for substantial or repeated violations of this Article or for conviction of a violation of any other federal, state, or local prescription drug law or regulation. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a license under this Article.

(b) Criminal Sanctions. – It is unlawful to engage in wholesale distribution in this State without a wholesale distributor license or to violate any other provision of this Article. A person who violates this Article commits a Class H felony. A fine imposed for a violation of this Article may not exceed two hundred fifty thousand dollars (\$250,000).

(c) Civil Penalty. – The Commissioner may assess a civil penalty of not more than ten thousand dollars (\$10,000) against a person who violates any provision of this Article. In determining the amount of a civil penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. Chapter 150B of the General Statutes governs the assessment of a civil penalty under this subsection. If a civil penalty is not paid within 30 days after the completion of judicial review of a final agency decision by the Commissioner, the penalty may be collected in any manner by which a debt may be collected. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance

with G.S. 115C-457.2. (1991, c. 699, s. 2; 1993, c. 539, s. 1294; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 7.)

§ 106-145.7. Storage, handling, and records of prescription drugs.

(a) Facilities. – All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed for wholesale distribution shall meet the following requirements:

- (1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations.
- (2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.
- (3) Have a quarantine area for the storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.
- (4) Be maintained in a clean and orderly condition.
- (5) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(b) Security. – All facilities used for wholesale distribution shall be secure from unauthorized entry. Access from outside the premises shall be kept to a minimum and be well-controlled. The outside perimeter of the premises shall be well-lighted. Entry into areas where prescription drugs are held shall be limited to authorized personnel. The facilities shall be equipped with the following:

- (1) An alarm system to detect entry after hours.
- (2) A security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. – All prescription drugs for wholesale distribution shall be stored at appropriate temperatures and under appropriate conditions in accordance with any requirements stated in the labeling of the prescription drugs or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF). If the labeling of a prescription drug or a compendium do not establish storage requirements for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(d) Examination of Materials. – A wholesale distributor shall visually examine each outside shipping container upon receipt for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. The examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents. A wholesale distributor shall carefully inspect each outgoing shipment for identity of the prescription drugs and to ensure that no prescription drugs that have been damaged in storage or held under improper conditions are delivered.

(e) Returned, Damaged, and Outdated Prescription Drugs. – A wholesale distributor shall quarantine and physically separate prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated from other prescription drugs until their destruction or their return to their supplier. A prescription drug whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as having been opened or used and shall be treated in the same manner as outdated prescription drugs.

If the conditions under which a prescription drug has been returned to a wholesale distributor cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed or returned to its supplier unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping. (1991, c. 699, s. 2.)

§ 106-145.8. Records of prescription drugs.

(a) Records. – A wholesale distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs, including all stored prescription drugs, all incoming and outgoing prescription drugs, and all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs. A wholesale distributor is not required, however, to keep a record of the lot number or expiration date of a prescription drug disposed of or distributed by the distributor.

A record of a prescription drug shall include all of the following information:

- (1) The source of the prescription drug, including the name and principal address of the seller or transferor and the address of the location from which the drug was shipped.
- (2) The identity and quantity of the prescription drug received and distributed or disposed of through another method.
- (3) The date the wholesale distributor received the prescription drug and the date the wholesale distributor distributed or otherwise disposed of the drug.
- (4) Documentation of the proper storage of prescription drugs. Documentation may be by manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs.

A wholesale distributor shall keep a record of a prescription drug for two years after its disposition.

(b) Inspection. – A wholesale distributor shall make inventories and records of prescription drugs available for inspection and photocopying by representatives of the Department or authorized federal, State, or local law enforcement officials. A wholesale drug distributor shall permit the Department or an authorized federal, State, or local law enforcement official to enter and inspect the distributor's premises and delivery vehicles and to audit the distributor's records and written operating procedures at reasonable times and in a reasonable manner.

A record that is kept at the inspection site or is immediately retrievable by computer or other electronic means shall be readily available for authorized inspection during the two-year retention period. A record kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a federal, State, or local law enforcement agency. (1991, c. 699, s. 2.)

§ 106-145.9. Written procedures concerning prescription drugs and lists of responsible persons.

(a) Procedures. – A wholesale distributor shall establish, maintain, and adhere to written procedures for the receipt, security, storage, inventory, and distribution of prescription drugs. These shall include all of the following:

- (1) A procedure for identifying, recording, and reporting a loss or theft of a prescription drug.
- (2) A procedure for correcting all errors and inaccuracies in inventories of prescription drugs.
- (3) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate.
- (4) A procedure for handling recalls and withdrawals of prescription drugs that adequately addresses recalls and withdrawals due to any of the following:
 - a. An action initiated at the request of the Food and Drug Administration or other federal, State, or local law enforcement or other governmental agency, including the Department.
 - b. Any voluntary action by the manufacturer to remove defective or potentially defective prescription drugs from the market.
 - c. Any action undertaken to promote public health and safety by replacing existing prescription drugs with an improved product or new package design.
- (5) A procedure to ensure that the wholesale distributor prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of a strike, a fire, flood, or other natural disaster, or another emergency.
- (6) A procedure to ensure that any outdated prescription drugs are segregated from other prescription drugs and either returned to the manufacturer or destroyed.

(b) Responsible Persons. – A wholesale distributor shall establish and maintain lists of officers, directors, managers, and other persons in charge of the distribution, storage, or handling of prescription drugs. The lists shall include a description of the duties of those on the list and a summary of their qualifications. (1991, c. 699, s. 2.)

§ 106-145.10. Application of other laws.

A wholesale drug distributor shall comply with applicable federal, State, and local laws and regulations. A wholesale distributor that deals in controlled substances shall register with the federal Drug Enforcement Administration (DEA) and shall comply with all applicable federal, State, and local laws and regulations. A wholesale drug distributor is subject to any applicable federal, State, or local laws or regulations that relate to prescription drug salvaging or reprocessing. (1991, c. 699, s. 2.)

§ 106-145.11: Repealed by Session Laws 2021-90, s. 15, effective July 22, 2021. (1991, c. 699, s. 2; repealed by 2021-90, s. 15, effective July 22, 2021.)

§ 106-145.12. Enforcement and implementation of Article.

The Commissioner shall enforce this Article by using employees of the Department. The Commissioner may enter into agreements with federal, State, or local agencies to facilitate

enforcement of this Article. The Commissioner may adopt rules to implement this Article. (1991, c. 699, s. 2.)

§ 106-145.13: Repealed by Session Laws 2015-276, s. 3, effective October 20, 2015.

Article 13.

Canned Dog Foods.

§§ 106-146 through 106-158: Repealed by Session Laws 1973, c. 771, s. 19.

Article 14.

State Inspection of Slaughterhouses.

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

Article 14A.

Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection.

§ 106-168.1. Definitions.

For the purposes of this Article, unless the context or subject matter otherwise clearly requires,

- (1) "Collector" means any person, as defined in this section, who collects raw material for the purpose of selling the same to any renderer for further processing.
- (2) "Person" means any individual, partnership, firm, association or corporation.
- (3) "Raw material" means inedible whole or portion of animal or poultry carcasses.
- (4) "Rendering operation" means the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.
- (5) "Rendering plant" means the building or buildings in which raw material is processed and the premises upon which said building or buildings used in connection with such processing are located.
- (6) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not include grease septage as defined in G.S. 130A-290. (1953, c. 732; 2012-127, s. 2.)

§ 106-168.2. License required.

No person shall engage in rendering operations unless such person shall hold a valid license to do so issued as hereinafter provided. (1953, c. 732.)

§ 106-168.3. Exemptions.

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government inspection. (1953, c. 732; 1997-261, s. 109.)

§ 106-168.4. Application for license.

Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by him. The application shall set forth the name and residence of the applicant, his present or proposed place of business, the particular method which he intends to employ or employs in the processing of raw material, and such other information as the Commissioner may require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953. The applicant shall pay a fee of fifty dollars (\$50.00) with each application, which said fee shall be the only charge made in connection with licensure. (1953, c. 732.)

§ 106-168.5: Repealed by Session Laws 2016-113, s. 4(a), effective July 26, 2016.

§ 106-168.6. Inspection; certificate of specific findings.

Upon receipt of an application for license, the Commissioner or the Commissioner's designee shall promptly inspect the plans, specifications, and selected site in the case of proposed rendering plants and shall inspect the buildings, grounds, and equipment of established rendering plants. If the Commissioner or the Commissioner's designee finds that the plans, specifications, and selected site in the case of proposed plants, or the buildings, grounds, and equipment in the case of established plants, comply with the requirements of this Article and the rules and regulations promulgated under the authority of this Article, the Commissioner shall certify the findings in writing. If there is a failure in any respect to meet such requirements, the Commissioner or the Commissioner's designee shall notify the applicant in writing of such deficiencies and shall, within a reasonable time to be determined by the Commissioner, make a second inspection. If the specified defects are remedied, the Commissioner or the Commissioner's designee shall certify the findings in writing. Not more than two inspections shall be required under any one application. (1953, c. 732; 2016-113, s. 4(b).)

§ 106-168.7. Issuance of license.

Upon certification in accordance with G.S. 105-168.6, the Commissioner shall issue a license to the applicant to conduct rendering operations as specified in the application. A license shall be valid until revoked for cause as hereinafter provided. (1953, c. 732; 2016-113, s. 4(c).)

§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

- (1) Buildings utilized in connection with the rendering plant shall be of sufficient size and shape to accommodate all phases of actual or intended processing. Adequate partitions shall be installed therein so as to eliminate any contact between raw materials and finished products and so as to preclude contamination of finished products. The buildings shall be constructed in a manner and of materials which will insure adequate drainage and sanitation in all phases of operation.

- (2) Raw material upon arrival at the rendering plant shall be unloaded into a building for processing. All raw material shall be processed by approved methods within 24 hours after delivery to the rendering plant.
- (3) Processing equipment shall be airtight, except for proper escapes for vapors caused by the cooking process.
- (4) Cooking vapors shall be controlled and disposed of by approved methods.
- (5) Vehicles used to transport raw material shall be so constructed as to prevent any drippings or seepings from such material from escaping from the truck. Such vehicles shall have body sides of sufficient height that no portion of any raw material transported therein shall be visible. All vehicles shall be provided with suitable top or covering to prevent the spread of disease by flies or other agents during the transportation of raw material.
- (6) All vehicles and containers used in transporting raw material shall be disinfected at the earliest practicable time after unloading, and shall, in any event, be disinfected before again being taken upon a public highway or before leaving the rendering plant. Approved facilities and materials for disinfection shall be carried on vehicles transporting carcasses. Employees shall be required to wear rubber boots which shall be disinfected prior to entry to a farm.
- (7) Approved facilities, means and methods for disinfection shall be available at the rendering plant at all times. Employees and employees' clothing coming in contact with raw material shall be disinfected before coming in contact with any finished products, or any portion of the plant in which the same are located. Rodent and fly control measures shall be practiced as a further means of prevention of the spread of disease.
- (8) Proof of general liability insurance of one million dollars (\$1,000,000) shall be made in a manner satisfactory to the Commissioner. (1953, c. 732; 2012-127, s. 4.)

§ 106-168.9. Transportation by licensee.

Any person holding a license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw material, except such material as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article. (1953, c. 732.)

§ 106-168.10. Disposal of diseased animals.

Any person holding a license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals. (1953, c. 732.)

§ 106-168.11. Authority of agents of licensee.

Authority granted to any person holding a valid license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their

authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting. (1953, c. 732.)

§ 106-168.12. Commissioner authorized to adopt rules and regulations.

The Commissioner of Agriculture is hereby authorized to make and establish reasonable rules and regulations, consistent with the provisions of this Article, for the proper administration and enforcement thereof. (1953, c. 732; 2016-113, s. 4(d).)

§ 106-168.13. Effect of failure to comply.

Failure to comply with the provisions of this Article or rules and regulations adopted pursuant to this Article shall be cause of revocation of license, if such failure shall not be remedied within a reasonable time after notice to the licensee. Any person whose license is revoked may reapply for a license in the manner provided in this Article for an initial application, except that the Commissioner shall not be required to cause the rendering plant and equipment of the applicant to be inspected until the expiration of 30 days from the date of revocation. (1953, c. 732; 2016-113, s. 4(e).)

§ 106-168.14. Collectors subject to certain provisions.

Any collector, as defined in this Article, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. 106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto. (1953, c. 732.)

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

(a) For purposes of this section, "collector of waste kitchen grease" means any person who collects waste kitchen grease for the purpose of selling the same to any renderer or other person for further processing.

(b) Any collector of waste kitchen grease who sells the waste kitchen grease collected shall provide the purchaser with a statement of ownership setting forth the lawful ownership of the waste kitchen grease sold to such purchaser. (2012-127, s. 5.)

§ 106-168.15. Violation a misdemeanor.

Any person conducting rendering operations or collecting raw material in violation of the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1953, c. 732; 1993, c. 539, s. 745; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-168.16. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 7; 1998-215, s. 8.)

Article 15.

Inspection of Meat and Meat Products by Counties and Cities.

§§ 106-169 through 106-173: Repealed by Session Laws 1997-74, s. 8.

Article 15A.

Meat Grading Law.

§§ 106-173.1 through 106-173.16. Repealed by Session Laws 1983, c. 248, s. 2.

Article 16.

Bottling Plants for Soft Drinks.

§§ 106-174 through 106-184.1: Repealed by Session Laws 1975, c. 614, s. 42.

Article 17.

Marketing and Branding Farm Products.

§ 106-185. Scope of Article; federal-State cooperation.

(a) Scope. – This Article gives the Department of Agriculture and Consumer Services the authority to investigate marketing conditions for and establish and maintain standard grades, packages, and State brands for farm products. As used in this Article, the term "farm products" means farm crops, horticultural crops, and animal products.

(b) Cooperation. – The Commissioner of Agriculture may enter into agreements with the United States Department of Agriculture that require State and federal cooperation in performing the duties imposed by this Article. (1919, c. 325, s. 1; C.S., s. 4781; 1921, c. 140; 1993, c. 223, s. 1; 1997-261, s. 36.)

§ 106-186. Power to employ agents and assistants.

The Board of Agriculture is charged with the execution of the provisions of this Article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C.S., s. 4782.)

§ 106-187. Board of Agriculture to investigate marketing of farm products.

It shall be the duty of the Board of Agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (1919, c. 325, s. 3; C.S., s. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc.

After investigation, and from time to time as may be practical and advisable, the Board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality,

and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this State: Provided, that no standard established or requirement for marking prescribed under this Article shall become effective until the expiration of 30 days after it shall have been promulgated. (1919, c. 325, s. 4; C.S., s. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements.

Whenever any standard for the grade or other classification of any farm product becomes effective under this Article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this Article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." This proviso shall not apply to peaches. (It is the intent and purpose of this exemption to exempt peaches from the requirements of Article 17 of Chapter 106 that ungraded peaches, when sold or offered for sale, shall be marked "ungraded," "field run," "not graded," "grade not determined" or "unclassified," or words of similar import.) The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue "stop-sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this Article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this Article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this Article, or unless the receptacle be of a capacity twenty-five percent (25%) less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five percent (25%) of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this Article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this Article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C.S., s. 4785; 1943, c. 483; 1969, c. 849.)

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

§ 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.

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a Class 3 misdemeanor and shall be punished only by a fine of not less than one hundred dollars (\$100.00). Each day on which apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation. (1973, c. 973; 1985, c. 585; 1993, c. 539, s. 746; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-190. Inspectors or graders authorized; revocation of license.

The Board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this Article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this Article, or has violated any provision of this Article, or of the rules and regulations made hereunder, the Board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C.S., s. 4786.)

§ 106-190.1. Aggregate State service credit for graders.

All fruit, vegetable, grain, poultry, egg and egg products graders employed by the Board in positions in fact permanent and full-time, but who were inadvertently or incorrectly classified as temporary until January 1, 1974, shall be given aggregate State service credit for the period of employment before January 1, 1974. This credit shall be given only to persons employed on a full-time, year-round basis during which time they were classified as temporary. Credit shall be given for purposes of determining the amount of leave earned by the employee, eligibility for and amount of longevity pay, and any other determinations for which the length of State service is relevant. Employees given retroactive aggregate State service credit under this section shall receive retroactive longevity pay, to the extent for which they would have been eligible for longevity pay if they had been correctly classified from the date of their initial employment, for all service beginning January 1, 1974, until August 1, 1977, with any longevity pay actually paid to be subtracted therefrom. (1977, c. 1038, s. 1.)

§ 106-191. Appeal from classification.

The owner or person in possession of any farm product classified in accordance with the provisions of this Article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C.S., s. 4787.)

§ 106-192. Certificate of grade prima facie evidence.

A certificate of the grade or other classification of any farm product issued under this Article shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C.S., s. 4788.)

§ 106-193. Unwholesome products not classified; health officer notified.

Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the State or of any county or municipality thereof. (1919, c. 325, s. 9; C.S., s. 4789.)

§ 106-194. Inspection and sampling of farm products authorized.

Agents and employees are authorized from time to time to ascertain the amount of any farm products in this State, to inspect the same in the possession of any person engaged in the business of marketing them in this State, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (1919, c. 325, ss. 10, 11; C.S., s. 4790.)

§ 106-194.1. Farm Product Inspection Account.

The Farm Product Inspection Account is established as a nonreverting account within the Department of Agriculture and Consumer Services. Interest and other investment income earned by the Account shall be credited to it.

Fees collected under this Article shall be credited to the Account and applied to the costs of administering this Article. Fees credited to the Account from grading and inspection services provided under a cooperative agreement with the United States Department of Agriculture are subject to any restrictions on use set out in the cooperative agreement. (1993, c. 223, s. 2; 1997-261, s. 109.)

§ 106-195. Rules and regulations; how prescribed.

The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this Article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States, prescribed under any act of Congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C.S., s. 4791.)

§ 106-196. Violation of Article or regulations a misdemeanor.

Any person who violates any provision of this Article, or of the rules and regulations made under the Article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a Class 3 misdemeanor. (1919, c. 325, ss. 13, 14; C.S., s. 4792; 1993, c. 539, s. 747; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 18.

Shipper's Name on Receptacles.

§ 106-197: Repealed by Session Laws 1997-74, s. 9.

Article 19.

Trademark for Standardized Farm Products.

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

§§ 106-202.1 through 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 through 106-202.11. Reserved for future codification purposes.

Article 19B.

Plant Protection and Conservation Act.

§ 106-202.12. Definitions.

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

- (1) "Board" means the North Carolina Plant Conservation Board as provided in this Article.
- (2) "Commissioner" means the Commissioner of Agriculture.
- (3) "Conserve" and "conservation" mean to use, and the use of, all methods and procedures for the purposes of increasing the number of individuals of resident species of plants up to adequate levels to assure their continuity in their ecosystems. These methods and procedures include all activities associated with scientific resource conservation such as research, census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range. With respect to endangered and threatened species, the terms mean to use, and the use of, methods and procedures to bring any endangered or threatened species to the point at which the measures provided for the species are no longer necessary.
- (4) "Endangered species" means any species or higher taxon of plant whose continued existence as a viable component of the State's flora is determined to be in jeopardy by the Board; also, any species of plant determined to be an "endangered species" pursuant to the Endangered Species Act.

- (5) "Endangered Species Act" means the Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), as it may be subsequently amended.
- (6) "Exotic species" means a species or higher taxon of plant not native or naturalized in North Carolina but appearing in the Federal Endangered and Threatened Species List or in the appendices to the International Treaty on Endangered and Threatened Species.
- (7) "Plant" means any member of the plant kingdom, including seeds, roots and other parts or their propagules.
- (8) "Protected plant" means a species or higher taxon of plant adopted by the Board to protect, conserve, and/or enhance the plant species and includes those the Board has designated as endangered, threatened, or of special concern.
- (9) "Resident plant or resident species" means a native species or higher taxon of plant growing in North Carolina.
- (10) "Scientific committee" means the North Carolina Plant Conservation Scientific Committee.
- (11) "Special concern species" means any species of plant in North Carolina which requires monitoring but which may be collected and sold under regulations adopted under the provisions of this Article.
- (12) "Threatened species" means any resident species of plant which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, or one that is designated as threatened by the Federal Fish and Wildlife Service. (1979, c. 964, s. 1.)

§ 106-202.13. Declaration of policy.

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

§ 106-202.14. Creation of Board; membership; terms; chairman; quorum; board actions; compensation.

(a) The North Carolina Plant Conservation Board is created within the Department of Agriculture and Consumer Services.

(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 North Carolina Forest Service of the Department of Agriculture and Consumer Services;
- (4) A North Carolina citizens conservation organization;
- (5) The commercial plant production industry in North Carolina;
- (6) The Department of Agriculture and Consumer Services;
- (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; 1989, c. 727, s. 218(45); 1997-261, ss. 37, 38; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(qq); 2013-155, s. 9.)

§ 106-202.15. Powers and duties of the Board.

The Board shall have all of the following powers and duties:

- (1) To adopt and maintain a list of protected plant species for North Carolina, identifying each entry by the common name and scientific name, along with its status as endangered, threatened, or of special concern, as provided under G.S. 106-202.16.
- (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 this State or 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 adopt rules under which the Department of Agriculture and Consumer Services 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 or grown horticulturally.
- (13) To stop the sale of or to seize any endangered, threatened, or special concern plant species, or part thereof possessed, transported, or moved within this State or brought into this State from any place outside the State if such is found by the Board or its duly authorized agent to be in violation of this Article or rules adopted pursuant to this Article. Such plants shall be moved or disposed of at the direction of the Board or its agent or by court order.
- (14) To establish fees for permits authorized in this Article. (1979, c. 964, s. 1; 1989, c. 508, s. 1; 1997-261, s. 39; 2007-456, s. 1; 2019-204, s. 8(a).)

§ 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 and Consumer Services 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 and Consumer Services 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. (1979, c. 964, s. 1; 1987, c. 827, s. 31; 1997-261, s. 109.)

§ 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 and Consumer Services.

(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 State Museum of Natural Sciences of the Department of Natural and Cultural Resources, and the North Carolina Natural Heritage Program of the Department of Natural and Cultural Resources or their designees, a representative of the North Carolina Association of Nurserymen, Inc., appointed by the Commissioner, and a representative of a conservation organization, 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; 1989, c. 727, s. 218(46); 1993, c. 561, s. 116(i); 1997-261, s. 109; 1997-443, s. 11A.119(a); 2007-456, s. 2; 2015-241, ss. 14.30(l), (w).)

§ 106-202.18. Powers and duties of the Scientific Committee.

The Scientific Committee shall have all of 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 environmental impact statements prepared by State agencies on projects that may affect protected plants; 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; 2007-456, s. 3.)

§ 106-202.19. Unlawful acts; penalties; enforcement.

(a) Unless the conduct is covered under some other provision of law providing greater punishment, it is unlawful to engage in any of the following conduct:

- (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.
- (3) To violate any rule of the Board promulgated under this Article.
- (4) Repealed by Session Laws 2012-200, s. 18, effective October 1, 2012.
- (5) To buy ginseng outside of a buying season as provided by the Board without obtaining the required documents from the person selling the ginseng.
- (6) To buy ginseng for the purpose of resale or trade without holding a currently valid permit as a ginseng dealer.
- (6a) To uproot, dig, take, or otherwise disturb or remove for any purpose from another person's land ginseng, galax, or Venus flytrap without a written permit from the owner that is dated and valid for no more than 180 days. A person in lawful possession of the land who has a recorded lease which allows for the disturbance or removal of any vegetation on the land is not subject to this subdivision.
- (6b) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.

- (6c) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.
- (6d) To buy more than five pounds of galax for the purpose of resale or trade without a copy of the landowner's written permission and confirmation of the collection date.
- (6e) To buy more than 50 Venus flytrap plants for the purpose of resale or trade unless fully compliant with applicable regulations.
- (7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those provided for the current year or harvest season by the Department of Agriculture and Consumer Services.
- (8) To provide false information on any record or form required under this Article.
- (9) To make false statements or provide false information in connection with any investigation conducted under this Article.
- (10) To possess any protected plant, or part thereof, which was obtained in violation of this Article or any rule adopted under this Article.
- (11) To violate a stop sale order issued by the Board or its agent.

(a1) Any person convicted of violating this Article, or any rule of the Board adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor. Each illegal movement or distribution of a protected plant shall constitute a separate violation. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(a2) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person guilty of violating this Article a second or subsequent time. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) The Commissioner or any employee or agent of the Department of Agriculture and Consumer Services 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; 1989, c. 508, s. 2; 1993, c. 539, s. 749; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, ss. 40, 41; 1998-215, s. 9; 2001-487, s. 43(b); 2007-456, ss. 4, 5; 2012-200, s. 18.)

§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.

Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its discretion, may order the defendant to forfeit any plant or plant parts which he possesses in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant or plant part by destruction or sale. The clear proceeds of forfeitures and sales pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1989, c. 508, s. 3; 1997-261, s. 109; 1998-215, s. 10.)

§ 106-202.21. Ginseng dealer permits.

(a) No person shall act in the capacity of a ginseng dealer, or shall engage, or offer to engage in the business of, advertise as, or assume to act as a ginseng dealer unless that person holds a currently valid permit as provided in this Article.

(b) Applications for a ginseng dealer permit shall be on a form and shall contain information as prescribed by the Board. All permits issued under this section shall expire on 30 June of the fiscal year for which they are issued.

(c) A ginseng dealer permit may be renewed annually upon application to the Board.

(d) A ginseng dealer shall notify the Board of any change of address or business location within 30 days of such change.

(e) The Board shall issue to each applicant who satisfies the requirements of this Article a permit which entitles the applicant to conduct the business described in the application during the harvest season for which the permit is issued, unless the permit is suspended or revoked. (1989, c. 508, s. 3.)

§ 106-202.22. Denial, suspension, or revocation of permit.

(a) The Board may deny, suspend, revoke, or modify any permit issued under this Article if it finds that the applicant or permit holder has violated this Article or rules adopted pursuant to this Article.

(b) Suspension of any permit under this Article shall be for not less than one year. Any permit holder whose permit has been revoked shall not be eligible to reapply until two years after the final decision of the Board or two years after his permit is surrendered pursuant to such revocation, whichever is earlier. The expiration or voluntary surrender of a permit shall not deprive the Board of jurisdiction to suspend, revoke or modify such permit. A person whose permit has been suspended or revoked shall not engage in business as an employee, partner, or associate of another permit holder during the period of such revocation or suspension.

(c) If a permit is suspended or revoked, the permit holder shall, within five days of such suspension or revocation, surrender such permit to the Commissioner or his authorized representative. (1989, c. 508, s. 3.)

Article 20.

Standard Weight of Flour and Meal.

§§ 106-203 through 106-209. Repealed by Session Laws 1945, c. 280, s. 2.

Article 21.

Artificially Bleached Flour.

§§ 106-210 through 106-219. Repealed by Session Laws 1975, c. 614, s. 42.

Article 21A.

Enrichment of Flour, Bread, Cornmeal and Grits.

§§ 106-219.1 through 106-219.9. Repealed by Session Laws 1975, c. 614, s. 42.

Article 22.

Inspection of Bakeries.

§§ 106-220 through 106-232. Repealed by Session Laws 1975, c. 614, s. 42.

Article 23.

Oleomargarine.

§ 106-233. Repealed by Session Laws 1975, c. 614, s. 42.

§ 106-234. Repealed by Session Laws 1949, c. 978, s. 2.

§ 106-235. Repealed by Session Laws 1963, c. 1135.

§§ 106-236 through 106-238. Repealed by Session Laws 1975, c. 614, s. 42.

Article 24.

Excise Tax on Certain Oleomargarines.

§ 106-239. Repealed by Session Laws 1975, c. 614, s. 42.

Article 25.

North Carolina Egg Law.

§§ 106-240 through 106-245. Repealed by Session Laws 1955, c. 213, s. 14.

§§ 106-245.1 through 106-245.12. Repealed by Session Laws 1965, c. 1138, s. 3.

Article 25A.

North Carolina Egg Law.

§ 106-245.13. Short title; scope; rule of construction.

This Article is named and may be cited as the North Carolina Egg Law and relates to eggs sold in the State of North Carolina. Words used in the singular form in this Article shall include the plural, and vice versa as the cause may require. (1965, c. 1138, s. 1.)

§ 106-245.14. Definitions.

The following words, terms, and phrases shall be construed for the purpose of this Article as follows:

- (1) "Authorized representative" means the Commissioner or any duly authorized agent or employee who is assigned to carry out the provisions of this Article.

- (2) "Candling and grading" means selecting eggs as to their conformity to the standards of quality and size or weight class preparatory to marketing them as a specific grade and size or weight class.
- (3) "Commissioner" means the North Carolina Commissioner of Agriculture.
- (4) "Consumer" means any person who purchases eggs for his or her use or his or her own family use or consumption and not for resale.
- (5) "Container" means any box, case, basket, carton, sack, bag, or other receptacle containing eggs. "Subcontainer" means any container used within another container.
- (6) "Distributor" means any person, producer, firm or corporation offering for sale or distributing eggs in the State to a retailer, cafe, restaurant, or any other establishment offering for sale to consumers, including but not limited to institutional consumers as defined in this Article. Distributors also shall include any person, producer, firm or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm or corporation engaged only to haul or transport eggs.
- (7) "Eggs" means product of a domesticated chicken in the shell or as further processed egg products.
- (8) "Facilities" means any room, compartment, refrigerator or vehicle used in handling eggs in any manner.
- (9) "Grades" shall mean and include specifications defining the limit of variation in quality of two or more eggs.
- (10) "Institutional consumer" means a restaurant, hotel, licensed boarding house, commercial bakery or any other institution in which eggs are prepared as food for use by its patrons, residents or patients.
- (11) "Law" means the provisions of this Article and all rules and regulations issued hereunder.
- (12) "Lots" means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture and Consumer Services.
- (13) "Marketing of eggs" or "market" means the sale, offer for sale, gift, barter, exchange, advertising, branding, marking, labeling, grading, or other preparatory operation or distribution in any manner of eggs or containers of eggs as defined in this Article.
- (14) "Packer" means any person that is engaged in grading, shell treating or packing eggs for sale to consumers, direct or through distribution outlets of stores.
- (15) "Person" means and includes any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other business organization and any member, officer, or employee thereof.
- (16) "Retailer" means any person who markets eggs to consumers.
- (17) "Size or weight class" means a classification of eggs based on weight at the rate per dozen.
- (18) "Standards for quality" means specifications of the physical characteristics of any or all of the component parts or the individual egg. (1965, c. 1138, s. 1; 1997-261, s. 42.)

§ 106-245.15. Designation of grade and class on containers required; conformity with designation; exemption.

No person shall market to consumers, institutional consumers or retailers or expose for that purpose any eggs unless there is clearly designated therewith on the container the grade and size or weight class established in accordance with the provisions of this Article and such eggs shall conform to the designated grade and size or weight class (except when sold on contract to a United States governmental agency); provided, however, a producer marketing eggs of his own production shall be exempt from this section when such marketing occurs on the premises where the eggs are produced, processed, or when ungraded sales do not exceed 30 dozen per week. (1955, c. 213, s. 7; 1965, c. 1138, s. 1; 1973, c. 739, s. 1.)

§ 106-245.16. Standards, grades and weight classes.

The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs sold or offered for sale in this State as will protect the consumer and the institutional consumer from eggs which are injurious or likely to be injurious to health by reason of the condition of the shell, or contents thereof, or by reason of the manner in which eggs are processed, handled, shipped, stored, displayed, sold or offered for sale. Such standards of quality, grades and weight classes as are promulgated and established by the Board shall also promote honesty and fair dealings in the poultry industry. Such standards, grades and weight classes may be modified or altered by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1; 1969, c. 139, s. 1.)

§ 106-245.17. Stop-sale orders.

If an authorized representative of the North Carolina Department of Agriculture and Consumer Services shall determine, after inspection, that any lot of eggs is in violation of this Article, he may issue a "stop-sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop-sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the State agency. (1965, c. 1138, s. 1; 1997-261, s. 109.)

§ 106-245.18. Container labeling.

(a) Any container or subcontainer in which eggs are marketed shall bear on the outside portion of the container, but not be limited to, the following:

- (1) The applicable consumer grade provided for in this Article.
- (2) The applicable size or weight class provided for in this Article.
- (3) The word "eggs."
- (4) The numerical count of the contents.
- (5) The name and address of the packer or distributor. Words and numerals used to designate the grade and size shall be in clearly legible bold-faced type at least three-eighths inch in height. Any person intending to reuse a container shall obscure any inappropriate labeling thereon and relabel the container in accordance with this section prior to refilling the container with eggs. In any case, the address of the packer or distributor shall be shown in letters not exceeding three-eighths inch in height.

(b) The term "fresh" may only be applied to eggs conforming to the specifications for Grade A or better. No other descriptive term other than applicable grade and size may be applied. (1965, c. 1138, s. 1; 1973, c. 739, s. 2.)

§ 106-245.19. Invoices.

(a) Any person, except a producer marketing eggs to another person for candling and grading, when marketing eggs to a retailer, institutional consumer, or other person shall furnish to the purchaser at the time of delivery an invoice showing date of sale, name and address of the seller, name of purchaser, quantity, grade and size-weight classification.

(b) A copy of such invoice shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.20. Advertisements.

No person shall advertise eggs for sale at a given price unless the unabbreviated grade or quality and size-weight are conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger. The provisions of this section shall not apply to retailers who (i) display egg prices in the same manner as other products sold by the retailer at the retail establishment, excluding any items on sale or subject to a promotion, and (ii) comply with G.S. 106-245.15. (1955, c. 213, s. 7; 1965, c. 1138, s. 1; 2013-265, s. 11.)

§ 106-245.21. Rules and regulations.

The North Carolina Board of Agriculture is authorized to make and amend, from time to time, such rules and regulations as may be necessary to administer and enforce the provisions of this Article. Such rules and regulations shall be published and copies thereof made available to interested parties upon request therefor. (1955, c. 213, s. 8; 1965, c. 1138, s. 1.)

§ 106-245.22. Sanitation.

(a) Any person engaged in the marketing of or the processing of eggs for marketing shall, in addition to maintaining egghandling facilities in a manner commensurate with laws governing food establishments, keep the eggs in a proper environment, in accordance with regulations promulgated by the North Carolina Board of Agriculture, to maintain quality. In addition, any container, including the packaging material therein, when used for the marketing of eggs shall be clean, unbroken and free from foreign odor. In all instances eggs shall, so far as possible and by use of all reasonable means, be protected from being soiled or dirtied by foreign matter. When cleaning is necessary a sanitary method approved by the Commissioner shall be employed.

(b) Repealed by Session Laws 1973, c. 739, s. 3. (1965, c. 1138, s. 1; 1973, c. 739, s. 3.)

§ 106-245.23. Power of Commissioner.

The Commissioner, or his authorized agents or representatives, may enter, during the regular business hours, any establishment or facility where eggs are bought, stored, offered for sale, or processed, in order to inspect and examine eggs, egg containers, and the premises, and to examine the records of such establishments or facilities relating thereto. (1955, c. 213, s. 10; 1965, c. 1138, s. 1.)

§ 106-245.24. Penalties for violations; enjoining violations; venue.

(a) Any person who violates any provision of this Article shall be guilty of a Class 3 misdemeanor.

(b) In addition to the criminal penalties provided for above, the Commissioner of Agriculture may apply by equity to a court of competent jurisdiction, and such court shall have jurisdiction and for cause shown to grant temporary or permanent injunction, or both, restraining any person from violating, or continuing to violate, any provisions of this Article.

(c) Any proceeding for a violation of this Article may be brought in the county where the violator resides, has a place of business or principal office or where the act or omission or part thereof, complained of occurred. (1955, c. 213, s. 12; 1965, c. 1138, s. 1; 1993, c. 539, s. 750; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-245.25. Warnings in lieu of criminal prosecutions.

Nothing in this Article shall be construed as requiring the Commissioner to report for criminal prosecution violations of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1965, c. 1138, s. 1.)

§ 106-245.26. Remedies cumulative.

Each remedy provided in this Article shall be in addition to and not exclusive of any other remedy provided for in this Article. (1965, c. 1138, s. 1.)

§ 106-245.27. Persons punishable as principals.

(a) Whoever commits any act prohibited by any section of this Article or aids, abets, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done which if directly performed by him or another would be a violation of the provisions of this Article, is punishable as a principal. (1965, c. 1138, s. 1.)

§ 106-245.28. Act of agent as that of principal.

In construing and enforcing the provisions of this Article, the act, omission, or failure, of any agent, officer or other person acting for or employed by an individual, association, partnership, corporation, or firm, within the scope of his employment or office shall be deemed to be the act, omission, or failure to [of] the individual, association, partnership, corporation, or firm as well as that of the person. (1965, c. 1138, s. 1.)

§ 106-245.29. Reserved for future codification purposes.

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.)

§ 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 and Consumer Services. (1987, c. 815, s. 1; 1997-261, s. 43.)

§ 106-245.32. Levy of tax; rules.

An excise tax is levied on eggs and processed eggs sold for use in this State. The tax on eggs is five cents (5¢) for each case of 30 dozen eggs. The tax on processed eggs is eleven cents (11¢) for each 100 pounds of processed eggs sold for use in this State. The tax imposed by this section is payable only once on the same eggs or processed eggs.

Processed eggs include frozen eggs, liquid eggs, and hard-cooked eggs. "Use" means consumption by the consumer. The Board may adopt rules necessary to administer this tax. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 1.)

§ 106-245.33. Report and payment of tax by handler; definition and functions of handler.

(a) The tax imposed by this Article is payable monthly to the Department by the handler of eggs or processed eggs. The tax is due when a report is required to be filed. A handler shall file a report with the Department on a form provided by the Department within 20 days after the end of each month. The report shall state the volume of eggs or processed eggs handled by the handler during the preceding month.

(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, a farmer who packs, processes, or otherwise performs the functions of a handler in North Carolina, or a distributor or seller of processed eggs. 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 or processed eggs include the sale, distribution, or other disposition of eggs or processed eggs in North Carolina regardless of where the eggs or processed 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 by this Article.

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 due on all eggs or processed eggs sold for use in this State. A handler shall maintain a certificate of registration, file returns, and perform all other duties required of handlers. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 2.)

§ 106-245.34. Exemptions.

Eggs sold by a handler who sells less than 500 cases a year are exempt from the tax levied under this Article. Processed eggs sold by a handler who sells less than 1,000 pounds of processed eggs a year are exempt from the tax levied under this Article. The Board shall establish a procedure for returning taxes paid on exempt eggs or processed eggs. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 3.)

§ 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 or processed eggs handled by him for a period of not less than two years from the time the eggs or processed eggs were handled. These 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; 1989 (Reg. Sess., 1990), c. 1001, s. 4.)

§ 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. 105-241.21 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; 2007-491, s. 44(1)a.)

§ 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.)

§ 106-245.38. Violations.

(a) It shall be a Class 1 misdemeanor for any handler knowingly to report falsely to the Department the quantity of eggs or processed eggs handled by him during any period, to falsify the records of the eggs or processed eggs handled by him, to fail to keep a complete record of the eggs or processed eggs handled by him, or to fail to preserve the records for a period of not less than two years from the time the eggs or processed eggs are handled.

(b) It shall be a violation of the North Carolina Egg Law, Article 25A of this Chapter, for a handler to fail to register as required by this Article. Any eggs transported, sold, or offered for sale by a handler who is not a registered handler shall be subject to the stop-sale and penalty provisions of the North Carolina Egg Law. (1987, c. 815, s. 1; 1989 (Reg. Sess., 1990), c. 1001, s. 5; 1993, c. 539, s. 751; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 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.

§ 106-246: Repealed by Session Laws 2013-265, s. 13, effective July 17, 2013.

§ 106-247. Cleaning and sterilization of vessels and utensils.

Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C.S., s. 7251(b).)

§ 106-248: Repealed by Session Laws 2013-265, s. 14, effective July 17, 2013.

§ 106-249. Receivers of products to clean utensils before return.

Every person, company, or corporation who shall receive milk, cream, or ice cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C.S., s. 7251(d).)

§ 106-250. Correct tests of butterfat; tests by Board of Agriculture.

Creameries and factories that purchase milk and cream from producers of same on a butterfat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this Article. The Board of Agriculture, under regulations provided for in G.S. 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C.S., s. 7251(e).)

§ 106-251. Department of Agriculture and Consumer Services to enforce law; examinations.

It shall be the duty of the Department of Agriculture and Consumer Services to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this Article shall be guilty of a violation of this Article. (1921, c. 169, s. 6; C.S., s. 7251(f); 1997-261, s. 44.)

§ 106-252. Closure of plants for violation of Article; certificate to district attorney of district.

If it shall appear from the examinations that any provision of this Article has been violated, the Commissioner of Agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of the place refuses or fails to comply with the order, law or regulations, the Commissioner shall then certify the facts in the case to the district

attorney in the district in which the violation was committed. (1921, c. 169, s. 7; C.S., s. 7251(g); 1973, c. 47, s. 2.)

§ 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.)

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories.

For the purpose of defraying the expenses incurred in the enforcement of this Article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semifrozen desserts and other similar frozen or semifrozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of one hundred dollars (\$100.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semifrozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of fifty dollars (\$50.00) each year. The inspection fee of fifty dollars (\$50.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C.S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707, s. 4; 1961, c. 791; 1989, c. 544, s. 15; 2015-241, s. 13.5(a); 2015-268, ss. 5.2(a), (b).)

§ 106-255. Violation of Article a misdemeanor; punishment.

Any person, firm, or corporation who shall violate any of the provisions of this Article shall be guilty of a Class 3 misdemeanor, and upon conviction thereof shall only be fined not to exceed twenty-five dollars (\$25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C.S., s. 7251(j); 1993, c. 539, s. 752; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 27.

Records of Purchases of Milk Products.

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

Article 28.

Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined.

Wherever the word "milk" appears hereinafter in this Article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk, including flavored drinks, skim condensed, whole condensed, dry milks and evaporated. (1941, c. 162, s. 1; 1951, c. 1133, s. 1.)

§ 106-261: Repealed by Session Laws 2017-10, s. 3.10, effective May 4, 2017.

§ 106-262. Powers of Commissioner of Agriculture.

The Commissioner of Agriculture is hereby authorized and empowered:

- (1) To require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was used or disposed;
- (2) To designate any area of the State as a natural marketing area for the sale or use of milk or milk products;
- (3) To set up classifications for the sale or use of milk or milk products for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given.
- (4) To make rules and regulations and issue orders necessary to carry out and enforce the provisions of this Article, including the supervision of producer bases and other production incentive plans; methods of uniform and equitable payments to all producers selling milk to the same firm, person or corporation; uniform methods of computing weights of milk and/or milk products; and maximum handling and transportation charges for milk sold and/or transferred between plants. (1941, c. 162, s. 3; 1951, c. 1133, s. 3.)

§ 106-263. Distribution of milk in classification higher than that in which purchased.

It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this Article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks' period. (1941, c. 162, s. 4.)

§ 106-264. Inspections and investigations by Commissioner.

For the purpose of administering this Article the Commissioner of Agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the State, and may take testimony for the purpose of ascertaining facts which in the judgment of the Commissioner are necessary to administer this Article. The Commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this Article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful.

It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this Article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor.

Any person, firm, or corporation violating any of the provisions of this Article and/or any rule, regulation or order promulgated in accordance with the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1941, c. 162, s. 7; 1951, c. 1133, s. 4; 1993, c. 539, s. 753; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 28A.

Regulation of Milk Brought into North Carolina

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

§ 106-266.6. Reserved for future codification purposes.

Article 28B

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

§ 106-266.7: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.8: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.9: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.10: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.11: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.12: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.13: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.14: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.15: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.16: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.17: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.18: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§ 106-266.19: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

§§ 106-266.20 through 106-266.21: Repealed by Session Laws 1971, c. 779, s. 1.

Article 28C.

Grade "A" Milk Sanitation.

§ 106-266.30. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Grade 'A' milk" means fluid milk and milk products which have been produced, transported, handled, processed and distributed in accordance with the provisions of the rules adopted by the Board of Agriculture.
- (2) "Milk" means the lacteal secretion practically free from colostrum obtained by the milking of one or more cows, goats, or other lactating animals. (1983, c. 891, s. 2; 2004-195, s. 6.1; 2011-145, s. 13.3(l), (m).)

§ 106-266.31. Board to adopt rules.

The Board of Agriculture shall adopt rules relating to the sanitary production, transportation, processing and distribution of Grade "A" milk. The rules, in order to protect and promote the public health, shall provide definitions and requirements for: (i) the sanitary production and handling of milk on Grade "A" dairy farms; (ii) the sanitary transportation of Grade "A" raw milk for processing; (iii) the sanitary processing of Grade "A" milk; (iv) the sanitary handling and distribution of Grade "A" milk; (v) the requirements for the issuance, suspension and revocation of permits; and (vi) the establishment of quality standards for Grade "A" milk. The rules shall be no less stringent than the 1978 Pasteurized Milk Ordinance recommended by the U.S. Public Health Service/Food and Drug Administration as amended effective January 1, 1982. The Board of Agriculture may adopt by reference the U.S. Public Health Service/Food and Drug Administration 1978 Pasteurized Milk Ordinance, as amended. (1983, c. 891, s. 2; 1985, c. 462, s. 15; 2011-145, s. 13.3(l), (n).)

§ 106-266.32. Permits required.

No person shall produce, transport, process, or distribute Grade "A" milk without first having obtained a valid permit from the Department of Agriculture and Consumer Services. (1983, c. 891, s. 2; 2011-145, s. 13.3(l), (o).)

§ 106-266.33. Duties of the Department.

The Department of Agriculture and Consumer Services shall enforce the rules of the Board of Agriculture governing Grade "A" milk by making sanitary inspections of Grade "A" dairy farms, Grade "A" processing plants, Grade "A" milk haulers and Grade "A" distributors; by determining the quality of Grade "A" milk; and by evaluating methods of handling Grade "A" milk to insure compliance with the provisions of the rules of the Board of Agriculture. The Department of Agriculture and Consumer Services shall issue permits for the operation of Grade "A" dairy farms, processing plants and haulers in accordance with the provisions of the rules of the Board of Agriculture and shall suspend or revoke permits for violations in accordance with the rules. (1983, c. 891, s. 2; 1995, c. 123, s. 3; 2011-145, s. 13.3(l), (p).)

§ 106-266.34. Certain other authorities of Department of Agriculture and Consumer Services not replaced.

This Article shall not repeal or limit the Department of Agriculture and Consumer Services' authority to carry out labeling requirements, required butterfat testing, aflatoxin testing, pesticide testing, other testing performed by the Department of Agriculture and Consumer Services, and any other function of the Department of Agriculture and Consumer Services concerning Grade "A" milk under any other Article under this Chapter that is not inconsistent with this Article. (1983, c. 891, s. 2; 1997-261, s. 87; 2011-145, s. 13.3(l), (q).)

§ 106-266.35. Sale or dispensing of milk.

(a) Except as provided in subsection (d) of this section:

- (1) Only milk that is Grade "A" pasteurized milk may be sold or dispensed directly to consumers for human consumption.
- (2) Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency.

(b) The Board of Agriculture may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. Any raw milk or raw milk product dispensed as animal feed shall include on its label the statement "NOT FOR HUMAN CONSUMPTION" in letters at least one-half inch in height. Any raw milk or raw milk product dispensed as animal feed shall also include on its label the statement "IT IS NOT LEGAL TO SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA." This labeling requirement does not apply to raw milk or raw milk products dispensed for personal use or consumption to the independent or partial owner of a cow, goat, or other lactating animal.

(c) As used in this section, the term "sale" or "sold" means any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation. The term "sale" or "sold" does not include the transfer or dispensing of raw milk or raw milk products to, or the right to acquire raw milk or raw milk products by, the independent or partial owner of a cow, goat, or other lactating animal.

(d) Nothing in this section shall prohibit the dispensing of raw milk or raw milk products for personal use or consumption to, or the acquisition of raw milk or raw milk products for personal use or consumption by, an independent or partial owner of a cow, goat, or other lactating animal. (1983, c. 891, s. 2; 2004-195, s. 6.2; 2008-88, s. 2; 2011-145, s. 13.3(l), (r); 2018-113, s. 15.2(a).)

§ 106-266.36. Milk embargo.

If the Commissioner of Agriculture or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 106-266.31, the Commissioner of Agriculture or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy

the milk sanitation rules adopted pursuant to G.S. 106-266.31, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 106-266.31, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 106-266.31, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid. (1983, c. 891, s. 2; 1997-443, s. 11A.63A; 2011-145, s. 13.3(s), (t).)

Article 29.

Inspection, Grading and Testing Milk and Dairy Products.

§ 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 and Consumer Services 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; 1997-261, s. 109.)

§ 106-267.1. License required; fee; term of license; examination required.

Every person who shall test milk or cream in this State by, or sample milk for, the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall expire on December 31 of each year, unless sooner revoked, as provided in G.S. 106-267.3. A license fee of five dollars (\$5.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1; 1959, c. 707, s. 5; 1989, c. 544, s. 14.)

§ 106-267.2. Rules and regulations.

The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this Article that shall govern the granting of licenses under this Article and shall establish and promulgate rules and regulations not inconsistent with this Article that shall govern the manner of testing, including, but not in limitation thereof, the taking of samples, location where the testing of said samples shall be made and the length of time samples of milk or cream shall be held after testing. (1951, c. 1121, s. 1.)

§ 106-267.3. Revocation of license; hearing.

The Commissioner of Agriculture shall have power to revoke any license granted under the provisions of this Article, upon good and sufficient evidence that the provisions of this Article or the rules and regulations of the Commissioner of Agriculture are not being complied with: Provided, that before any license shall be revoked, an opportunity shall be granted the licensee, upon being confronted with the evidence, to show cause why such license should not be revoked. (1951, c. 1121, s. 1.)

§ 106-267.4. Representative average sample; misdemeanor, what deemed.

In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a Class 2 misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1; 1993, c. 539, s. 755; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-267.5. Standard Babcock testing glassware; scales and weights.

In the use of the Babcock test all persons shall use the "standard Babcock testing glassware, scales, and weights." The term "standard Babcock testing glassware, scales and weights" shall apply to glassware, scales and weights. It shall be unlawful for any person, firm, company, association, corporation or agent thereof to falsely manipulate, underread or overread the Babcock test or any other contrivance used for determining the quality of value of milk or cream where the value of said milk or cream is determined by the percentage of butterfat contained in the same or to make a false determination by the Babcock test or otherwise, or to falsify the record of such test or to pay on the basis of any test, measurement or weight except the true test, measurement or weight. (1951, c. 1121, s. 1.)

§ 106-268. Definitions; enforcement of Article.

(a) The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this Article and section.

(b) The term "adulteration" means:

- (1) Failure to meet definitions and standards as established by the Board of Agriculture.
 - (2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
 - (3) If any substance has been substituted wholly or in part thereof.
 - (4) If it is adjudged to be unfit for human consumption.
- (c) The term "misbranded" means:
- (1) If its labeling is false or misleading in any particular.
 - (2) If it is offered for sale under the name of another dairy product or frozen dessert.
 - (3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

(d) The Department of Agriculture and Consumer Services, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this Article or of this section have been violated, or whenever a duly authorized agent of the Department has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this Article or section not in compliance with this Article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of

the Department of Agriculture and Consumer Services, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this Article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this Article or section. In the event any "stop-sale" order shall be issued under the provisions of this Article or section, the agents, inspectors or representatives of the Department of Agriculture and Consumer Services shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this Article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1; 1997-456, s. 27; 1997-261, s. 46.)

§ 106-268.1. Penalties.

Any person, firm or corporation violating any of the provisions of this Article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a Class 2 misdemeanor. (1951, c. 1121, s. 1; 1993, c. 539, s. 756; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 30.

Board of Crop Seed Improvement.

§ 106-269. Creation and purpose.

There is hereby created a Board of Crop Seed Improvement. It shall be the duty and function of this Board, in cooperation with the Agricultural Experiment Station of North Carolina State College of Agriculture and Engineering, and the Seed Testing Division of the North Carolina Department of Agriculture and Consumer Services, to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. (1929, c. 325, s. 1; 1955, c. 330, s. 1; 1997-261, s. 109.)

§ 106-270. Board membership.

The Board of Crop Seed Improvement shall consist of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, and the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of the North Carolina Department of Agriculture and Consumer Services, and the President of the North Carolina Crop Improvement Association. (1929, c. 325, s. 2; 1955, c. 330, s. 2; 1997-261, s. 109.)

§ 106-271. Powers of Board.

The said Board shall have control, management and supervision of the production, distribution and certification of purebred crop seeds under the provisions of this Article. (1929, c. 325, s. 3.)

§ 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.)

§ 106-273. North Carolina Crop Improvement Association.

For the purpose of carrying out more fully the provisions of this Article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

§ 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.)

§ 106-275. False certification of purebred crop seeds made misdemeanor.

It shall be a Class 1 misdemeanor for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this Article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1; 1993, c. 539, s. 757; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-276. Supervision of certification of crop seeds.

Certification of crop seeds shall be subject to the supervision of the Board of Crop Seed Improvement. The North Carolina Crop Improvement Association is recognized as the official agency for seed certification. (1929, c. 325, s. 7; 1955, c. 330, s. 3.)

Article 31.

North Carolina Seed Law.

§ 106-277. Purpose.

The purpose of this Article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale or otherwise providing for planting purposes of agricultural seeds and vegetable seeds; to prevent misrepresentation thereof; and for other purposes. (1963, c. 1182; 1987 (Reg. Sess., 1988), c. 1034, s. 1; 2009-455, s. 1.)

§ 106-277.1. Short title.

This Article shall be known by the short title of "The North Carolina Seed Law of 1963." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.2. Definitions.

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

- (1) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this Article.
- (2) The term "agricultural seeds" shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.
- (2a) – (2e) Reserved.
- (2f) The term "blend" means a mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.
- (3) The term "Board" means the North Carolina Board of Agriculture as established under G.S. 106-2.
- (3a) Reserved.
- (3b) The term "brand" means an identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds.
- (3c) The term "buyer" means a person who buys agricultural or vegetable seed for the purpose of planting and growing the seed.
- (4) The terms "certified seeds," "registered seeds" or "foundation seeds" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed-certifying agency.
- (5) The term "clone" means all the individuals derived by vegetative propagation from a single, original individual.
- (6) The term "code designation" means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).
- (7) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
- (7a) The term "conditioning" means cleaning, scarifying, or blending to obtain uniform quality and other operations that would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind, or kind and variety, without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.
- (8) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

- (9) The term "dealer" or "vendor" shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.
- (9a) The term "Department" means the Department of Agriculture and Consumer Services as established in G.S. 106-2.
- (9b) The term "distribute" means to provide seed for seeding purposes to more than five persons, but shall not include seed provided for educational purposes.
- (10) The term "germination" means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.
- (11) The term "grower" shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.
- (12) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.
- (13) The term "hybrid" means the first generation seed of a cross produced by controlling cross-fertilization within prescribed limits and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second-generation or subsequent-generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names. The Board of Agriculture shall prescribe minimum limits of pollination control (percent hybridity) for each hybridized species which will qualify to be labeled "hybrid".
- (14) The term "inbred line" means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.
- (15) The term "in bulk" refers to loose seed in bins, or open containers, and not to seed in bags or packets.
- (16) The term "inert matter" means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.
- (17) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.
- (18) The term "labeling" includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.
- (19) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.
- (20) The term "mixture" means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.

- (21) The term "North Carolina seed analysis tag" means the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag.
- (22) "Noxious-weed seeds" shall be divided into two classes:
 - a. "Prohibited noxious-weed seeds" are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.
 - b. "Restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.
- (23) The term "official certifying agency" means
 - a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or
 - b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under a.
- (24) The term "origin" means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.
- (25) The term "other crop seeds" means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.
- (26) The term "person" shall include any individual, partnership, corporation, company, society or association.
- (27) Repealed by Session Laws 2009-455, s. 2, effective October 1, 2009.
- (28) The term "pure seed" means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.
- (29) The term "purity" means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.
- (30) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.
- (31) Repealed by Session Laws 2009-455, s. 2, effective October 1, 2009.
- (32) The term "seed offered for sale" means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes,

and shall be subject to the provisions of the seed law, unless clearly labeled "not for sale as seed."

- (33) The term "seizure" means a legal process carried out by court order against a definite amount of seed.
- (34) The term "stop-sale" means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.
- (35) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.
- (36) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.
- (37) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.
- (38) The term "weed seeds" means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this Article.
- (39) The term "wholesaler" shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers.
- (40), (41) Repealed by Session Laws 1998, c. 210, s. 1. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182; 1971, c. 637, s. 1; 1987 (Reg. Sess., 1988), c. 1034, ss. 2-4; 1998-210, s. 1; 2009-455, s. 2.)

§ 106-277.3. Label or tag requirements generally.

Each container of agricultural and vegetable seeds which is sold, offered or exposed for sale, or transported within or into this State for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the information required under G.S. 106-277.4 through 106-277.7, which information shall not be modified or denied in the labeling or on another label attached to the container. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106-277.4: Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1034, s. 5.

§ 106-277.5. Labels for agricultural seeds.

Agricultural seeds sold, offered or exposed for sale, transported for sale, or otherwise distributed within this State shall be labeled to show the following information:

- (1) The commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component, in excess of five percent (5%) of the whole, and the percentage by weight of each in order of its predominance. The Board of Agriculture may, pursuant to G.S. 106-277.15, require the variety to be stated on the labeling for certain kinds of agricultural

seed, and the phrase "variety not stated" shall not be used on the labeling of such seed. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label. Second generation from hybrid seeds, if sold, shall be labeled "second generation (of the parent), variety not stated." "F" designations on labels, unless used as a part of a variety name, will refer only to size and shape of corn seeds.

- (2) Lot identification.
- (3) Net weight.
- (4) Origin, if known. If the origin is unknown, the fact shall be stated.
- (5) Percentage by weight of inert matter.
- (6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as "other crop seeds") other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five percent (5%) will be considered as other crop seed.
- (7) Percentage by weight of all weed seeds, including noxious-weed seeds.
- (8) For each named agricultural seed:
 - a. Percentage of germination, exclusive of hard seed.
 - b. Percentage of hard seeds, if present.
 - c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.
- (9) The name and number per pound of each kind of restricted noxious-weed seed present.
- (10) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
- (11) Such other information as the Board shall prescribe by rule. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 3; 1987 (Reg. Sess., 1988), c. 1034, s. 6; 1995, c. 47, s. 1; 2009-455, s. 3.)

§ 106-277.6. Labels for vegetable seeds in containers of one pound or less.

Labels for vegetable seeds in containers of one pound or less shall show the following information:

- (1) Name of kind and variety of seed.
- (2) Repealed by Session Laws 2009-455, s. 4, effective October 1, 2009.
- (2a) Lot identification.
- (3) Repealed by Session Laws 2009-455, s. 4, effective October 1, 2009.
- (3a) One of the following, as applicable:
 - a. The statement "Packed for (year)" or "Sell by (year)."
 - b. The statement "Sell by (month)(year)" where the month and year in which the germination test was complete is no more than 12 months from the date of the test, exclusive of the month and year of the test.

- c. The percentage germination and the calendar month and year that the test was completed to determine the percentage, provided that the germination test was completed within 12 months, exclusive of the month and year of the test.
- (4) For seeds which germinate less than the standards last established by the Commissioner and approved by the Board of Agriculture under the Article:
 - a. Percentage of germination, exclusive of hard seed.
 - b. Percentage of hard seed, if present.
 - c. The calendar month and year the test was completed to determine such percentage.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.
 - d. The words "Below Standard" in not less than eight-point type.
- (5) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
- (6) Such other information as the Board shall prescribe by rule. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 4; 1995, c. 47, s. 2; 2009-455, s. 4.)

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

Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

- (1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.
- (2) Lot identification.
- (3) Repealed by Session Laws 2009-455, s. 5, effective October 1, 2009.
- (4) For each named vegetable seed:
 - a. The percentage of germination exclusive of hard seed.
 - b. The percentage of hard seed, if present.
 - c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.
- (5) Net weight, except when in bulk as defined in this Article.
- (6) Name and address of persons who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
- (7) No tag or label shall be required, unless requested, on seeds sold directly to and in the presence of the purchaser and taken from a bag or container properly labeled.

- (8) Such other information as the Board shall prescribe by rule. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 5; 1995, c. 47, s. 3; 2009-455, s. 5.)

§ 106-277.8. Responsibility for presence of labels.

(a) The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to any lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor, with or without endorsement, or bears his own label.

(b) The labeler of any original or unbroken lot of seed shall be responsible for the presence of and the information on all labels attached to said lot of seed at the time he sells or offers for sale such lot of seed. (1963, c. 1182.)

§ 106-277.9. Prohibitions.

It shall be unlawful for any person:

- (1) To transport, to offer for transportation, to sell, distribute, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:
 - a. Unless a seed license has been obtained in accordance with the provisions of this Article.
 - b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed (i) on agricultural seed within a nine-month period, exclusive of the calendar month in which the test was completed, (ii) on cool season lawn seeds and mixtures of cool season lawn seeds, including, but not limited to, Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bent grass, and creeping bent grass, within a 15-month period, exclusive of the calendar month in which the test was completed, and (iii) on vegetable seed within a 12-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; provided, the North Carolina Board of Agriculture may adopt rules to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.
 - c. Not labeled in accordance with the provisions of this Article or having a false or misleading labeling or claim.
 - d. Pertaining to which there has been a false or misleading advertisement.
 - e. Consisting of or containing prohibited noxious-weed seeds.
 - f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this Article.

- g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this Article.
 - h. That have been treated and not labeled as required in this Article, or treated and not conspicuously colored.
 - i. Repealed by Session Laws 2009-455, s. 6, effective October 1, 2009.
 - j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.
 - k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.
 - l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this Article.
 - m. Unless it conforms to the definition of a "lot."
 - n. Any variety, hybrid or blend of seeds not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this Article.
 - o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale or distribution of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.
 - p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this Article.
 - q. By variety name seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.
 - r. That employ a brand name on the label unless a variety or mixture of varieties is labeled as required in this Article. If a brand name other than a registered trademark is used, it must be a separate statement from the variety name or the statement of a mixture, or blend, of genetic variations.
 - s. Labeled as a "blend" unless the lot complies with the definition of "blend" in G.S. 106-277.2, and is registered with the Commissioner, as may be required in G.S. 106-277.9(1)n. Other mechanical combinations of varieties shall be labeled as a mixture according to the requirements in G.S. 106-277.5(1).
- (2) To transport, offer for transportation, sell, offer for sale, or expose for sale seeds, whole grain not for seeding purposes unless labeled "not for seeding purposes."

- (3) To detach, alter, deface, or destroy any label provided for in this Article or the rules and regulations promulgated hereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.
- (4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds or vegetable seeds.
- (5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.
- (6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to remove or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.
- (7) To use the name of the Department of Agriculture and Consumer Services or the results of tests and inspections made by the Department for advertising purposes.
- (8) To use the words "type" or "trace" in lieu of information required by G.S. 106-277.4 through 106-277.7.
- (9) To label and offer for sale seed under the scope of this Article without keeping complete records as specified in G.S. 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182; 1971, c. 637, s. 6; 1987 (Reg. Sess., 1988), c. 1034, ss. 7-9; 1997-261, s. 47; 2009-455, s. 6.)

§ 106-277.10. Exemptions.

(a) When the required analysis and other information regarding the seed is present on a seedman's label or tag which bears an official North Carolina seed stamp or is accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of G.S. 106-277.5 through 106-277.7 shall be deemed to have been complied with.

(b) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when attached to containers of seed duly certified by the said Association or when it refers to an accompanying tag which carries the same information required in G.S. 106-277.5 to 106-277.7 and when fees applicable to the North Carolina seed analysis tag have been paid to the Commissioner.

(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

- (1) Lot identification.
- (2) Origin, if known. If unknown, so stated.
- (3) Commonly accepted name of kind and variety.
- (4) Name and number per pound of noxious-weed seeds.
- (5) Percentage of germination with month and year of tests.
- (6) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(d) The provisions of G.S. 106-277.3 through 106-277.7 do not apply:

- (1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.

- (2) To seed for conditioning when consigned to, being transported to or stored in an approved conditioning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for conditioning" and provided further that other labeling or representation which may be made with respect to the unlearned or unconditioned seed shall be subject to this Article.
- (3) To seed sold by a farmer grower to a seed dealer or conditioner, or to seed in storage in or consigned to a seed-cleaning or conditioning plant; provided that any labeling or other representation which may be made with respect to the unlearned or unconditioned seed shall be subject to this Article.
- (4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, conditioning, or marketing agricultural or vegetable seeds subject to provisions of this Article.

(e) No person shall be subject to the penalties of this Article for having sold, offered or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind or variety when such seeds cannot be identified by examination thereof unless such person has failed to obtain an invoice or grower's declaration giving origin, kind and variety or to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 2009-455, ss. 7, 8.)

§ 106-277.11. Disclaimers, nonwarranties and limited warranties.

The use of a disclaimer, nonwarranty or limited warranty clause in any invoice, advertising [or] written, printed or graphic matter pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or in any proceedings for confiscation of seeds brought under the provisions of this Article or rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.12. Records.

All persons transporting or delivering for transportation, selling, offering or exposing for sale agricultural or vegetable seeds if their name appears on the label shall keep for a period of two years a file sample and a complete record of such seed, including invoices showing lot number, kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The Commissioner or the Commissioner's duly authorized agents shall have the right to inspect such records in connection with the administration of this Article at any time during customary business hours. If the records are available electronically, the electronic records shall be made available to the Commissioner or the Commissioner's authorized representative. (1945, c. 828; 1949, c. 725; 1963, c. 1182; 2021-78, s. 8(b).)

§ 106-277.13. Tolerances to be established and used in enforcement.

Due to variations which may occur between the analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this Article, except as otherwise established by appropriate rules and regulations promulgated under authority of this Article. (1963, c. 1182.)

§ 106-277.14. Administration.

The duty of enforcing this Article and its rules and regulations and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. (1963, c. 1182.)

§ 106-277.15. Rules, regulations and standards.

The Board of Agriculture, in accordance with the Administrative Procedure Act, 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 Board of Agriculture shall adopt rules, regulations and standards as follows:

- (1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this Article.
- (2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this Article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.
- (3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.
- (4) Declaring the maximum number of "restricted" noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
- (5) Declaring the minimum percentage of germination permitted for sale as "Agricultural Seeds."
- (6) Declaring germination standards for vegetable seeds.
- (7) Prescribing the form and use of tags or stamps to be used in labeling seed.
- (8) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this Article.
- (9) Establishing fees and charges for agricultural and vegetable seed testing and analysis.
- (10) Prescribing minimum hybrid percentage for labeling for each species hybridized.
- (11) Prescribing labeling and coloring requirements for treated seed.
- (12) Establishing a Tobacco Seed Committee which shall approve flue-cured tobacco varieties prior to registration with the Department.
- (13) Prescribing labeling requirements for agricultural and vegetable seed. (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; 1987 (Reg. Sess., 1988), c. 1034, s. 10; 1995, c. 47, s. 4.)

§ 106-277.16. Seed-testing facilities.

The Commissioner is authorized to establish and maintain or make provision for seed-testing facilities, to employ educationally qualified persons, to make or provide for making purity and germination tests of seeds, upon request, for farmers or seedsmen, and to prescribe rules and regulations governing such testing, and to incur such expenses as may be necessary to comply with these provisions. (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.)

§ 106-277.17. Registration and variety testing.

The Commissioner is authorized to require the registration, after field testing for performance and trueness-to-variety, of any variety, blend, or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety, blend, or hybrid or any kind of crop, by and with the advice of the Director of the North Carolina Agricultural Research Service, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (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; 1987 (Reg. Sess., 1988), c. 1034, ss. 11, 12; 1989, c. 770, s. 24.)

§ 106-277.18. Registration and licensing of dealers.

It shall be the duty of the Commissioner and he is hereby authorized to require each seed dealer selling, offering or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes, including packet or package seeds, to register with the Commissioner and to obtain a license annually. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§ 106-277.19. Revocation, suspension, or refusal of license for cause; hearing; appeal.

In accordance with Chapter 150B of the General Statutes, the Commissioner is authorized to suspend any seed license issued for a period not to exceed three years, revoke any seed license issued, or to refuse to issue a seed license to any person upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules adopted thereunder. (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; 2013-345, s. 1(a).)

§ 106-277.20. Right of entry for purposes of inspection; duty of vendors.

For the purpose of carrying out this Article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to his Article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (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.)

§ 106-277.21. Sampling, inspecting and testing; notice of violations.

It shall be the duty of the Commissioner, who may act through his authorized agents, to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, held in storage, sold, offered or exposed for sale within this State for sowing purposes at such time and place and to such extent as he may deem necessary to determine whether said seeds are in compliance with the provisions of this Article, and to notify promptly the person or persons who transported, had in his possession, sold, offered or exposed the seeds for sale of any violation. (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.)

§ 106-277.22. Stop-sale orders; penalty covering expenses; appeal.

The Commissioner is authorized to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seeds which the Commissioner, or his authorized agent, finds is in violation of any of the provisions of this Article or the rules and regulations promulgated thereunder, which order shall prohibit further sale or movement of such

seed until such officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of said seed by the enforcement officer. Any person violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed. With respect to seeds which have been denied sale as provided in this section, the owner, custodian or the person labeling such seeds shall have the right to appeal from such order to the superior court of the county in which the seeds are found, praying for judgment as to the justification of said order and for discharge of such seed from the order prohibiting the same in accordance with the findings of the court; and provided, further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this Article. (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.)

§ 106-277.23. Notice of violations; hearings, prosecutions or warnings.

It shall be the duty of the Commissioner to give notice of every violation of the provisions of this Article with respect to agricultural or vegetable seeds, or mixtures of such seeds, to the person in whose hands such seeds are found, and to send copies of such notice to the shipper of such seed and to the person whose "analysis tag or label" is attached to the container of such seeds, in which notice the Commissioner may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appear, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182; 2009-455, s. 9.)

§ 106-277.24. Penalty for violations.

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall pay a fine of not more than ten thousand dollars (\$10,000). This fine shall not apply, however, to a retailer with respect to any transaction where the seed sold by the retailer was acquired by the retailer in a sealed container or package, or the retailer did not have reasonable knowledge that the seed sold was in violation of this Article. In determining the amount of the fine, the court shall consider the retail value of the seed sold in violation of the law, and in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the court shall order the payment of restitution to any injured party for any losses incurred as a result of the unlawful sale. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182; 1993, c. 539, s. 758; 1994, Ex. Sess., c. 24, s. 14(c); 2013-345, s. 1(b).)

§ 106-277.25. Seizure and disposition of seeds violating Article.

Any lot of agricultural or vegetable seeds, mixtures of such seeds being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this Article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the seeds or mixtures of such seeds are located. In the event the court finds the seeds to be in violation of the provisions of this Article and orders the condemnation thereof,

such seeds shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, with permission to process or relabel to bring them into compliance with the provisions of this Article. (1945, c. 828; 1949, c. 725; 1963, c. 1182; 2009-455, s. 10.)

§ 106-277.26. Publication of test results and other information.

The Commissioner is authorized to publish the results of analyses, tests, examinations, studies and investigations made as authorized by this Article, together with any other information he may deem advisable. (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.)

§ 106-277.27. Cooperation with United States Department of Agriculture.

The Commissioner is authorized to cooperate with the United States Department of Agriculture in seed law enforcement and testing seed for trueness as to kind and variety. (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.)

§ 106-277.28. License and inspection fees.

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

- (1) Repealed by Session Laws 1991, c. 588, s. 1.
- (2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:
 - a. Wholesale or combined wholesale and retail seed dealer.....\$125.00
 - b. Retail seed dealer..... \$30.00.
 - c.,d. Repealed by Session Laws 2009-455, s. 11, effective October 1, 2009.
- (3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid

with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105; 1987 (Reg. Sess., 1988), c. 1034, s. 13; 1989, c. 37, s. 8; 1991, c. 98, s. 1; c. 588, s. 1; 1995, c. 47, s. 5; 1997-261, s. 48; 2005-276, s. 42.1(c); 2009-455, s. 11.)

§ 106-277.29: Repealed by Session Laws 1998-210, s. 2.

§ 106-277.30. Filing complaint; investigation; referral to Seed Board.

(a) Complaint by Buyer. – When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or as warranted, or as the result of negligence, the buyer may make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered or certified mail. A filing fee of one hundred dollars (\$100.00) shall be paid to the Department with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the Seed Board incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered or certified mail.

(b) Investigation Requested by Dealer. – Any dealer who has received notice, either orally or in writing, that a buyer believes that he or she has suffered damage due to the failure of agricultural or vegetable seed sold by the dealer to perform as labeled or as warranted, or as a result of negligence, may request an investigation by the Seed Board pursuant to G.S. 106-277.32. A filing fee of one hundred dollars (\$100.00) shall be paid to the Department by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by registered or certified mail. The buyer may file a response to the request with the Commissioner within 10 days of receipt of the request for an investigation.

(c) Referral to Seed Board. – The Commissioner shall refer the complaint or request for investigation to the Seed Board to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32. (1998-210, s. 3.)

§ 106-277.31. Notice required.

Dealers shall legibly print or type on each seed container or affix a label on each seed container a notice in the following form or using reasonably equivalent language:

"Notice of Claims Procedure for Defective Seed

North Carolina provides an opportunity for persons who believe that they have suffered damage from the failure of agriculture or vegetable seeds to perform as labeled or warranted, or as a result of negligence, to have the matter investigated and heard before a special seed board as an

alternative to filing a court action. To take advantage of this procedure, a purchaser of seed must file a complaint with the North Carolina Commissioner of Agriculture in time for the seed, crop, or plants to be inspected. Failure to follow this procedure will limit the amount of damages you may be able to recover. Please contact the Commissioner of Agriculture for information about this claims procedure." (1998-210, s. 3.)

§ 106-277.32. Seed Board created; membership; duties.

(a) The Commissioner shall appoint a Seed Board composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the Board shall serve a four-year term at the discretion of the Commissioner. The Board shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the Board. Three members of the Board shall constitute a quorum and at least three board members must vote affirmatively for the Board to take any action.

(b) A clerk shall be appointed to serve the Board. The clerk shall be an employee of the Department. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the Board as directed by the chairperson.

(c) The Department shall provide administrative support for the investigation under this section. The Board shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(d) Members of the Board appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Members of the Board who are State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-6.

(e) The Attorney General shall represent the Board in any and all legal proceedings that may arise concerning or against the Board. (1998-210, s. 3.)

§ 106-277.33. Duties of Seed Board.

(a) In conducting its investigation of claims referred by the Commissioner, the Seed Board may engage in the following activities:

- (1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.
- (2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the Board to be necessary.
- (3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the dealer.
- (4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the Board.
- (5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The Board shall keep a record of its activities and reports on file in the Department. The Department shall transmit all findings and recommendations to the buyer and to the dealer within 30 days of completion of the investigation.

(c) No investigation shall be made by less than the whole membership of the Board unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the Board in reporting its findings and making its recommendations.

(d) The report of the investigation and the recommendations of the Seed Board shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of the complaint pursuant to G.S. 106-277.30. (1998-210, s. 3.)

§ 106-277.34. Actions regarding defective seed claims; evidence.

(a) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the Seed Board. Statements of the parties and recommendations of the Seed Board as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable.

(b) In any court action where a buyer alleges that he or she suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or warranted, or as the result of negligence, and the buyer failed to make a sworn complaint against the dealer as set forth in G.S. 106-277.30, the buyer's right to recover damages shall be limited to actual expenditures paid by the buyer to other persons for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent, or other expenses incurred in connection with the cultivation of the seed alleged to be defective, less any value received by the buyer arising from the sale or transfer of any crops grown from the seed in question. (1998-210, s. 3.)

§§ 106-278 through 106-284.4. Reserved for future codification purposes.

Article 31A.

Seed Potato Law.

§§ 106-284.5 through 106-284.13: Repealed by Session Laws 1973, c. 294.

Article 31B.

Vegetable Plant Law.

§ 106-284.14. Title.

This Article shall be known as the "Vegetable Plant Law." (1959, c. 91, s. 1.)

§ 106-284.15. Purpose of Article.

The purpose of this Article is to improve vegetable production in North Carolina and to enable vegetable producers to secure vegetable plants for transplanting that are free from diseases and insects, and in order to prevent the spread of diseases and insects affecting the future stability of the vegetable industry and the general welfare of the public. (1959, c. 91, s. 2; 1973, c. 1370, s. 1.)

§ 106-284.16. Definitions.

For the purpose of this Article, the following terms shall be construed respectively to mean:

- (1) "Certified vegetable plants for transplanting" shall mean plants which have been tagged or labeled so as to indicate that such plants have been inspected by an authorized agent of an officially recognized State inspecting or certifying agency of some state, and found to conform to the appropriate standards set by the North Carolina Board of Agriculture.
- (2) "Vegetable plants" shall mean such plants as asparagus, pepper, eggplant, sweet potato, onion, cabbage and other cole crops, tomato plants, white seed potatoes and onion sets intended for transplanting purposes and such other vegetable plants intended for transplanting purposes as the North Carolina Board of Agriculture may designate by regulation in order to protect the vegetable industry.
- (3) As applied to vegetable plants "standards" include the qualities of color, freshness, firmness, strength, straightness, unbroken and undamaged condition, uniformity of size, and freedom from injurious insects, diseases, nematodes, snails, and other pests and means the standards with respect thereto as established and fixed in regulations adopted by the North Carolina Board of Agriculture. (1959, c. 91, s. 3; 1973, c. 1370, s. 2.)

§ 106-284.17. Unlawful to sell plants not up to standard and not appropriately tagged or labeled.

It shall be unlawful for any person, firm, or corporation to pack for sale, offer or expose for sale, or ship into this State any vegetable plants which do not meet the appropriate standards as set by the North Carolina Board of Agriculture and which have not been appropriately tagged or labeled as certified vegetable plants for transplanting. (1959, c. 91, s. 4; 1973, c. 1370, s. 3.)

§ 106-284.18. Rules and regulations.

The State Board of Agriculture is hereby authorized to adopt reasonable rules and regulations to carry out the intent, purposes and provisions of this Article. (1959, c. 91, s. 5; 1973, c. 1370, s. 4.)

§ 106-284.19. Inspection; interference with inspectors; "stop-sale" notice.

To enforce the provisions of this Article effectively, the Commissioner of Agriculture and his duly authorized agents are authorized to inspect vegetable plants, and may enter any place of business, warehouse, common carrier or other places where such vegetable plants are stored or being held, for the purpose of making such an inspection; and it shall be unlawful for any person, firm or corporation in custody of such vegetable plants or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections. When the Commissioner or his authorized inspectors find vegetable plants being held, offered or exposed for sale in violation of any of the provisions of this Article or any rule or regulation adopted pursuant thereto, he may issue a "stop-sale notice" to the owner or custodian of any such vegetable plants and shall tag such plants as are in violation. It shall be unlawful for anyone after notice or receipt of such "stop-sale notice" to remove such notice from plants or from any location to which attached; or to plant, sell, give away, move or exchange for transplanting purposes any plants in respect to which such notice has been issued unless and until so authorized by the Commissioner or his agent or a court of competent jurisdiction. (1959, c. 91, s. 6; 1973, c. 1370, s. 5.)

§ 106-284.20. Interference with Commissioner, etc., or other violation a misdemeanor; penalties.

If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this law or shall violate any provision of this law or any rule or regulation of the Board of Agriculture adopted pursuant to this law, he shall be guilty of a Class 1 misdemeanor. Each day's violation shall constitute a separate offense. (1959, c. 91, s. 7; 1973, c. 1370, s. 6; 1993, c. 539, s. 759; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-284.21. Authority to permit sale of substandard plants.

Notwithstanding any other provision of this Article, the Commissioner of Agriculture is authorized when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in his discretion may seem necessary, the sale of vegetable plants for transplanting purposes which do not meet the standards referred to in G.S. 106-284.16. (1959, c. 91, s. 8.)

§ 106-284.22. When Article not applicable.

The provisions of this Article shall not apply:

- (1) To the sale by a grower or retail merchant of vegetable plants grown within this State when such sale is made for home or garden or any noncommercial use; provided, however, the provisions shall apply to such sale when such plants are found to be infested with pests so that the exposure for sale or planting is deemed by the Commissioner or his agent to be a hazard to the commercial vegetable industry of North Carolina.
- (2) To the sale of vegetable plants for commercial transplanting purposes in this State when grown within this State and sold by a plant producer to a planter having personal knowledge of the conditions under which such vegetable plants were grown or produced provided that such plants are transplanted within a 30-mile radius at which they were grown; but also provided, however, the provisions shall apply to such sale when such plants are found to be infested with pests so that the exposure for sale or planting is deemed by the Commissioner or his agent to be a hazard to the commercial vegetable industry of North Carolina. (1959, c. 91, s. 9; 1973, c. 1370, s. 7.)

§ 106-284.23. Not set out.

§§ 106-284.24 through 106-284.29. Reserved for future codification purposes.

Article 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.30. Title.

This Article shall be known as the "North Carolina Commercial Feed Law of 1973." (1973, c. 771, s. 2.)

§ 106-284.31. Purpose.

The purpose of this Article is to regulate the manufacture and distribution of commercial feeds in the State of North Carolina and to protect a farmer-buyer from the manufacturer-seller of

concentrated, commercial feed who might sell substandard or mislabeled feedstuff, and not to protect from himself a farmer who mixes his own feed. (1973, c. 771, s. 1.)

§ 106-284.32. Enforcing official.

This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1973, c. 771, s. 3.)

§ 106-284.33. Definitions of words and terms.

When used in this Article:

- (1) The term "Board" means the North Carolina State Board of Agriculture.
- (2) The term "brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.
- (3) The term "canned pet food" means any commercial feed packed in cans or hermetically sealed containers, and used or intended for use as food for pets.
- (4) The term "commercial feed" means all materials, except whole unmixed seed such as corn, including physically altered entire unmixed seeds when not adulterated within the meaning of G.S. 106-284.38(1), which are distributed for use as feed or for mixing in feed; provided, that the Board by regulation may exempt from this definition, or from specific provisions of this Article, hay, straw, stover, silage, cobs, husks, hulls, unpasteurized milk, and individual chemical compounds or substances which are not intermixed or mixed with other materials, and are not adulterated within the meaning of G.S. 106-284.38(1).
- (4a) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract between that person and a manufacturer of commercial feeds whereby such commercial feed is supplied, furnished, or otherwise provided to such person by the said manufacturer and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product produced by the independent contractor.
- (5) The term "customer-formula feed" means commercial feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent with each batch moved directly from the manufacturer to the customer and not stocked or displayed in a dealer's warehouse or sales area and not resold or redistributed to any person.
- (6) The term "distribute" means to offer for sale, sell, exchange, or barter, commercial feed.
- (7) The term "distributor" means any person who distributes.
- (8) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.
- (9) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

- (10) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.
- (11) The term "labeling" means all labels and other written, printed, or graphic matter (i) upon a commercial feed or any of its containers or wrapper or (ii) accompanying such commercial feed, or advertisement, brochures, posters, television and radio announcements used in promoting the sale of such commercial feed.
- (12) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.
- (13) The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
- (14) The term "official sample" means a sample of feed taken by the Commissioner or his agent in accordance with the provisions of G.S. 106-284.42(a), (c) or (e).
- (15) The terms "percent" or "percentage" means percentage by weight, except in G.S. 106-284.42 where these terms refer to the retail value of the lot of commercial feed.
- (16) The term "permitted analytical variation" means allowance for the inherent variability in sampling and laboratory analysis in guaranteed components. Manufacturing variations and their effect on the guaranteed components are not included in such values.
- (17) The term "person" means an individual, a partnership, a corporation, an association, and any other legal entity.
- (18) The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.
- (19) The term "pet food" means any commercial feed prepared and distributed for consumption by pets.
- (20) The term "product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.
- (21) The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.
- (22) The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.
- (23) The term "ton" means a net weight of 2,000 pounds avoirdupois. (1973, c. 771, s. 4; 1975, c. 900, s. 1; c. 961, s. 1; 2008-88, s. 3.)

§ 106-284.34. Registration.

(a) No person shall manufacture or distribute a commercial feed in this State, unless he has filed with the Commissioner on forms provided by the Commissioner, his name, place of business, and location of each manufacturing facility in this State, if any, and made application to the Commissioner for a permit to report the quantity of commercial feed distributed in this State.

(b) Manufacturers of registered feeds may apply for, and the Commissioner at his discretion may issue, numbered permits authorizing manufacturers of registered feeds to purchase commercial feed as defined in G.S. 106-284.33(4), and the responsibility for the payment of the

inspection fee assessed by the provisions of this Article will be assumed by the purchaser to whom such permit has been issued. The Commissioner may at his discretion, and without notice, cancel any permit issued under the provision of this section. The use of permits issued under the provisions of this section shall be governed by rules and regulations promulgated by the Commissioner.

(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of five dollars (\$5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of twelve dollars (\$12.00) for each canned pet food shall accompany each request for registration.

(d) The Commissioner is empowered to refuse registration of any commercial feed not in compliance with the provisions of this Article and to cancel any registration subsequently found not to be in compliance with any provisions of this Article: Provided, that no registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to amend his application in order to comply with the requirements of this Article.

(e) The manufacturer of commercial feed that has not been registered and is found being distributed in the State shall pay a thirty-dollar (\$30.00) delinquent registration fee in addition to the regular registration fee. (1973, c. 771, s. 5; 1989, c. 544, s. 7; 2005-276, s. 42.1(a).)

§ 106-284.35. Labeling.

A commercial feed shall be labeled as follows:

- (1) In case of commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:
 - a. The net weight.
 - b. The product name and the brand name, if any, under which the commercial feed is distributed.
 - c. The guaranteed analysis stated in such terms as the Board by regulation determines is required to advise the users of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists.
 - d. The common or usual name of each ingredient used in the manufacture of the commercial feed: Provided, that the Board by regulation may permit the use of collective terms for a group of ingredients which perform a similar function, or the Board may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if it finds that such statement is not required in the interest of consumers.
 - e. The name and principal mailing address of the manufacturer or the person distributing the commercial feed.

- f. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the Board may require by regulations as necessary for their safe and effective use.
 - g. Such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the commercial feed.
- (2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document to be presented to the purchaser at time of delivery, bearing the following information:
- a. Name and address of the manufacturer.
 - b. Name and address of the purchaser.
 - c. Date of delivery.
 - d. The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.
 - e. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Board may require by regulation as necessary for their safe and effective use.
 - f. Such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the customer-formula feed. (1973, c. 771, s. 6.)

§ 106-284.36. Bag weights.

All commercial feed, except that in bags or packages of five pounds or less, shall be in such standard-weight bags or packages as the Board by regulation shall prescribe. (1973, c. 771, s. 7.)

§ 106-284.37. Misbranding.

A commercial feed shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular.
- (2) If it is distributed under the name of another commercial feed.
- (3) If it is not labeled as required in G.S. 106-284.35.
- (4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Board.
- (5) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. (1973, c. 771, s. 8.)

§ 106-284.38. Adulteration.

A commercial feed 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 commercial feed shall not be considered adulterated

- under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or
- b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive); or
 - c. If it is, or it bears or contains, any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act; or
 - d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug and Cosmetic Act 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 feed shall 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 feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a), of the Federal Food, Drug and Cosmetic Act.
 - e. If it is, or it bears or contains, any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug and Cosmetic Act.
- (2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.
 - (3) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.
 - (4) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the Board to assure that the drug meets the requirements of this Article as to safety and has the identity and strength and meets the quality and purity characteristics which its purports or is represented to possess. In promulgating such regulations, the Board shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this State.
 - (5) If it contains viable weed seeds in amounts exceeding the limits which the Board shall establish by rule or regulation. (1973, c. 771, s. 9.)

§ 106-284.39. Prohibited acts.

The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

- (1) The manufacture or distribution of any commercial feed that is adulterated or misbranded.
- (2) The adulteration or misbranding of any commercial feed.
- (3) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of G.S. 106-284.38(1).
- (4) The removal or disposal of a commercial feed in violation of an order under G.S. 106-284.43.
- (5) The failure or refusal to register in accordance with G.S. 106-284.34.
- (6) The violation of G.S. 106-284.44(f).
- (7) Failure to pay inspection fees and file reports as required by G.S. 106-284.40.
- (8) The use of metal fasteners as bag fasteners or for attaching labels to the containers of commercial feed. (1973, c. 771, s. 10.)

§ 106-284.40. Inspection fees and reports.

(a) An inspection fee at the rate of three cents (3¢) for each carton of 48 cans shall be paid on canned pet food distributed in this State by the person whose name appears on the label as the manufacturing distributor or guarantor subject to (b)(1), (2), (3), and (5) of this section.

(b) An inspection fee at the rate of twelve cents (12¢) per ton shall be paid on commercial feeds distributed in the State by the person whose name appears on the label of the commercial feed as the manufacturer, distributor or guarantor of the commercial feed, subject to the following:

- (1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.
- (2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.
- (3) No fee shall be paid on commercial feeds which are used as ingredients or a base for the manufacture of commercial feeds which are registered, if the fee has already been paid. If the inspection fee has already been paid on such commercial feed, the amount paid shall be deducted from the gross amount due on the total feed produced.
- (4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of forty dollars (\$40.00) shall be paid in lieu of the inspection fee specified above.
- (5) The minimum inspection fee shall be ten dollars (\$10.00) per quarter unless no feed was sold in the State during the quarter.
- (6) Manufacturers of commercial feeds may appear before the Board, and after finding there exists a contract feeder relationship between a manufacturer of commercial feeds and an independent contractor, the Board may issue annual numbered permits exempting that manufacturer of commercial feed from paying the inspection fee assessed by the provisions of this law for that feed delivered to the contract feeder. The manufacturer of ingredients who sells such ingredients to manufacturers of commercial feeds under this subdivision shall have in his possession the exemption number of the permit referred to in

G.S. 106-284.34(b) and/or the permit issued by the Board under this subdivision before the supplier may be relieved of the responsibility for payment of the inspection fee. The holder of a valid contract feeder exemption permit shall be exempt from paying the inspection fee on all ingredients purchased for its own use, provided that at least one-half of the ingredients purchased in the previous calendar year were used in feed delivered to contract feeders.

The holder of said permit may voluntarily return said permit to the Commissioner for cancellation at which time said holder may not apply for or receive another exemption permit under this subdivision for a period of 12 months. The exemption permits under this subdivision shall be renewable automatically every year by the Board without additional findings of fact unless it is brought to the Board's attention by the Commissioner or his duly designated officer or employee that there no longer exists the relationship of a contract feeder between the manufacturer of commercial feeds and an independent contractor. In the event the Commissioner or his duly designated officer or employee notifies the Board when the permit is to be automatically renewed or anytime the permit is in effect, that there no longer exists a contract feeder relationship for the permit holder, the Board shall determine the veracity of the notification and revoke said permit if the facts are found to be true by the Board.

Commercial feeds exempt from inspection fees under this subdivision shall not be subject to sampling and analysis other than as may be necessary to determine compliance with good manufacturing practice regulations pertaining to medicated animal feed and medicated feed premixes established under G.S. 106-284.38(4) of this law.

- (c) Each person who is liable for the payment of such fee shall:
- (1) File, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the number of net tons of commercial feeds and/or cases of canned pet food distributed in this State during the preceding calendar quarter, and upon filing such statements shall pay the inspection fee at the rate stated in subsections (a) and (b) of this section. Inspection fees which are due and owing and have not been remitted to the Commissioner within 15 days following the due date shall have a penalty fee of ten percent (10%) (minimum ten dollars (\$10.00)) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commissioner from taking other actions as provided in this Chapter.
 - (2) Keep such records as may be necessary or required by the Commissioner to indicate accurately the tonnage of commercial feed distributed in this State, and the Commissioner or the Commissioner's duly designated agent shall have the right to examine such records during normal business hours, to verify statements of tonnage. If the records are available electronically, the electronic records shall be made available to the Commissioner or the Commissioner's authorized representative. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor. (1973, c.

771, s. 11; 1975, c. 900, s. 2; c. 961, s. 2; 1987 (Reg. Sess., 1988), c. 1043; 1989, c. 544, s. 6; 2005-276, s. 42.1(b); 2021-78, s. 8(c).)

§ 106-284.41. Rules and regulations.

(a) The Board is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article. In the interest of uniformity the Board shall by regulation adopt, unless it determines that they are inconsistent with the provisions of this Article or are not appropriate to conditions which exist in this State, the following:

- (1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, and
- (2) Any regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act (21 U.S.C. section 301 et seq.).

(b) Before the issuance, amendment, or repeal of any rule or regulation authorized by this Article, the Board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the Board shall take appropriate action to issue the proposed rule or regulation or to amend or repeal an existing rule or regulation. The provisions of this subsection notwithstanding, if the Board pursuant to the authority of this Article, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act, any amendment or modification adopted by said Association or by the Secretary of Health, Education and Welfare in the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be deemed adopted automatically under this Article without regard to the publication of the notice required by this subsection (b), unless the Board by resolution specifically determines that said amendment or modification shall not be adopted. (1973, c. 771, s. 12; 1975, c. 19, s. 32.)

§ 106-284.42. Inspection, sampling, and analysis.

(a) For the purpose of enforcement of this Article, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the Commissioner upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized (i) to enter, during normal business hours or actual operation, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured, processed, packed, or held for distribution and take samples therefrom or to enter any vehicle being used to transport or hold such feeds and take samples therefrom; and (ii) to inspect during normal business hours or while in operation, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished or unfinished materials, containers, and labeling therein. The inspection may include the verification of such records, and production and control procedures as may be necessary to determine compliance with this Article.

(b) A separate presentation of appropriate credentials shall be given for each such inspection, but a presentation shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(c) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample(s) in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample(s) obtained.

(d) If the owner of any factory, warehouse or establishment described in subsection (a), or his agent, refuses to admit the Commissioner or his agent to inspect in accordance with subsections (a) and (b), the Commissioner or his agent is authorized to obtain without notice from any district or superior court judge within the county where the facility is located, an order directing such owner or his agent to submit the premises described in such order to inspection.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the Commissioner to the person named on the label and to the dealer. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon written request within 30 days following receipt of the analysis, the Commissioner shall furnish to the registrant a portion of the sample concerned.

(g) The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in G.S. 106-284.33, subdivision (14), and obtained and analyzed as provided for in subsections (a), (c), and (e) of this section.

(h) The Board is authorized to adopt regulations establishing permitted analytical variation providing for reasonable deviation from the guaranteed analysis.

(i) The registrant of a commercial feed found to be in significant violative deviation from the guarantee shall be subject to a penalty for this deviation.

(j) If the analysis of a sample shows a deviation from permitted analytical variation established by the Board, the registrant or other responsible person shall be penalized according to the following schedule:

Component Deviating	Method of Penalty Assessment
Crude protein.....	Three times the relative percentage * of deviation from the guarantee times the retail value of the commercial feed.
Crude fat.....	Ten percent (10%) of retail value of the lot of commercial feed.
Crude fiber.....	Ten percent (10%) of retail value of the lot of commercial feed.
Vitamins.....	Ten percent (10%) of retail value of the lot of commercial feed.
Minerals.....	Ten percent (10%) of retail value of the lot of commercial feed.
Crude protein equivalent from nonprotein nitrogen.....	Ten percent (10%) of retail value of the lot of commercial feed.
Animal drugs.....	Twenty percent (20%) of retail value of the lot of commercial feed.

Antibiotics..... Twenty percent (20%) of retail value of the lot of commercial feed.
Other analysis..... Ten percent (10%) of retail value of the lot of commercial feed.

* Example, a feed guaranteed 16.0% protein and assaying only 14.0%, will be considered as 2.0%/16.0%, or 12.5% deficient in protein. The penalty will be computed as $3 \times 0.125 \times$ retail value of the feed, or $0.375 \times$ retail value of the feed.

(k) Penalties for multiple deficiencies within a sample shall be additive; provided that in no case shall the penalty exceed the retail value of the product. The minimum penalty under any of the foregoing provisions shall be twenty-five dollars (\$25.00) or the retail value of the product whichever is smaller, regardless of the value of the deficiency.

(l) Within 60 days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed or canned pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the clear proceeds of the penalty assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, ch. 771, s. 13; 1997-261, s. 109; 1998-215, s. 11.)

§ 106-284.43. Detained commercial feeds.

(a) "Withdrawal from distribution" orders: When the Commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this Article or of any of the prescribed regulations under this Article, he may issue and enforce a written or printed "withdrawal from distribution" order, ordering the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Commissioner or a court. The Commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) "Condemnation and confiscation": Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the Commissioner to the superior court in the county in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this Article, and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this Article. All costs and expenses incurred by the Department of Agriculture and Consumer Services in any proceedings associated with such seizure and confiscation shall be paid by the claimant. (1973, c. 771, s. 14; 1997-261, s. 109.)

§ 106-284.44. Penalties; enforcement of Article; judicial review; confidentiality of information.

(a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that

each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed as requiring the Commissioner or his representative to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a withdrawal from distribution order, as a result of minor violations of the Article, or when he believes the public interest will best be served by suitable notice of warning in writing.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the Commissioner or his designated agent.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rule or regulation promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Chapter 150B of the General Statutes.

(f) Any person who uses to his own advantage, or reveals to other than the Board, or officers of the other State agencies whose requests are deemed justifiable by the Commissioner, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this Article, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a Class 2 misdemeanor; provided, that this prohibition shall not be deemed as prohibiting the Commissioner, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of the other states, who are similarly prohibited by law from revealing this information. (1973, c. 47, s. 2; c. 771, s. 15; c. 1331, s. 3; 1987, c. 827, s. 1; 1993, c. 539, ss. 760, 761; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-284.45. Cooperation with other entities.

The Commissioner may cooperate with and enter into agreements with governmental agencies of this State, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this Article. (1973, c. 771, s. 16.)

§ 106-284.46. Publication.

The Commissioner shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the State as compared with the analyses guaranteed in the registration and on the label; provided, that the information concerning production and use of commercial feed shall not disclose the operations of any person. (1973, c. 771, s. 17.)

Article 32.

Linseed Oil.

§§ 106-285 through 106-302. Repealed by Session Laws 1977, c. 42.

Article 33.

Adulterated Turpentine.

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

Article 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of livestock and poultry quarantine.

Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock and poultry from any state where there is known to prevail contagious or infectious diseases among the livestock and poultry of such state. (1915, c. 174, s. 1; C.S., s. 4871; 1969, c. 606, s. 1.)

§ 106-305. Proclamation of infected feedstuff quarantine.

Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man, livestock and poultry. (1915, c. 174, s. 2; C.S., s. 4872; 1953, c. 1328; 1969, c. 606, s. 1.)

§ 106-306. Rules to enforce quarantine.

Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock and poultry in this State. (1915, c. 174, s. 3; C.S., s. 4873; 1969, c. 606, s. 1.)

§ 106-307. Violation of proclamation or rules.

Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a Class 2 misdemeanor. (1915, c. 174, s. 4; C.S., s. 4874; 1969, c. 606, s. 1; 1993, c. 539, s. 762; 1994, Ex. Sess., c. 24, s. 14(c).)

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

The North Carolina Department of Agriculture and Consumer Services is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1; 1969, c. 606, s. 1; 1997-261, s. 49.)

§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.

(a) All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any reportable contagious or infectious disease in livestock and poultry. The Board of Agriculture shall establish by rule a list of animal diseases and conditions to be reported and the time and manner of reporting.

(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of Public Health in the Department of Health and Human Services when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever, virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act. (1943, c. 640, s. 2; 1969, c. 606, s. 1; 2002-179, s. 9; 2011-145, s. 13.3(oo).)

§ 106-307.3. Quarantine of infected or inoculated livestock.

Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease may be quarantined by the State Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or other organism are subject to quarantine at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer serum or vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3; 1969, c. 606, s. 1.)

§ 106-307.4. Quarantine of inoculated poultry.

All poultry that are inoculated with a product containing a living virus or other organism capable of causing disease shall be quarantined at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture. Provided nothing herein contained shall be construed as preventing anyone entitled to administer vaccines under existing laws from continuing to administer same. (1969, c. 606, s. 1.)

§ 106-307.5. Livestock and poultry brought into State.

All livestock and poultry transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4; 1969, c. 606, s. 1.)

§ 106-307.6. Violation made misdemeanor.

Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-307.1 to 106-307.5 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a Class 2 misdemeanor. (1943, c. 640, s. 6; 1969, c. 606, s. 1; 1993, c. 539, s. 763; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-307.7. Diseased livestock running at large.

Whenever the State Veterinarian is informed or reasonably believes that certain livestock is infected with or has been exposed to any contagious or infectious disease, that such livestock is running at large and that such livestock cannot be captured with the exercise of reasonable diligence, the State Veterinarian shall have authority to direct the appropriate sheriff or other

proper officer to destroy such livestock in a reasonable manner and such sheriff or other officer shall make diligent effort to destroy such livestock. (1971, c. 676.)

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ 106-308. Appropriation to combat animal and fowl diseases.

If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious disease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture and Consumer Services has no funds available to immediately meet the situation in cooperation with the United States Department of Agriculture, the Director of the Budget, upon approval of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture and Consumer Services, to be used by the North Carolina Department of Agriculture and Consumer Services in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of Part 4 of Article 34 of Chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation be spent for the purposes set forth in this section unless the funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; C.S., s. 4875; 1951, c. 799; 1997-261, s. 109.)

§ 106-309. Disposition of surplus funds.

If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the State Treasurer shall return such part of the appropriation as is not expended to the general fund, and the Commissioner of Agriculture shall furnish the Governor an itemized statement of the money expended, and all moneys set aside out of the State funds and used for the purpose of eradicating said disease under the provisions of this Article shall be paid back to the State funds by the Department of Agriculture and Consumer Services out of the first funds received by said agricultural Department available for such purpose. (1915, c. 160, s. 2; C.S., s. 4876; 1997-261, s. 109.)

Part 3. Hog Cholera

§ 106-310. Burial of hogs dying natural death required.

It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within 12 hours after

the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a Class 3 misdemeanor, and shall be fined not less than five dollars (\$5.00) nor more than ten dollars (\$10.00) for each offense, at the discretion of the court. (1915, c. 225; C.S., s. 4877; 1993, c. 539, s. 764; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-311. Hogs affected with cholera to be segregated and confined.

If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them so that they shall not have access to any ditch, canal, branch, creek, river or other watercourse which passes beyond the premises of the owners of such swine, he shall be guilty of a Class 3 misdemeanor. (1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1899, c. 47; 1903, c. 106; Rev., s. 3297; 1913, c. 120; C.S., s. 4490; 1993, c. 539, s. 765; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-312. Shipping hogs from cholera-infected territory.

It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a Class 1 misdemeanor. (1917, c. 203; C.S., s. 4491; 1993, c. 539, s. 766; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-313. Price of serum to be fixed.

The Department of Agriculture and Consumer Services shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C.S., s. 4878; 1997-261, s. 50.)

§ 106-314. Manufacture and use of serum and virus restricted.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture and Consumer Services, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture and Consumer Services or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be cancelled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a Class 1 misdemeanor. (1915,

c. 88; 1919, c. 125, ss. 1, 2, 3; C.S., s. 4879; 1959, c. 576, s. 1; 1993, c. 539, s. 767; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

§ 106-315. Written permit from State Veterinarian for sale, use or distribution of hog-cholera virus, etc.

No hog-cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the State unless permission has been given in writing by the State Veterinarian for such distribution, sale, or use, said permission to be cancelled by the State Veterinarian when he deems same necessary. (1939, c. 360, s. 5; 1959, c. 576, s. 2.)

§ 106-316. Counties authorized to purchase and supply serum.

If the county commissioners of any county in the State deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture and Consumer Services sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C.S., s. 4881; 1997-261, s. 109.)

§ 106-316.1. Purpose of §§ 106-316.1 to 106-316.5.

It is the purpose and intent of G.S. 106-316.1 to 106-316.5 to safeguard the swine industry in North Carolina through a program designed to prevent the spread of hog cholera by prohibiting and restricting the use of virulent hog-cholera virus; to provide for the use of modified live virus hog-cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture; to empower the State Board of Agriculture to establish rules and regulations and the Commissioner of Agriculture to establish emergency rules and regulations governing the movement of hogs into the State from other states and within the State; to establish rules and regulations designating the minimum dosage of anti-hog-cholera serum and antibody concentrate that shall be used in combination with modified live-virus hog-cholera vaccines on swine vaccinated at public livestock markets and other places; and to establish such other rules and regulations and emergency rules and regulations as may be necessary for carrying out the purposes of G.S. 106-316.1 to 106-316.5. (1955, c. 824, s. 1; 1959, c. 576, s. 3.)

§ 106-316.2. Use of virulent hog-cholera virus prohibited without permit; virulent hog-cholera virus defined; use of modified live virus vaccines.

Notwithstanding any other provision of the law, either general, public-local, special or private, and except as herein provided, the possession, sale and use of virulent hog-cholera virus in North Carolina is hereby prohibited. Virulent hog-cholera virus referred to in this section means any unattended hog-cholera virus collected directly or indirectly from blood or other tissues of swine infected with hog cholera which has not been licensed as a modified live virus hog-cholera vaccine.

The State Veterinarian may issue a permit authorizing the sale, possession and use of virulent hog-cholera virus only for the purpose of laboratory diagnosis; official research programs; production of anti-hog-cholera serum, antibody concentrate, modified live virus, killed virus vaccine, and similar biological products; and following a declaration that a state of emergency exists in a designated quarantined hog-cholera area or areas within the State by the Commissioner of Agriculture of North Carolina. The use of virulent hog-cholera virus during a declared state of emergency shall be under the direct supervision of the State Veterinarian or his authorized representative. Modified live-virus hog-cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture may be sold and used in compliance with the General Statutes of North Carolina and the rules, regulations, definitions and standards adopted by the North Carolina Board of Agriculture and the emergency rules and regulations established by the Commissioner of Agriculture. (1955, c. 824, s. 2; 1959, c. 576, s. 4.)

§ 106-316.3. Unlawful to import hogs inoculated with virulent virus; exceptions for immediate slaughter; health certificate and permit required.

It shall be unlawful to bring hogs into North Carolina that have been inoculated with virulent hog-cholera virus less than 30 days prior to the date of entry, except for immediate slaughter, and in addition thereto the transportation or importation of such hogs that have been inoculated with virulent hog-cholera virus must be accompanied by the health certificate and permit as required by the rules and regulations of the North Carolina Board of Agriculture or emergency rules and regulations of the North Carolina Commissioner of Agriculture. The provisions of this section shall not be construed to be in conflict with or to repeal any provisions of G.S. 106-317 through 106-322 or any other statute or rule or regulation prohibiting, restricting or controlling the interstate movement of hogs for other reasons. (1955, c. 824, s. 3; 1959, c. 576, s. 5.)

§ 106-316.4. Penalties for violation of §§ 106-316.1 to 106-316.5.

Any person, firm or corporation violating the provisions of G.S. 106-316.1 to 106-316.5 shall be guilty of a Class 1 misdemeanor. (1955, c. 824, s. 4; 1993, c. 539, s. 768; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-316.5. Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-317. Regulation of the transportation or importation of hogs and other livestock into State.

To prevent the spread of hog cholera, vesicular exanthema, vesicular stomatitis, foot-and-mouth disease, or any other contagious, infectious and communicable swine disease in North Carolina, the North Carolina Board of Agriculture is authorized and empowered to promulgate rules and regulations governing the transportation and importation of swine into North Carolina from any other state or territory: Provided, that following a proclamation by the Secretary of Agriculture of the United States and the Commissioner of Agriculture of North Carolina that a state of emergency exists, arising from the existence of a dangerous contagious and infectious disease of livestock which threatens the livestock industry of the country, the North Carolina Commissioner of Agriculture is empowered and authorized to immediately promulgate emergency rules and regulations governing the movement of swine and other livestock within the State and prohibiting, restricting and/or controlling the transportation and importation of swine and other

livestock into North Carolina for the duration of the emergency. The emergency rules and regulations promulgated by the North Carolina Commissioner of Agriculture shall be subject to approval, disapproval or change at the next regular or special meeting of the North Carolina Board of Agriculture. The North Carolina Board of Agriculture under the authority of this section may by regulation establish a system of health certificates and permits for the better protection of the swine and livestock of this State. (1941, c. 373, s. 1; 1955, c. 424, s. 1.)

§ 106-318. Issuance of health certificates for swine and livestock; inspection.

Such health certificates that may be required under the rules and regulations by the Board of Agriculture or the emergency rules and regulations of the Commissioner of Agriculture shall be issued by a State, federal or duly licensed veterinarian in the state of origin certifying that the swine or other livestock transported and imported are healthy and not infected with or exposed to a contagious, infectious or communicable swine or other livestock disease, and all permits required under such rules and regulations shall be in possession of the owner or agent in charge, at all times until delivery of such swine or other livestock, and upon request, the owner or agent in charge shall produce said required certificate and permit for inspection by any police or peace officer or inspection agent of this State or any county thereof. The burden shall be on the person transporting said swine or other livestock to prove the origin, identity and destination of such swine and other livestock. (1941, c. 373, s. 2; 1955, c. 424, s. 2.)

§ 106-319. Burial of hogs and other livestock dying in transit.

It shall be the duty of any owner or agent having in charge any swine or other livestock imported or transported into this State who shall, before delivery lose a hog or other livestock from natural or unnatural death to have the same delivered to a rendering plant or buried in the area to a depth of at least two feet within 12 hours after death of said swine or other livestock. (1941, c. 373, s. 3; 1955, c. 424, s. 3.)

§ 106-320. Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-321. Penalties for violation.

Any person, firm or corporation who shall violate any provision set forth in this Article or any rule or regulation duly established by the State Board of Agriculture or emergency rules and regulations established by the Commissioner of Agriculture shall be guilty of a Class 1 misdemeanor. (1941, c. 373, s. 5; 1955, c. 424, s. 4; 1993, c. 539, s. 769; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-322. Effect of §§ 106-317 to 106-322.

Sections 106-317 to 106-322 shall not repeal Article 34, Chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

§ 106-322.1. State-federal hog-cholera cooperative agreements; establishment of hog-cholera eradication areas.

The Commissioner of Agriculture is authorized to enter into cooperative State-federal agreements with the United States Department of Agriculture for the purpose of State-federal programs for the control and eradication of hog cholera. The Commissioner of Agriculture may

designate individual counties or two or more counties as hog-cholera eradication areas. (1963, c. 1084, s. 1.)

§ 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments.

If it appears in the judgment of the State Veterinarian to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with or exposed to such disease, the State Veterinarian is authorized to order said swine destroyed or slaughtered, notwithstanding the wishes of the owners of said swine, provided that if the owner contests the diagnosis of hog cholera he shall be entitled to a review of the case by a licensed practicing veterinarian, the State Veterinarian, or his authorized representative, and the federal inspector in charge, or his authorized representative, to determine that a diagnosis of hog cholera was arrived at by the use of accepted, standard diagnostic techniques. The State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one half of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feedlot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twenty-five dollars (\$25.00) for any grade swine nor more than one hundred dollars (\$100.00) for any purebred swine and subject to available State funds. The procedure for appraisal, disposal and salvage of slaughtered or destroyed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals provided, however, that the appraisal may be made by the owner, or his representative, and the State Veterinarian, or his authorized representative, when agreement on the appraised value of the swine can be made; provided, further, that swine which entered the State 30 days or more before developing symptoms of hog cholera may be appraised in the same manner as swine which originate in North Carolina.

For the purposes of this section, "purebred swine" shall mean any swine upon which a certificate of pure breeding has been issued by a purebred swine association, or swine not more than 12 months of age eligible to receive such a certificate. (1963, c. 1084, s. 1; 1967, c. 105; 1969, c. 525, ss. 1, 2.)

§ 106-322.3. When indemnity payments not to be made.

No payments shall be made for any swine slaughtered in the following cases:

- (1) If the owner does not clean up and disinfect premises as directed by an inspector of the Animal Health Division, Agricultural Research Service, United States Department of Agriculture or the State Veterinarian or his authorized representative;
- (2) Where the owner has not complied with the livestock disease control laws and regulations applicable to hog cholera;
- (3) For swine in a herd in which hog-cholera vaccine has been used illegally on one or more animals in the herd;
- (4) Swine involved in an outbreak in which the existence of hog cholera has not been confirmed by the State Veterinarian or his authorized representative;
- (5) Swine belonging to the United States or the State of North Carolina;

- (6) Swine brought into the State in violation of State laws or regulations;
- (7) Swine which the claimant knew to be affected with hog cholera, or had notice thereof, at the time they came into his possession;
- (8) Swine which have not been within the State of North Carolina for at least 30 days prior to discovery of the disease;
- (9) Where the owner does not use reasonable care in protecting swine from exposure to hog cholera;
- (10) Where the owner has failed to submit the reports required by the United States Department of Agriculture and the North Carolina Department of Agriculture and Consumer Services for animals on which indemnity is paid under Article 34.
- (11) Swine purchased by a buying station for slaughter which are not slaughtered within 10 days of purchase. (1969, c. 525, s. 21/2; 1997-261, s. 51.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease; purchase by State of animals exposed to certain diseases.

If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and paratuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and paratuberculosis to pay one third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twenty-five dollars (\$25.00) for any grade animal nor more than one hundred dollars (\$100.00) for any purebred animal; provided further, that the State indemnity shall not be in excess of the indemnity payments made by the federal government. In the case of horses or mules destroyed for glanders, to pay one half of the appraised value, said half not to exceed one hundred dollars (\$100.00).

The State Veterinarian is also authorized, in his discretion, and subject to the maximum payment hereinabove provided, to purchase in the name of the State, cattle which have been exposed to Bang's disease, tuberculosis or paratuberculosis and horses and mules which have been exposed to glanders. (1919, c. 62, s. 1; C.S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2; 1969, c. 525, s. 3; 1973, c. 1122.)

§ 106-324. Appraisal of cattle affected with Bang's disease and tuberculosis.

Cattle affected with Bang's disease and tuberculosis and paratuberculosis shall be appraised by three men – one to be chosen by the owner, one by the United States Bureau of Animal Industry, and one by the State Veterinarian. If the United States Bureau of Animal Industry is not represented, then the appraisers shall be chosen, one by the owner, one by the State Veterinarian, the third by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; C.S., s. 4883; 1929, c. 107; 1939, c. 272, s. 1.)

§ 106-325. Appraisal of animals affected with glanders; report.

Animals affected with glanders shall be appraised by three men – one to be chosen by the owner, one to be chosen by the State Veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms

furnished by the State Veterinarian, and a copy sent to the State Veterinarian at once. (1919, c. 62, s. 3; C.S., s. 4884.)

§ 106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to State Veterinarian; contents.

Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the State Veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the State Veterinarian: Provided, that the State Veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States Department of Agriculture. (1919, c. 62, s. 4; C.S., s. 4885; 1939, c. 272, ss. 1, 3.)

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis.

Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the State Veterinarian to be marketed, shall market the cattle within 30 days and shall obtain from the purchaser a report in triplicate. One copy to be sent by the State Veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; C.S., s. 4886; 1939, c. 272, s. 1.)

§ 106-328. Report on salvage.

When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the State Veterinarian, in triplicate shall be made, signed by the owner and the United States Bureau of Animal Industry or State inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C.S., s. 4887.)

§ 106-329. Compensation when killing ordered.

Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the State Veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the State Veterinarian. (1919, c. 62, s. 7; C.S., s. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens.

When animals have been destroyed pursuant to this Article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C.S., s. 4889.)

§ 106-331. State not to pay for feed of animals ordered killed.

Expense for the care and feeding of animals held for slaughter shall not be paid by the State. (1919, c. 62, s. 9; C.S., s. 4890.)

§ 106-332. Disinfection of stockyards by owners.

Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States Bureau of Animal Industry or State Veterinarian. (1919, c. 62, s. 10; C.S., s. 4891.)

§ 106-333. Payments made only on certain conditions.

No payments shall be made for any animal slaughtered in the following cases:

- (1) If the owner does not disinfect premises, etc., as directed by an inspector of the United States Bureau of Animal Industry or the State Veterinarian.
- (2) For any animals destroyed where the owner has not complied with all lawful quarantine regulations.
- (3) Animals reacting to a test not approved by the State Veterinarian.
- (4) Animals belonging to the United States.
- (5) Animals brought into the State in violation of the State laws and regulations.
- (6) Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.
- (7) Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the State.
- (8) Animals which have not been within the State of North Carolina for at least 120 days prior to the discovery of the disease.
- (9) Where owner does not use reasonable care in protecting animals from disease.
- (10) Where owner has failed to submit the necessary reports as required by this Article.
- (11) Any unregistered bull. (1919, c. 62, s. 11; C.S., s. 4892; 1939, c. 272, s. 4.)

§ 106-334. Owner's claim for indemnity supported by reports.

The owner must present his claim for indemnity to the State Veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the State or United States Bureau of Animal Industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; C.S., s. 4893; 1939, c. 272, s. 1.)

§ 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.)

Part 5. Tuberculosis.

§ 106-336. Animals reacting to tuberculin test.

All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C.S., s. 4895(a).)

§ 106-337. Animals to be branded.

All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T," not less than two inches high, and promptly report the same to the State Veterinarian. (1921, c. 177, s. 2; C.S., s. 4895(b).)

§ 106-338. Quarantine; removal or sale; sale and use of milk.

The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to the other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C.S., s. 4895(c).)

§ 106-339. Seller liable in civil action.

Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C.S., s. 4895(d).)

§ 106-340. Responsibility of owner of premises where sale is made.

When cattle are sold or otherwise disposed of in this State by a nonresident of this State, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the Department of Agriculture and Consumer Services. (1921, c. 177, s. 5; C.S., s. 4895(e); 1997-261, s. 109.)

§ 106-341. Sale of tuberculin.

No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C.S., s. 4895(f).)

§ 106-342. Notice to owner of suspected animals; quarantine.

When the State Veterinarian receives information, or has reason to believe, that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within 10 days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed

from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with, and the quarantine canceled by the State Veterinarian. (1921, c. 177, s. 7; C.S., s. 4895(g).)

§ 106-343. Appropriations by counties; elections.

The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the state Department of Agriculture and Consumer Services and Federal Department of Agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in 10 days after said appropriation is voted, one fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under G.S. 163-287. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and cooperative tuberculosis eradication shall be taken up with the state Department of Agriculture and Consumer Services and Federal Department of Agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C.S., s. 4895(h); 1997-261, s. 109; 2013-381, s. 10.15; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 106-344. Petition for election if commissioners refuse cooperation; order; effect.

If the board of commissioners of any county should exercise their discretion and refuse to cooperate as set out in G.S. 106-343, then if a petition is presented to said board by one fifth of the qualified voters of the county requesting that an election be held as provided in G.S. 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall order said election to be held in the way provided in G.S. 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall cooperate with the State and federal governments as herein provided. (1921, c. 177, s. 9; C.S., s. 4895(i).)

§ 106-345. Importation of cattle.

Whenever a county board shall cooperate with the State and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C.S., s. 4895(j).)

§ 106-346. Amount of appropriation.

When cooperative tuberculosis eradication shall be taken up in any county as provided for in G.S. 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one half of the expense of said cooperative tuberculosis eradication. (1921, c. 177, s. 11; C.S., s. 4895(k).)

§ 106-347. Qualified veterinarian.

The words "qualified veterinarian" which appear in G.S. 106-336 to 106-350 shall be construed to mean a veterinarian approved by the State Veterinarian and the chief of the United States Bureau

of Animal Industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C.S., s. 4895(l).)

§ 106-348. 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 control and eradicate tuberculosis. (1921, c. 177, s. 13; C.S., s. 4895(m).)

§ 106-349. Violation of law a misdemeanor.

Any person or persons who shall violate any provision set forth in G.S. 106-336 to 106-350, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a Class 1 misdemeanor. (1921, c. 177, s. 14; C.S., s. 4895(n); 1993, c. 539, s. 770; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-350. Sale of tubercular animal a felony.

Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in G.S. 106-338 shall be guilty of a Class I felony. (1921, c. 177, s. 15; C.S., s. 4895(o); 1993, c. 539, s. 1295; 1994, Ex. Sess., c. 24, s. 14(c).)

Part 6. Cattle Tick.

§ 106-351. Systematic dipping of cattle or horses.

Systematic dipping of all cattle or horses infested with or exposed to the cattle tick (*Margaropus annulatus*) shall be taken up in all counties or portions of counties that shall at any time be found partially or completely infested with the cattle tick (*Margaropus annulatus*) under the direction of the State Veterinarian acting under the authority as hereinafter provided in G.S. 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the State Board of Agriculture not in conflict with G.S. 106-351 to 106-363. (1923, c. 146, s. 1; C.S., s. 4895(p).)

§ 106-352. Counties not embraced in quarantine zones.

If it shall be determined by the State Veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (*Margaropus annulatus*), the county commissioners of said counties which are partially or completely infested with the cattle tick (*Margaropus annulatus*) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (*Margaropus annulatus*) is completely eradicated and notice in writing of same is given by the State Veterinarian. (1923, c. 146, s. 3; C.S., s. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost.

The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (*Margaropus annulatus*) is completely eradicated and notice in writing of same is given by the State

Veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of G.S. 106-351 to 106-363, except G.S. 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C.S., s. 4895(s).)

§ 106-354. Local State inspectors; commissioned as quarantine inspectors; salaries, etc.

The State Veterinarian shall appoint the necessary number of local State inspectors to assist in systematic tick eradication, who shall be commissioned by the Commissioner of Agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the service of any of said inspectors is not satisfactory to the State Veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; C.S., s. 4895(t); 1925, c. 275, s. 6.)

§ 106-355. Enforcement of compliance with law.

If the county commissioners shall fail, refuse or neglect to comply with the provisions of G.S. 106-351 to 106-363, the State Veterinarian shall apply to any court of competent jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of G.S. 106-351 to 106-363. (1923, c. 146, s. 6; C.S., s. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period.

Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every 14 days in a vat properly charged with arsenical solution as recommended by the United States Bureau of Animal Industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (*Margaropus annulatus*) in such county or counties. (1923, c. 146, s. 7; C.S., s. 4895(v).)

§ 106-357. Service of notice.

Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C.S., s. 4895(w).)

§ 106-358. Cattle placed in quarantine; dipping at expense of owner.

Cattle, horses or mules infested with or exposed to the cattle tick (*Margaropus annulatus*) the owner or owners of which, after five days' written notice from a quarantine inspector of such animals as is provided for in G.S. 106-357, shall fail or refuse to dip such animals regularly every 14 days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C.S., s. 4895(x).)

§ 106-359. Expense of dipping as lien on animals; enforcement of lien.

Any expense incurred in the enforcement of G.S. 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff of the county after 20 days' advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick-eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents (\$1.50) in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within 30 days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within 12 months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C.S., s. 4895(y).)

§ 106-360. Duty of sheriff.

It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of G.S. 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture and Consumer Services. If the sheriff of any county shall neglect, fail or refuse to render his assistance when so required, he shall be guilty of a Class 1 misdemeanor. (1923, c. 146, s. 11; C.S., s. 4895(z); 1993, c. 539, s. 771; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

§ 106-361. 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 that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C.S., s. 4895(aa).)

§ 106-362. Penalty for violation.

Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-351 to 106-363 or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provision of G.S. 106-351 to 106-363 shall be guilty of a Class 1 misdemeanor. (1923, c. 146, s. 13; C.S., s. 4895(bb); 1993, c. 539, s. 772; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-363. Damaging dipping vats a felony.

Any person or persons who shall willfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a Class H felony. (1923, c. 146, s. 14; C.S., s. 4895(cc); 1993, c. 539, s. 1296; 1994, Ex. Sess., c. 24, s. 14(c).)

Part 7. Rabies.

§§ 106-364 through 106-387: Repealed by Session Laws 1983, c. 891, s. 8.

Part 8. Brucellosis (Bang's Disease).

§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.

It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture and Consumer Services. (1937, c. 175, s. 1; 1967, c. 511; 1997-261, s. 109.)

§ 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture.

"Brucellosis" shall mean the disease wherein an animal is infected with *Brucella* organisms (including *Brucella Abortus*, *B. Melitensis* and *B. Suis*), irrespective of the occurrence or absence of abortion or other symptoms. An animal shall be declared affected with brucellosis if it is classified as a reactor to a serological test for the disease, or if the *Brucella* organism has been found in the body, its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves in accordance with the recommendations of the Brucellosis Committee of the United States Livestock Sanitary Association, and approved by the United States Department of Agriculture, when in his opinion vaccination is necessary for the control and eradication of brucellosis. Vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture. Above the ages designated by regulation of the Board of Agriculture, all such vaccinates classified as reactors on an official test for brucellosis, shall be considered as affected with brucellosis and shall be branded with the letter "B" in accordance with G.S. 106-390. It shall be unlawful to sell, offer for sale, distribute, or use brucellosis vaccine or any product containing live *Brucella* organisms, except as provided for in regulations adopted by the Board of Agriculture.

The control and eradication of brucellosis in the herds of North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of brucellosis. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119; 1967, c. 511.)

§ 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.

All blood samples for the brucellosis test shall be drawn by persons whose qualifications are set by regulation of the Board of Agriculture. Animals from which blood is collected for a brucellosis test shall be identified by numbered ear tag, tattoo, or in some other manner approved by the Commissioner of Agriculture. It shall be the duty of the person who collects the blood sample, or other designated authorized person, to brand all cattle affected with brucellosis with the letter "B" on the left hip or jaw, not less than three or more than four inches high, tag such animals with an approved brucellosis reactor ear tag, and report the same to the State Veterinarian. It shall be the duty of the person owning said cattle at the time of said testing to assist with and cooperate with the person testing said cattle. Cattle affected with brucellosis shall be quarantined and slaughtered at a State or federally inspected slaughter plant within 10 days after branding and tagging; provided the State Veterinarian, in his discretion, may grant an extension of time for said slaughter not to exceed

30 days; and provided further that the Commissioner of Agriculture may allow a branded and tagged animal having unusual breeding value to be held for a period of time determined by him under conditions of isolation and quarantine prescribed by the State Veterinarian. Animals believed by the State Veterinarian or his authorized representative to have been exposed to brucellosis, or animals classified as suspects, shall be quarantined on the owner's premises or at such other place as is mutually agreeable to the owner and the State Veterinarian until the quarantine is removed in accordance with law or until the animal is disposed of in accordance with law. No animal affected with, or exposed to, brucellosis shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same made to the State Veterinarian.

All cattle, swine, sheep, goats or other animals subject to infection by *Brucella* organisms, sold, or offered at public sale, except for immediate slaughter, shall be subject to test requirements established by the Board of Agriculture.

No ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for the purpose of brucellosis testing, including testing at slaughter plants, shall be removed from the animal without authorization from the State Veterinarian or his authorized representative. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489; 1967, c. 511; 1969, c. 465.)

§ 106-391. Civil liability of vendors.

Any person or persons who knowingly sells, or otherwise disposes of, to another, an animal affected with brucellosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4; 1967, c. 511.)

§ 106-392. Sales by nonresidents.

When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of G.S. 106-388 to 106-398 and the regulations of the Department of Agriculture and Consumer Services. (1937, c. 175, s. 5; 1967, c. 511; 1997-261, s. 109.)

§ 106-393. Duties of State Veterinarian; quarantine of animals; required testing.

When the State Veterinarian receives information, or has reasonable grounds to believe, that brucellosis exists in any animal, or animals, or that it has been exposed to the disease, he shall promptly cause said animal, or animals, to be quarantined on the premises of owner or such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. Said animals shall not be removed from premises where quarantined until quarantine has been released by State Veterinarian or his authorized representative. A permit to move such infected or exposed animals to immediate slaughter may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations to provide for compulsory testing of animals for brucellosis. (1937, c. 175, s. 6; 1967, c. 511.)

§ 106-394. Cooperation of county boards of commissioners.

The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their

county as will enable them to cooperate effectively with the State and United States Departments of Agriculture in the eradication of brucellosis in their respective counties. (1937, c. 175, s. 7; 1967, c. 511.)

§ 106-395. Compulsory testing.

Whenever a county board of commissioners shall cooperate with the State and the United States governments, as provided for in G.S. 106-388 to 106-398, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle. (1937, c. 175, s. 8; 1967, c. 511.)

§ 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.)

§ 106-397. Violation made misdemeanor.

Any person or persons who shall violate any provision set forth in G.S. 106-388 to 106-398, or any rule or regulation duly established pursuant to this Article by the State Board of Agriculture or any inspector who shall willfully fail to comply with any provisions of G.S. 106-388 to 106-398, shall be guilty of a Class 1 misdemeanor. (1937, c. 175, s. 11; 1967, c. 511; 1993, c. 539, s. 773; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-398. Punishment for sale of animals known to be infected, or under quarantine.

Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in G.S. 106-388 to 106-398, shall be guilty of a Class 1 misdemeanor. (1937, c. 175, s. 12; 1967, c. 511; 1993, c. 539, s. 774; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-399. Repealed by Session Laws 1967, c. 511.

§§ 106-399.1 through 106-399.3. Reserved for future codification purposes.

Part 9. Control of Livestock Diseases.

§ 106-399.4. Imminent threat of contagious animal disease; emergency measures and procedures.

(a) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products, the State Veterinarian or an authorized representative may develop and implement any emergency measures and procedures that the State Veterinarian determines necessary to prevent and control the animal disease. Any emergency measure or procedure relating

to composting of dead domesticated animals pursuant to this Part shall be deemed to be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Department of Environmental Quality to issue individual permits.

(b) Written notice of emergency procedures and measures implemented under this section, including an identification of the disease threat and a description of any potentially infected area and animal, shall be mailed or delivered to news media, farm organizations, agriculture agencies, and any other interested or affected parties as determined by the State Veterinarian. Such emergency procedures and measures may include, but are not limited to, restrictions on the transportation of any potentially infected animals, restrictions on the transportation of agriculture products and other commodities into and out of potentially infected areas, restrictions on access to potentially infected areas, quarantines under G.S. 106-401(a), emergency disinfectant and other control measures at all portals of entry into the State, including airports, ports, and other transportation corridors, and any other measures necessary to prevent and control the threat of disease infection.

(c) All State agencies and political subdivisions of the State shall cooperate with the implementation of the emergency procedures and measures developed under this section. All State agencies and political subdivisions of the State shall comply with the emergency procedures and measures developed under this section.

(d) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products, the State Veterinarian or an authorized representative may enter any property in the State to examine any animal that the State Veterinarian has reasonable grounds to believe is infected with or exposed to a contagious animal disease. The owner or operator of the premises on which the animal is located shall permit entry on the premises by the State Veterinarian or an authorized representative and shall cooperate with the State Veterinarian or an authorized representative. The provisions of G.S. 106-401(a) with respect to obtaining an emergency order do not apply to this subsection. (2001-12, s. 1; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1; 2015-241, s. 14.30(c); 2015-263, s. 33(a).)

§ 106-399.5. Warrantless inspections.

When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products, the State Veterinarian or an authorized representative may stop and inspect without a warrant any individual or any motor vehicle on a public or private road that is moving:

- (1) Into the State from any other country, to determine whether the individual or motor vehicle is carrying any animal or any article that is capable of introducing or spreading the animal disease.
- (2) In interstate commerce, upon probable cause to believe that the individual or motor vehicle is carrying any animal or any article that is capable of introducing or spreading the animal disease.

- (3) In intrastate commerce from any other portion of the State or from any premises or area quarantined under G.S. 106-401, upon probable cause to believe that the individual or motor vehicle is carrying any animal or any article that is capable of introducing or spreading the animal disease. (2001-12, s. 1; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-400. Sale or transportation of animals affected with disease prohibited.

No person shall sell, trade, offer for sale or trade, or transport by motor vehicle on any public road or other public place within the State any animal affected with a contagious animal disease, unless permitted by the State Veterinarian in writing and in accordance with the provisions of the permit. The State Veterinarian or an authorized representative may examine any animal that is being transported or moved, sold, traded, or offered for sale or trade on any public road or other public place within the State for the purpose of determining if the animal is affected with a contagious animal disease or is being transported or offered for sale or trade in violation of this Part. If the animal is found to be diseased or is being moved, sold, offered for sale or trade in violation of this Part, it shall be placed under quarantine under G.S. 106-401 in a place to be determined by the State Veterinarian or an authorized representative. Any animal shipped or otherwise moved into this State in violation of federal laws or regulations shall be handled in accordance with the provisions of this Part. (1939, c. 360, s. 1; 2001-12, s. 5; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 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 an authorized 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 may quarantine swine that have not been properly tested. (1987, c. 793, s. 1; 2001-12, s. 6; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-401. State Veterinarian authorized to quarantine.

(a) The State Veterinarian or an authorized representative may enter any property in the State or stop any motor vehicle on a public or private road to examine any animal that the State Veterinarian has reasonable grounds to believe is affected with or exposed to a contagious animal disease. If the person refuses to consent to the entry and examination after the State Veterinarian or an authorized representative has notified, in writing, the owner or person in whose custody the animal is found, of the intention to enter the property and conduct the examination, the State Veterinarian or an authorized representative may petition the district court in the county where the animal is found for an emergency order authorizing the entry and examination. The State Veterinarian or an authorized representative may quarantine any animal affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and shall give public notice of the quarantine by posting or placarding with a suitable quarantine sign the entrance to any part of the premises on which the animal is held. The animal shall be maintained by the owner of the animal or the owner or operator of the premises in accordance with this Part at the expense of the owner of the animal or the owner or operator of the premises. No animal under quarantine shall be removed from the place of quarantine unless permitted by the State Veterinarian or an authorized representative in writing. The quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or an

authorized representative, and the quarantine shall not be cancelled until any sick or diseased animal has been properly disposed of and the premises have been properly cleaned and disinfected.

(b) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products, the State Veterinarian or an authorized representative may quarantine areas within the State. As part of the quarantine under this subsection, the State Veterinarian or an authorized representative may enter any property in the State to examine any animal, to obtain blood and tissue samples for testing for the animal disease, and for any other reason directly related to preventing or controlling the animal disease, and may stop motor vehicles on a public or private road. The provisions of subsection (a) of this section with respect to obtaining an emergency order do not apply to this subsection. Written notice of the quarantine, including a description of the area and the type of animal affected by the disease, shall be mailed or delivered to news media, farm organizations, agriculture agencies, and other entities reasonably calculated to give notice of the quarantine to affected animal owners, to the owners or operators of affected premises, and to the public. No animal subject to the quarantine shall be moved to any other premises unless permitted by the State Veterinarian or an authorized representative in writing. (1939, c. 360, s. 2; 1971, c. 724; 2001-12, s. 2; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-401.1. Inspection and quarantine of poultry.

The State Veterinarian or an authorized representative may enter any property in the State or stop any motor vehicle to examine any poultry that the State Veterinarian has reason to believe is affected with or exposed to a contagious animal disease. The State Veterinarian or an authorized representative may quarantine any poultry affected with or exposed to a contagious disease or injected with or otherwise exposed to any material capable of producing a contagious disease and give public notice of the quarantine by posting or placarding with a suitable quarantine sign the entrance to or any part of the premises on which the poultry is held. The poultry shall be maintained by the poultry owner or the owner or operator of the premises in accordance with this Part at the expense of the poultry owner or the owner or operator of the premises. The quarantine under this section does not apply to those diseases that are endemic in the State and for which adequate preventive and control measures are not available. No poultry under quarantine shall be moved from the place of quarantine, unless permitted by the State Veterinarian or an authorized representative in writing. The quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or an authorized representative and shall not be released or cancelled until the sick or dead poultry have been properly disposed of and the premises have been properly cleaned and disinfected. (1969, c. 693, s. 1; 2001-12, s. 7; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-402. Confinement and isolation of diseased animals required.

Any animal or poultry affected with or exposed to a contagious animal disease shall be confined by the owner of the animal or poultry or the owner or operator of the premises in such a manner, by penning or otherwise securing and actually isolating the animal or poultry from the approach or contact with other animals or poultry not so affected; it shall not have access to any ditch, canal, branch, creek, river, or other surface water that passes beyond the affected premises, to

any public road, or to the premises of any other person. (1939, c. 360, s. 3; 1969, c. 693, s. 2; 2001-12, s. 8; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-402.1. Movement of animals prohibited; destruction of animals to control animal disease authorized.

(a) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products or that it is necessary to control a contagious animal disease, the State Veterinarian or an authorized representative may prohibit the movement of any animal to or from any premises used for shows, sales, markets, fairs, exhibitions, processing or rendering facilities, or other public or private assembly or may prohibit commingling of animals. Written notice of the prohibition under this subsection shall be mailed, delivered, or otherwise provided to the owner or operator of the premises by any means reasonably calculated to give notice. The owner or operator of the premises shall not permit any animal to enter or remain on the premises in violation of this section.

(b) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products or that it is necessary to control a contagious animal disease, the State Veterinarian may order the destruction of any animal and, after consulting with the State Health Director, the proper disposal of the animal. G.S. 106-403 does not apply to the disposal of animals under this subsection. The order shall be in writing and shall include the manner in which the destruction of the animal will be carried out. The order shall be delivered to the owner of the animal and the owner or operator of the premises on which the animal is located by certified mail or any other means reasonably calculated to give the owner of the animal and the owner or operator of the premises notice. In the event the owner of the animal and the owner or operator of the premises cannot be notified, the State Veterinarian or an authorized representative may seize and destroy the animal. The owner or operator of the premises on which the animal is located shall permit entry on the premises by the State Veterinarian or an authorized representative and shall cooperate with the State Veterinarian or an authorized representative. The provisions of G.S. 106-401(a) with respect to obtaining an emergency order do not apply to this subsection.

(c) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products or that it is necessary to control a contagious animal disease, the State Veterinarian may require the Executive Director of the Wildlife Resources Commission to develop a plan to address the movement of wildlife and the destruction of wildlife. (2001-12, s. 3; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-403. Disposition of dead domesticated animals.

It is the duty of the owner of domesticated animals that die from any cause and the owner or operator of the premises upon which any domesticated animals die, to bury the animals to a depth

of at least three feet beneath the surface of the ground within 24 hours after knowledge of the death of the domesticated animals, or to otherwise dispose of the domesticated animals in a manner approved by the State Veterinarian. It is a violation of this section to bury any dead domesticated animal closer than 300 feet to any flowing stream or public body of water. It is unlawful for any person to remove the carcasses of dead domesticated animals from the person's premises to the premises of any other person without the written permission of the person having charge of the other premises and without burying the carcasses as provided under this section. The governing body of each municipality shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the provisions of this section, of any dead domesticated animals located within the limits of the municipality when the owner of the animals cannot be determined. The board of commissioners of each county shall designate some appropriate person whose duty it shall be to provide for the removal and disposal under this section, of any dead domesticated animals located within the limits of the county, but without the limits of any municipality, when the owner of the animals cannot be determined. All costs incurred by a municipality or county in the removal of dead domesticated animals shall be recoverable from the owner of the animals upon admission of ownership or conviction. "Domesticated animal" as used in this section includes poultry. (1919, c. 36; C.S., s. 4488; 1927, c. 2; 1939, c. 360, s. 4; 1971, c. 567, ss. 1, 2; 2001-12, s. 9; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-404. Animals affected with glanders to be killed.

If the owner of any animal having the glanders or farcy omits or refuses, upon discovery or knowledge of its condition, to destroy the animal at once, that person is guilty of a Class 3 misdemeanor. (1881, c. 368, s. 8; Code, s. 2489; 1891, c. 65; Rev., s. 3296; C.S., s. 4489; 1993, c. 539, s. 775; 1994, Ex. Sess., c. 24, s. 14(c); 2001-12, s. 10; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

§ 106-405. Prohibited acts; penalties.

(a) Except as provided in G.S. 106-404, any person who knowingly and willfully violates any provision of this Part is guilty of a Class 2 misdemeanor.

(b) It is prohibited that any person knowingly and willfully:

- (1) Hide or conceal any animals that are subject to a quarantine under this Part.
- (2) Fail to report the occurrence of an animal disease for which a quarantine under this Part is in effect.

(c) Any person who has committed an act that is prohibited under subsection (b) of this section shall be subject to an administrative penalty not to exceed ten thousand dollars (\$10,000) per violation. Each act in violation of subsection (b) of this section is a separate violation. (1939, c. 360, s. 6; 1969, c. 693, s. 3; 1993, c. 539, s. 776; 1994, Ex. Sess., c. 24, s. 14(c); 2001-12, s. 4; 2003-6, s. 1; 2005-21, s. 1; 2009-103, s. 1.)

Part 10. Feeding Garbage to Swine.

§ 106-405.1. Definitions.

For the purpose of this Part, the following words shall have the meanings ascribed to them in this section:

- (1) "Garbage" means consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming food, including the offal from or parts thereof; provided that the Commissioner of Agriculture or his authorized

representative is empowered to exempt from this definition the waste resulting from the processing of seafood.

- (2) "Person" means the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or any other entity. (1953, c. 720, s. 1; 1967, c. 872, s. 1.)

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

(a) No person shall feed garbage to swine without first securing a permit therefor from the North Carolina Commissioner of Agriculture or his authorized agent. Such permits shall be issued for a period of one year and shall be renewable on the date of expiration.

(b) No permit shall be issued or renewed for garbage feeding under this Part in any county or other subdivision in which local regulations to prohibit garbage feeding are in effect.

(c) This Part shall not apply to any individual who feeds only his own household garbage to swine: Provided, that any such swine sold or disposed of shall be sold or disposed of in accordance with rules and regulations promulgated by the State Board of Agriculture.

(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.)

§ 106-405.3. Application for permit.

(a) Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Carolina Commissioner of Agriculture in accordance with requirements of this Part.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of twenty-five dollars (\$25.00) for each permit issued to a garbage feeder under the provisions of this Part. The fees provided for in this Part shall be used exclusively for the enforcement of this Part.

(c) No permit fee shall be collected from any federal, State, county, or municipal institution. (1953, c. 720, s. 3; 1967, c. 872, s. 2.)

§ 106-405.4. Revocation of permits.

Upon determination that any person, having a permit issued under this Part or one who has applied for a permit hereunder, has violated or failed to comply with any provisions of this Part, the North Carolina Commissioner of Agriculture may revoke such permit or refuse to issue a permit to an applicant therefor. (1953, c. 720, s. 4.)

§ 106-405.5. Sanitation.

Premises on which garbage feeding is permitted under this Part must be equipped with feeding platforms constructed of concrete, wood or other impervious material, or troughs of such material of sufficient size to accommodate the swine herd. Premises must be kept free of collections of unused garbage and waste materials. Sanitation, rat and fly control measures must be practiced as a further means of the prevention of the spread of diseases. (1953, c. 720, s. 5.)

§ 106-405.6. Cooking or other treatment.

All garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212 degrees F. for at least 30 minutes unless treated in some other manner which shall be approved in writing by the North Carolina Commissioner of Agriculture as being equally effective for the protection of animal and human health. (1953, c. 720, s. 6.)

§ 106-405.7. Inspection and investigation; maintenance of records.

(a) Any authorized representative of the North Carolina Commissioner of Agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the proper treatment of garbage to be fed to swine, sanitation of the premises and health of the animals.

(b) Garbage feeders shall keep a complete permanent record relating to the operation of equipment and their procedure of treating garbage, and also from whom all swine are received and to whom sold for immediate slaughter. Such record is to be available to the Commissioner of Agriculture or his authorized representative.

(c) Any operator, manager or person in charge of a restaurant, cafe, boardinghouse, school, hospital, or other public or private place where food is served to persons other than members of the immediate family or nonpaying guests of such operator, manager, or person in charge, shall not allow or permit garbage to be removed from the premises thereof unless the person removing said garbage is in possession of a valid garbage-feeding permit issued by the North Carolina Department of Agriculture and Consumer Services, or unless such person removing said garbage is in possession of a document from the county department of health wherein such garbage is located stating that the person removing said garbage is authorized to dispose of such garbage in a legal manner or unless such person removing said garbage is an employee of a municipality engaged in the regular collection of garbage for said municipality. The name and address or license number of any motor vehicle of any person removing garbage other than under authorization from the county department of health, the North Carolina Department of Agriculture and Consumer Services or a municipality, shall be reported by such operator, manager or person in charge, to the State Veterinarian within five days after the first removal of such garbage is made. (1953, c. 720, s. 7; 1971, c. 566, s. 2; 1997-261, s. 109.)

§ 106-405.8. Enforcement of Part; rules and regulations.

The North Carolina Commissioner of Agriculture is hereby charged with the administration and enforcement of the provisions of this Part. The North Carolina Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to cooperate with the United States Bureau of Animal Industry in the control and eradication of vesicular exanthema.

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 that may hereafter be necessary to carry out the provisions of this Part. (1953, c. 720, s. 8.)

§ 106-405.9. Penalties.

Any person, firm or corporation who shall knowingly violate any provisions set forth in this Part or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Part shall be guilty of a Class 1 misdemeanor. Such person, firm, or corporation may be enjoined from continuing such violation. (1953, c. 720, s. 9; 1993, c. 539, s. 777; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 106-405.10 through 106-405.14. Reserved for future codification purposes.

Part 11. Equine Infectious Anemia.

§ 106-405.15. "Equine infectious anemia" defined.

Equine infectious anemia shall mean the disease wherein an animal is infected with the virus of equine infectious anemia, irrespective of the occurrence or absence of clinical signs of the disease. An animal shall be declared infected with equine infectious anemia if it is classified as a reactor to a serological test or other test approved by the State Veterinarian. (1973, c. 1198, s. 1.)

§ 106-405.16. Animals infected with or exposed to equine infectious anemia declared subject to quarantine.

It is hereby declared that the disease of horses, ponies, mules and asses (and other equine animals) known as equine infectious anemia is of an infectious and contagious nature and that animals infected with, exposed to, or suspected of being carriers of the disease shall be subject to quarantine and identification as required by the rules and regulations of the North Carolina Department of Agriculture and Consumer Services. (1973, c. 1198, s. 2; 1997-261, s. 109.)

§ 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 and Consumer Services. (1973, c. 1198, s. 3; 1981, c. 495, s. 7; 1997-261, s. 109.)

§ 106-405.18. Implementation of control and eradication program.

The control and eradication of equine infectious anemia in North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the U.S. Department of Agriculture in the control and eradication of equine infectious anemia. (1973, c. 1198, s. 4.)

§ 106-405.19. Violation made misdemeanor.

Any person who shall willfully move, direct the movement, or allow to be moved, from the premises where quartered any animal or animals known to be infected with equine infectious anemia, or under quarantine because of suspected exposure to equine infectious anemia, or who shall violate any provision of this Part or any rule or regulation promulgated by the Board of Agriculture under this Part shall be guilty of a Class 1 misdemeanor. (1973, c. 1198, s. 5; 1993, c. 539, s. 778; 1994, Ex. Sess., c. 24, s. 14(c).)

Part 12. Penalties.

§ 106-405.20. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 8; 1998-215, s. 12.)

Article 35.

Public Livestock Markets.

§ 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.)

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

The Commissioner of Agriculture shall require the owner of each public livestock market issued a permit under the provisions of G.S. 106-406 to furnish a bond acceptable to the Commissioner of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000), in the discretion of the Commissioner, to secure the performance of all obligations incident to the operation of the public livestock market operation including prompt payment to the vendors of all livestock sold at said market; provided, that, at the discretion of the Commissioner of Agriculture, a bond shall not be required of a livestock market bonded under the Federal Packers and Stockyards Act.

The term "public livestock market" as used in this Article shall not be interpreted to mean any of the following:

- (1) A market where horses and mules exclusively are sold;
- (2) A market that sells only finished livestock to be used for immediate slaughter;
- (3) A dispersal sale of livestock by a farmer, dairyman, livestock breeder, or feeder when all animals offered for sale have been owned by him at least 30 days; provided that, no more than one dispersal sale shall be held by any person, firm or corporation within any period of six months.
- (4) Purebred livestock association sales and those sales where Future Farmers of America, 4-H Clubs and similar groups, State institutions, or private fairs conduct sales of livestock. (1941, c. 263, s. 2; 1967, c. 894, s. 2.)

§ 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 and Consumer Services. 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 and Consumer

Services 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; 1997-261, s. 109.)

§ 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.)

§ 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 as 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.)

§ 106-408.1. Market operation fees.

A fee of twenty-five dollars (\$25.00) shall be paid by the market operator to the North Carolina Department of Agriculture and Consumer Services for each day, or fraction thereof, a sale is held, provided that an additional maximum fee of ten dollars (\$10.00) per one-half hour, or fraction thereof, shall be paid to the North Carolina Department of Agriculture and Consumer Services for operation after 6:00 P.M. Provided further, that the Board of Agriculture may at its discretion adjust both fees for market operation within the limits set in this section. A fee to be set by the Board of Agriculture may be charged to the buyer of cattle and swine required to be tested under G.S. 106-409 and 106-410, and the amount collected used to offset the twenty-five dollar (\$25.00) market operation fee. All test fees charged in excess of twenty-five dollars (\$25.00) shall revert to the North Carolina Department of Agriculture and Consumer Services and be payable within 24 hours following the close of a sale day. The starting and finishing time of each sale shall be recorded by the livestock inspector on his report of the sale. A copy of the report shall be given to the market operator or his representative following the sale. Failure to make the required payment within 24 hours following close of a sale day shall be cause for the Commissioner of Agriculture to prohibit, on 72 hours' notice, further sales at the market until the account is paid in full. The operation fee shall be waived when a livestock market operator employs a licensed, accredited veterinarian approved by the State Veterinarian to be present at the market from the starting time of the sale until all livestock to be admitted to the sales barn on that sale day have entered and such work in inspection, testing and vaccination as designated by the State Veterinarian has been completed. (1971, c. 739, s. 3; 1997-261, s. 109.)

§ 106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed.

No cattle except those for immediate slaughter, shall be removed from any public livestock market except in accordance with this Article and regulations adopted by the North Carolina Board of Agriculture. All cattle removed from any public livestock market for immediate slaughter shall be identified in a manner approved by the Commissioner of Agriculture and the person removing same shall before removal sign a form in duplicate showing the number of cattle, their description, and where same are to be slaughtered or resold for slaughter. Cattle sold for slaughter shall be disposed of in one of the following ways:

- (1) Moved directly to a recognized slaughtering establishment for immediate slaughter.
- (2) Sold to a dealer bonded under the Packers and Stockyards Act who handles cattle for immediate slaughter.
- (3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

A "buying station" of a slaughterhouse or similar business not operating under a public livestock market permit shall not allow the removal of animals for any purpose other than that of immediate slaughter unless a written permit has been secured from the State Veterinarian or his authorized representative. This provision shall not apply to buying stations operated by feedlot operators buying animals for movement to their own feedlots.

Cattle sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No livestock market operator, or agent or employee thereof, shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2; 1967, c. 894, s. 6.)

§ 106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment.

No swine, except those for immediate slaughter, shall be removed from any public livestock market except in accordance with regulations adopted by the North Carolina Board of Agriculture. All swine removed from any public livestock market for immediate slaughter shall be identified in a manner prescribed by regulation adopted by the North Carolina Board of Agriculture and the person removing same shall sign a form in duplicate showing the number of hogs, their description and where they are to be slaughtered or resold for slaughter. Slaughter hogs may be disposed of in one of the following ways:

- (1) Moved directly to a recognized slaughter establishment for immediate slaughter.
- (2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles hogs for immediate slaughter.
- (3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

Swine sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No market operator shall allow the removal of any swine from a market in violation of this section.

Swine for breeding or feeding purposes shall not be resold in a livestock market for other than immediate slaughter within 14 days of prior sale at a livestock market unless they are identified as having been previously sold swine at the time of resale. Such identification shall contain the date and place of the prior sale and shall be furnished in writing to the market operator by the seller of said swine.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4; 1967, c. 894, s. 7; 1971, c. 739, s. 5.)

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

Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this Article and the applicable regulations of the Department of Agriculture and Consumer Services. It shall be a Class 1 misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized

slaughter plant or as provided in G.S. 106-409 and G.S. 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a Class 1 misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8; 1993, c. 539, s. 779; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

§ 106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc.

No animal known to be affected with or having visible symptoms of a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with, or exposed to, any contagious or infectious disease of animals or any animal that reacts to an official test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon written permission of the Commissioner of Agriculture or his authorized representative. All animals sold for slaughter under this provision must be moved directly to a recognized slaughter establishment with State or federal meat inspection unless written permission to do otherwise is secured from the State Veterinarian or his authorized representative. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said costs shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this Article. (1941, c. 263, s. 7; 1967, c. 894, s. 9.)

§ 106-413. Sale, etc., of certain diseased animals restricted; application of Article; sales by farmers.

No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this Article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5; 1967, c. 894, s. 10.)

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.

No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any

person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture and Consumer Services if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a Class 1 misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11; 1993, c. 539, s. 780; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

§ 106-415. Cost of tests, serums, etc.

The cost of all tests, serums, vaccines and other medical supplies necessary for the enforcement of this Article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and the cost shall constitute a lien against all said animals; provided that, the Commissioner of Agriculture, by and with the consent of the Board of Agriculture, is hereby authorized to determine reasonable charges and costs for such tests, serums, vaccines, and other medical supplies; provided further, that an animal which shows a reaction to a test for brucellosis shall be automatically "no-saled" and resold for immediate slaughter and the cost of the test paid by the original seller. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269; 1967, c. 894, s. 12.)

§ 106-416. 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 that may be necessary to carry out the provisions of this Article. This power shall include, but not be confined to, the authority to designate a time after which livestock shall not be allowed to enter a sales barn on the day of a sale. (1941, c. 263, s. 11; 1967, c. 894, s. 13; 1971, c. 739, s. 4.)

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.

Any person, firm, or corporation who shall knowingly violate any provisions set forth in this Article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Article, shall be guilty of a Class 1 misdemeanor. A market operating under this Article shall not be responsible for the health or death of an animal sold through such market if the provisions of this Article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14; 1993, c. 539, s. 781; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-417.1. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 9; 1998-215, s. 13.)

§ 106-418. Exemption from health provisions.

The health provisions of this Article shall not apply to "no-sale" cattle offered for sale at a public livestock market by a bona fide farmer who has owned them at least 60 days. (1941, c. 263, s. 12 1/2; 1967, c. 894, s. 15.)

Article 35A.

North Carolina Livestock Prompt Pay Law.

§ 106-418.1. Short title.

This Article shall be known by the short title of "North Carolina Livestock Prompt Pay Law." (1973, c. 38, s. 2.)

§ 106-418.2. Legislative intent and purpose.

The purpose of the Article is to regulate the sale of livestock by auction at public livestock markets and to assure prompt payment for livestock sold. (1973, c. 38, s. 1.)

§ 106-418.3. Definitions.

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

- (1) "Banking business day" means a day in which banks are normally open for business in North Carolina.
- (2) "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
- (3) "Custodial accounts" means custodial accounts for trust funds as explained in the Code of Federal Regulations, January 1, 1972, § 201.42.
- (4) The "North Carolina Public Livestock Market Advisory Board" means the Board established under G.S. 106-407.1.
- (5) "Public livestock market" means livestock sales at a market duly licensed under G.S. 106-406. (1973, c. 38, s. 3; 1975, c. 19, s. 33.)

§ 106-418.4. Duties of Commissioner.

The Commissioner shall regulate, by and with the consent of the Board of Agriculture as provided herein, the payment for livestock sold at auction. (1973, c. 38, s. 4.)

§ 106-418.5. Collection of payment.

Collection of payment for livestock purchased at auction shall be made by the public livestock market on the same date of purchase of the livestock, and the proceeds therefrom shall be deposited by the public livestock market in their custodial account not later than the next banking business day following the date of sale. Collection for livestock purchased by auction shall be made by cash, check, or draft. There shall be no loans made from the custodial account of any public livestock market to any purchaser of livestock at said sales establishment. Payment shall be made by the public livestock market to the seller of livestock at auction not later than one banking business day after the date of sale of the animal or animals. (1973, c. 38, s. 5.)

§ 106-418.6. Action upon failure of payment.

It shall be the duty and responsibility of each public livestock market to report to the Commissioner within 24 hours after having knowledge that a check or draft issued in payment for livestock has been dishonored or that a buyer of livestock at auction has not fulfilled his obligation to pay for livestock within the prescribed time in G.S. 106-418.5. It shall be the duty and responsibility of the Commissioner to notify all public livestock markets of the fact of dishonor of any such check issued or the failure to honor any draft upon presentation used in payment for livestock or due to the lack of satisfactory payment for livestock. (1973, c. 38, s. 6.)

§ 106-418.7. Authority of Board of Agriculture, North Carolina Public Livestock Market Advisory Board and the Commissioner.

The Board of Agriculture shall establish rules and regulations pertaining to the purchase and payment of livestock sold in this State at public livestock markets. The North Carolina Public Livestock Market Advisory Board shall recommend rules and regulations pertaining to the administration of this Article to the Board of Agriculture for their consideration. The Commissioner is authorized to revoke any livestock market operator's license issued or to refuse to issue a livestock market license to any person as hereinafter provided upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person, firm or corporation shall have first been given an opportunity to appear at a hearing before the Commissioner or his agent. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1973, c. 38, s. 7; 1989, c. 770, s. 25.)

§ 106-418.7A. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 10; 1998-215, s. 14.)

Article 35B.

Livestock Dealer Licensing Act.

§ 106-418.8. Definitions.

When used in this Article,

- (1) The term "Commissioner" means the Commissioner of Agriculture of North Carolina;
- (2) The term "livestock" means cattle, sheep, goats, swine, horses and mules;
- (3) The term "livestock dealer" means any person who buys livestock (i) for his own account for purposes of resale, or (ii) for the account of others; and
- (4) The term "person" means an individual, partnership, corporation, association, or other legal entity. (1973, c. 196.)

§ 106-418.9. Exemptions.

The provisions of this Article shall not apply to a person who offers for sale or trade only livestock which he has raised or livestock which he owns or has had in his possession for a period of 30 days or longer or who has had the livestock grown under contract, and is not engaged in the business of buying, selling, trading, or negotiating the transfer of livestock. Neither shall this Article apply to a livestock market operator conducting sales in compliance with the Public Livestock Markets Act (General Statutes Chapter 106, Article 35). (1973, c. 196.)

§ 106-418.10. Prohibited conduct.

It shall be unlawful for any person to:

- (1) Carry on or conduct the business of a livestock dealer without a current valid license issued by the North Carolina Department of Agriculture and Consumer Services under the provisions of this Article;
- (2) Fail to keep the records required by G.S. 106-418.13. (1973, c. 196; 1997-261, s. 52.)

§ 106-418.11. Licenses.

(a) Any person desiring to be licensed as a livestock dealer shall make application to the Commissioner. Such application shall contain the address, both business and personal, of the applicant. No financial information shall be required from the applicant.

Whenever an applicant has complied with this Article, the Commissioner shall issue to such applicant a license which shall entitle the licensee to engage in the business of livestock dealer for a period of one year, unless such license is sooner suspended, or revoked in accordance with the provisions of this Article.

The license may be renewed annually by written request to the Commissioner on a form prepared by the Department of Agriculture and Consumer Services, which form shall require only the name and current address of the licensee. No renewal fee shall be charged.

(b) The Commissioner may suspend for a period not to exceed 120 days the license of any livestock dealer whom the Commissioner finds has violated G.S. 106-418.10(2). For a second violation of G.S. 106-418.10(2) within a period of two years, the Commissioner may revoke a dealer's license.

(c) The Commissioner may refuse to issue a license to any person who has (i) within five years of his application therefor, been finally adjudicated as having on two or more occasions violated the provisions of G.S. 106-418.10(1) or (ii) on three or more occasions within five years of his application therefor been finally adjudicated as violating G.S. 106-418.10(2).

(d) All proceedings relative to the suspension, revocation, or refusal of a license shall be conducted pursuant to the provisions of Chapter 150B of the General Statutes. (1973, c. 196; c. 1331, s. 3; 1975, c. 19, s. 34; 1987, c. 827, s. 1; 1997-261, s. 109.)

§ 106-418.12. Hearings.

Any hearing required or permitted to be held pursuant to this Article may be conducted by the Commissioner or his delegate and his decision shall be treated for all purposes as that of the Commissioner. (1973, c. 196.)

§ 106-418.13. Maintenance of records.

Every livestock dealer shall keep complete records for at least one year of all transactions involving livestock and permit any authorized agent of the Commissioner to have access to and to copy all records relating to such transactions. Such records shall consist of the approximate age, breed and species of the livestock, the date of sale, name and address of persons from whom and to whom livestock are sold and traded. (1973, c. 196.)

§ 106-418.14. Penalties.

Any person who violates G.S. 106-418.10(1) is guilty of a Class 3 misdemeanor. For a second or subsequent violation of G.S. 106-418.10(1), a person is guilty of a Class 2 misdemeanor. (1973, c. 196; 1999-408, s. 5.)

§ 106-418.15. Short title.

This Article may be cited as the "Livestock Dealer Licensing Act." (1973, c. 196.)

§ 106-418.16. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 11; 1998-215, s. 15.)

Article 36.

Plant Pests.

§ 106-419. Plant pest defined.

A plant pest is hereby defined to mean any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products. (1957, c. 985.)

§ 106-419.1. Plants, plant products and other objects exposed to plant pests.

Any plant, plant product, object or article which has been, or which the Commissioner of Agriculture or his agents have reasonable grounds to believe has been exposed to a plant pest, may be treated as a plant pest for the purposes of this Article. (1971, c. 526.)

§ 106-420. Authority of Board of Agriculture to adopt regulations.

The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this Article as to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection,

certification and movement of nursery stock, (i) into the State from outside the State, (ii) within the State, and (iii) from within the State to points outside the State. The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, narcissus bulb inspection, plant pest inspection, phytosanitary certification, and plant pest certification activities. (1957, c. 985; 1991, c. 442, s. 1; 2021-180, s. 10.2(a).)

§ 106-420.1. Agreements against plant pests.

The North Carolina Board of Agriculture is authorized to enter into agreements with any agency of the United States or any agency of another state for the eradication, suppression, control and prevention of spread of plant pests. The Commissioner of Agriculture is authorized to enter into agreements with any unit of local government in this State or any organization incorporated or unincorporated who has an interest in the control of plant pests for the eradication, suppression, control and prevention of spread of plant pests. (1971, c. 526.)

§ 106-421. Permitting uncontrolled existence of plant pests; nuisance; method of abatement.

No person shall knowingly and willfully keep upon his premises any plant or plant product infested or infected by any dangerous plant pest, or permit dangerous plants or plant parasites to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested or infected plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Commissioner of Agriculture, take such measures as may be prescribed to eradicate such pests. The notice shall be in writing and shall be mailed to the usual or last known address, or left at the ordinary place of business, of the owner or his agent. If such person fails to comply with such notice within such reasonable time as the notice prescribes, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to take such measures as shall be necessary to eradicate such pests, and shall compute the actual costs of labor and materials used in eradicating such pests, and the owner of the premises in question shall pay to the Commissioner of Agriculture such assessed costs. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infected or infested plants or soil when done by the order of the Commissioner of Agriculture. (1957, c. 985.)

§ 106-421.1. Authority of Board of Agriculture to regulate plants.

The Board of Agriculture shall have the sole authority to prohibit the planting, cultivation, harvesting, disposal, handling, or movement of plants as defined in G.S. 106-202.12. This section shall not prevent the designation of plants as noxious aquatic weeds pursuant to Article 15 of Chapter 113A of the General Statutes, nor shall it prevent the adoption or enforcement of city or county ordinances regulating the appearance of property or the handling and collection of solid waste. (2013-197, s. 1.)

§ 106-422. Agents of Board; inspection.

The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this Article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other

means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. Any duly authorized agent of the Commissioner shall have authority to stop or cause to be stopped on any highway or other public place, by any law-enforcement officer at the request of said authorized agent of the Commissioner, any vehicle or other means of transportation that is being used, or that the representative of the Commissioner has reasonable grounds to believe is being used, to transport or move any plant, plant product or seed in violation of the provisions of this Article. (1957, c. 985; 1967, c. 976.)

§ 106-423. Nursery inspection; nursery dealer's certificate; narcissus inspection.

The Board of Agriculture shall have the authority to define nursery stock. The Commissioner of Agriculture shall have the right to cause all plant nurseries, and narcissus bulb fields where narcissus bulbs are commercially raised, within the State to be inspected at least once each year for serious plant pests. Every person, firm or corporation buying and reselling nursery stock shall register and secure a dealer's certificate for each location from which plants are sold. (1957, c. 985.)

§ 106-423.1. Criminal penalties; violation of laws or regulations.

If anyone shall attempt to prevent inspection of his premises as provided in the preceding sections, or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provisions of this Article or any regulations of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a Class 3 misdemeanor. Each day's violation shall constitute a separate offense. (1957, c. 985; 1993, c. 539, s. 782; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 37.

Cotton Grading.

§§ 106-424 through 106-429. Repealed by Session Laws 1999-44, s. 3, effective May 13, 1999.

Article 38.

Marketing Cotton and Other Agricultural Commodities.

§§ 106-429.1 through 106-434: Repealed by Session Laws 1997-74, s. 10.

§ 106-435: Repealed by Session Laws 2014-100, s. 2.2(j), effective July 1, 2014.

§§ 106-436 through 106-451.1: Repealed by Session Laws 1997-74, s. 11.

§§ 106-451.2 through 106-451.5. Reserved for future codification purposes.

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.)

§ 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 and Consumer Services to engage in the business of storing cotton for hire. (1987, c. 840, s. 1; 1997-261, s. 54.)

§ 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 and Consumer Services.
- (3) To delegate to any division head and other officer or employee of the Department of Agriculture and Consumer Services 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; 1997-261, s. 55.)

§ 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 contain the information required under the United States Warehouse Act, 7 U.S.C. § 214, et seq., and the regulations promulgated thereunder. (1987, c. 840, s. 1; 2006-112, s. 57.)

§ 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 and Consumer Services 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; 1997-261, s. 109.)

§ 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 and Consumer Services. (1987, c. 840, s. 1; 1997-261, s. 109.)

§ 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: Repealed by Session Laws 2014-100, s. 2.2(j), effective July 1, 2014.

§ 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 Class 1 misdemeanor. (1987, c. 840, s. 1; 1993, c. 539, s. 786; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 106-451.29 through 106-451.39. Reserved for future codification purposes.

Article 38B.

Cotton Gins, Warehouses, Merchants.

§ 106-451.40. Definitions.

- (1) "Cotton gin" means any cotton gin.
- (2) "Cotton merchant" means any person who buys cotton from the producer for the purpose of resale, or acts as a broker or agent for the producer in arranging the sale of cotton. It does not include a person who buys cotton for his own use.
- (3) "Cotton warehouse" means any enclosure in which producer-owned cotton is stored or held for longer than 48 hours. (1999-412, s. 1.)

§ 106-451.41. Registration required.

No person shall engage in business as a cotton gin, cotton warehouse, or cotton merchant without first having registered with the Commissioner of Agriculture. This shall include a cotton marketing cooperative or association that performs any of these functions. (1999-412, s. 1.)

§ 106-451.42. Application; bond; display of certificate of registration.

(a) A cotton gin, cotton warehouse, cotton merchant, or cotton marketing cooperative or association shall, on or before July 1 of each year, file an application for registration on a form provided by the Commissioner of Agriculture. A fee of twenty-five dollars (\$25.00) shall be submitted with each application.

(b) An application for registration as a cotton warehouse shall also be accompanied by a bond in the amount of three hundred thousand dollars (\$300,000) issued by a company authorized to issue surety bonds in North Carolina and shall be conditioned upon fulfillment of contractual obligations related to the purchase or storage of cotton. A bond shall not be required for a person who is licensed and bonded under the U.S. Warehouse Act.

(c) The registration certificate shall be conspicuously displayed at the place of business. (1999-412, s. 1.)

§ 106-451.43. Records; receipts; other duties; denial of registration.

(a) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall keep records of producer-owned cotton transactions for seven years, showing the producer's name, bale number, and bale weight.

(b) Cotton gins shall, within 48 hours of ginning, make available to the person from whom cotton was received, a paper document showing the bale number and weight for each bale of cotton ginned.

(c) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall not market, obligate for sale, or otherwise dispose of producer-owned cotton without written consent from the producer.

(d) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall assist the Commissioner of Agriculture or his agents in inspecting records of producer-owned cotton transactions. Cotton gins, cotton warehouses, cotton merchants, and cotton

cooperatives or associations shall assist the Commissioner or his agents in weighing or reweighing a representative sample of cotton bales stored or held at their premises, using sampling procedures approved by the Board of Agriculture.

(e) Violation of any of the requirements of this section shall be grounds for denial, suspension, or revocation of registration under G.S. 106-451.41. (1999-412, s. 1.)

§ 106-451.44. Operation without registration unlawful; injunction.

Engaging in business as a cotton gin, cotton warehouse, or cotton merchant without being registered under G.S. 106-451.41 is punishable as a Class 2 misdemeanor. In addition, the Commissioner of Agriculture may apply to any court of competent jurisdiction to obtain injunctive relief to prevent violations of this act. (1999-412, s. 1.)

§§ 106-451.45 through 106-451.49. Reserved for future codification purposes.

Article 39.

Leaf Tobacco Warehouses.

§ 106-452: Repealed by Session Laws 2006-162, s. 29, effective July 24, 2006.

§ 106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.

All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person 18 years of age or older, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of _____, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C.S., s. 5125; 1951, c. 1105, s. 1; 1971, c. 1085, s. 2.)

§ 106-454. Warehouse proprietor, etc., to render bill of charges; penalty.

The owner, operator, or person in charge of each warehouse shall render to each seller of tobacco at the warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charge or fees to be made or accepted. Any person, firm, corporation, or any employee thereof, violating the provisions of this section shall be guilty of a Class 3 misdemeanor for the first offense, and for the second or additional offenses a Class 2 misdemeanor. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C.S., s. 5126; 1973, c. 1305; 1993, c. 539, s. 787; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-455. Tobacco purchases to be paid for by cash or check to order.

The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may

arise by law, be guilty of a Class 3 misdemeanor. (1931, c. 101, s. 1; 1939, c. 348; 1993, c. 539, s. 788; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 40.

Leaf Tobacco Sales.

§§ 106-456 through 106-460. Repealed by Session Laws 1999-44, s. 4.

Article 40.

Leaf Tobacco Sales.

§ 106-461. Nested, shingled or overhung tobacco.

It shall be unlawful for any person, firm or corporation to sell or offer to sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

- (1) Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;
- (2) Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and
- (3) Overhanging tobacco: This is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

§ 106-462. Sale under name other than that of true owner prohibited.

It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 106-463. Allowance for weight of baskets and trucks.

It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

§ 106-464. Violation made misdemeanor.

Any person, firm or corporation violating the provisions of G.S. 106-461 to 106-463 shall be guilty of a Class 3 misdemeanor. (1933, c. 467, s. 4; 1993, c. 539, s. 789; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; fire insurance and extended coverage required; price fixing prohibited.

Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco

boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

Each tobacco board of trade organized pursuant to this section shall, on or before June 1, 1973, by regulation, require that all auction warehouse firms which are members of, or may hereafter request membership in, such board of trade for the purpose of displaying for sale and selling leaf tobacco, deposit with the board of trade prior to the market opening, a copy of a policy of fire insurance and extended coverage in a company licensed to do business in North Carolina to fully insure, as determined by the board of trade, the market value of the maximum volume of tobacco that will be weighed and left displayed for sale on said warehouse floor at any time during the marketing season. Warehouses using mechanized conveyor-line auction sales where tobacco is not displayed for sale on sales floor would be excluded from the requirement of this regulation.

In determining the market value and maximum volume of tobacco that will be weighed and placed on said warehouse floor at any one time, the board of trade shall use as criteria the prior season's official gross average price for that belt, as recorded by the North Carolina Department of Agriculture and Consumer Services and the maximum limit of daily sales, as recommended by the currently functioning flue-cured and burley tobacco marketing organizations, applied to each warehouse based on the firm's pro rata share of the market's maximum limit daily sales opportunity, multiplied times the number of days of sales that said warehouse plans to place on sales floor at any one time, including any and all tobacco weighed and deposited with the warehouse as bailee for future sale. The data relating to the official average price and the maximum limits of daily sales shall be assembled and supplied by the North Carolina Commissioner of Agriculture or his representative to the board of trade in each tobacco market in North Carolina, at least 30 days prior to the opening of markets in each belt.

It shall be unlawful for any person, firm, or corporation to operate an auction sale in said market until said policy is so deposited with and approved by the board of trade. The board of trade shall enjoin the sale of tobacco by any warehouse firm that fails to so deposit a policy of fire insurance and extended coverage with the board.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars (\$50.00) in those towns in which less than 3,000,000 pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars (\$100.00) in those towns in which during said period of time more than 3,000,000 and less than 10,000,000 pounds of tobacco was sold; a fee of one hundred fifty dollars (\$150.00) in those towns in which during said period of time more than 10,000,000 and less than 25,000,000 pounds of tobacco was sold; a fee of three hundred dollars (\$300.00) in those towns in which during said period of time more than 25,000,000 pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

- (1) Warehousemen;

(2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a Class 1 misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383; 1973, c. 96; 1993, c. 539, s. 790; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Article 41.

Dealers in Scrap Tobacco.

§§ 106-466 through 106-470. Repealed by Session Laws 1999-44, s. 5, effective May 13, 1999.

Article 42.

Production, Sale, Marketing and Distribution of Tobacco.

§§ 106-471 through 106-489. Repealed by Session Laws 1955, c. 188, s. 1.

Article 43.

Combines and Power Threshers.

§§ 106-490 through 106-495. Repealed by Session Laws 1955, c. 268, s. 2.

§§ 106-495.1 through 106-495.2. Repealed by Session Laws 1975, c. 24.

Article 44.

Unfair Practices by Handlers of Fruits and Vegetables.

§ 106-496: Repealed by Session Laws 2018-113, s. 1(a), effective January 1, 2019.

§ 106-497: Repealed by Session Laws 2018-113, s. 1(a), effective January 1, 2019.

§ 106-498: Repealed by Session Laws 2018-113, s. 1(a), effective January 1, 2019.

§ 106-499: Repealed by Session Laws 2018-113, s. 1(a), effective January 1, 2019.

§ 106-500: Repealed by Session Laws 2018-113, s. 1(a), effective January 1, 2019.

§ 106-501: Repealed by Session Laws 2018-113, s. 1(a), effective January 1, 2019.

Article 44A.

Fruit and Vegetable Handlers Registration Act.

§ 106-501.1. Definitions.

The following definitions shall apply when used under this Article:

- (1) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.
- (2) "Consignment" means any transfer of fruits and vegetables by a seller to the custody of another person who acts as the agent for the seller for the purpose of selling such fruits and vegetables.
- (3) "Department" means the Department of Agriculture and Consumer Services.
- (4) "Farmer" means any person who produces fruits or vegetables or both.
- (5) "Handler" means any person in the business of buying, receiving, selling, exchanging, negotiating, processing for resale, or soliciting the sale, resale, exchange, or transfer of any fruits and vegetables purchased from a North Carolina farmer, received on consignment from a North Carolina farmer, or received to be handled on net return basis from a North Carolina farmer.
- (6) "Net return basis" means a purchase for sale of fruits and vegetables from a farmer or shipper at an unfixed or unstated price at the time the fruits and vegetables are shipped from the point of origin, and it shall include all purchases made "at the market price," "at net worth," and on similar terms, which indicate that the buyer is the final arbiter of the price to be paid.
- (7) "Processing" means any act or operation that freezes, dehydrates, cans, or otherwise changes the physical form or characteristic of fruits and vegetables. (2018-113, s. 1(b).)

§ 106-501.2. Registration required.

(a) Prior to conducting business in North Carolina, a handler shall register with the Department, free of cost, by providing to the Department the following information:

- (1) The handler's name.
- (2) The handler's principal place of business.
- (3) The type of fruits and vegetables handled by the handler.
- (4) The annual volume, in dollar amount, of fruits and vegetables handled by the handler in North Carolina.

(b) A handler shall update the Department within 60 calendar days of any change in information required under subdivision (a)(1), (a)(2), or (a)(3) of this section.

(c) A handler shall update the Department of the annual volume required under subdivision (a)(4) of this section by February 1st of each year.

(d) Information collected under this Article shall be held confidential by the Department and not subject to public records disclosure. (2018-113, s. 1(b).)

§ 106-501.3. Exemptions to registration.

This Article shall not apply to:

- (1) A farmer or group of farmers in the sale of fruits and vegetables produced by the farmer or group of farmers.
- (2) A handler who pays at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN-based debit transaction, or a credit card.
- (3) A restaurant.
- (4) A retailer that sells fruits and vegetables to end-use consumers through retail establishments or food stands operated by the company, its affiliates, or subsidiaries. (2018-113, s. 1(b).)

§ 106-501.4. Authority of the Board of Agriculture.

The Board of Agriculture may adopt rules to implement this Article. (2018-113, s. 1(b).)

§ 106-501.5. Civil penalties.

(a) The Commissioner may assess a civil penalty of not more than one hundred dollars (\$100.00) per violation against any person or business entity who violates a provision of this Article or any rule adopted thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Civil penalties for failure to register or provide updated information under this Article shall only be issued after a 15-calendar-day notice has been provided to the handler and the handler fails to remedy the deficiency within the 15 days. (2018-113, s. 1(b).)

§ 106-501.6. Injunctions.

In addition to the remedies provided in this Article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to any court of competent jurisdiction, and such court shall have jurisdiction upon hearing and for cause shown to grant, for a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this Article or any rule promulgated thereunder. Such injunction shall be issued without bond. (2018-113, s. 1(b).)

Article 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart.

For the purpose of the operating of a State fair, expositions and other projects which properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart 200 acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set

apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1; 1959, c. 1186, s. 1.)

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

(a) 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.

(b) 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.

(c) 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.

(d) The Board of Agriculture shall provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the State Fairgrounds. (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; 1991, c. 336, s. 2.)

§ 106-503.1. Board authorized to construct and finance facilities and improvements for fair.

(a) **Borrowing Money and Issuing Bonds.** – For the purpose of building, enlarging and improving the facilities on the properties of the State fair, the State Board of Agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars (\$100,000), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the Governor and Council of State: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the State of North Carolina, and the credit of the State of North Carolina and the State Department of Agriculture and Consumer Services or the agricultural fund, other than the revenue of the State fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other State fair assets may be pledged as security for the payment of any bonds that may be issued.

(b) **Contracts and Leases; Pledge of Gate Receipts, etc.** – For the further purpose of acquiring, constructing, operating and financing said properties and facilities on the North Carolina State fairgrounds, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized. Prior to execution, the Board of Agriculture shall consult with the Joint Legislative Commission on Governmental Operations on all agreements, contracts, and leases authorized under this subsection. The preceding sentence applies only to agreements, contracts, and leases with an estimated revenue to the State of one hundred thousand dollars (\$100,000) or more.

(c) Gifts and Endowments. – The State Board of Agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the State fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009; 1959, c. 1186, s. 3; 1997-261, s. 109; 2001-487, s. 71.)

§ 106-503.2. Regulation of firearms at State Fair.

(a) Except as otherwise provided in this section, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms in any manner on the State Fairgrounds during the period of time each year that the State Fair is conducted.

(b) Notwithstanding subsection (a) of this section, any prohibition under this section shall not apply to the following persons:

- (1) Any person exempted by G.S. 14-269(b)(1), (2), (3), (4), or (5).
- (2) Any person who has a concealed handgun permit that is valid under Article 54B of this Chapter [Chapter 14 of the General Statutes], or who is exempt from obtaining a permit pursuant to that Article, who has a handgun in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit. (2015-195, s. 4(a).)

§ 106-504. Lands dedicated by State may be repossessed at will of General Assembly.

Any lands which may be dedicated and set apart under the provisions of this Article may be taken possession of and repossessed by the State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence.

Any number of resident persons, not less than 10, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, subject to any other applicable provisions of law, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, as may be needful to promote the objects of their association.

Whenever any such association is formed subsequent to April 1, 1949, a copy of the articles of incorporation shall be filed with the Secretary of State, together with any other information the Secretary of State may require. A fee of ten dollars (\$10.00) shall be paid to the Secretary of State when such articles are filed. Upon receipt of such articles in proper form, and such other information as may be required, and the filing fee, the Secretary of State shall issue a charter of incorporation.

The corporate existence shall continue as long as there are 10 members, during the will and pleasure of the General Assembly. (1852, c. 2, ss. 1, 2, 3; R.C., c. 2, ss. 6, 7; Code, s. 2220; Rev., ss. 3868, 3869; C.S., s. 4941; 1949, c. 829, s. 2.)

§ 106-506. Organization; officers; new members.

Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (1852, c. 2, s. 3; R.C., c. 2, s. 7; Code, s. 2221; Rev., s. 3869; C.S., s. 4942.)

§ 106-507: Repealed by Session Laws 2013-316, s. 5(d), effective January 1, 2014, and applicable to admissions purchased on or after that date.

§ 106-508. Funds to be used in paying premiums.

All moneys so subscribed, as well as that received from the State treasury as herein provided, shall after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their bylaws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufacturers, mechanical implements, tools and productions as are of the growth and manufacture of the county or region, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county or region wherein such societies are respectively organized. (1852, c. 2, s. 7; R.C., c. 2, s. 9; Code, s. 2223; Rev., s. 3873; C.S., s. 4945; 1949, c. 829, s. 2.)

§ 106-509. Annual statements to State Treasurer.

Each agricultural society entitled to receive money from the State Treasurer shall, through its treasurer, transmit to the Treasurer of the State, in the month of December or before, a statement showing the money received from the State, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (1852, c. 2, s. 8; R.C., c. 2, s. 10; Code, s. 2224; Rev., s. 3874; C.S., s. 4946.)

§ 106-510. Publication of statements required.

Each agricultural society receiving money from the State under this Chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the State; and evidence that the requirements of this Chapter have been complied with shall be furnished to the State Treasurer before he shall pay to such society the sum of fifty dollars (\$50.00) for the benefit of such society for the next year. (1852, c. 2, s. 9; R.C., c. 2, s. 11; Code, s. 2225; Rev., s. 3875; C.S., s. 4947.)

§ 106-511. Records to be kept; may be read in evidence.

The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party. (1852, c. 2, s. 5; R.C., c. 2, s. 12; Code, s. 2226; Rev., s. 3876; C.S., s. 4948.)

Part 3. Protection and Regulation of Fairs.

§ 106-512. Lien against licensees' property to secure charge.

All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fairgrounds, or which shall rent any ground space for carrying on any kind of business in such fairgrounds, either upon stipulated price or for a certain percent of the receipts taken in by such person, persons, firm, or

corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C.S., s. 4950.)

§ 106-513. Notice of sale to owner.

Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property 10 days before such sale, if he or it be a resident of the State, but if a nonresident of the State, or his or its residence be unknown, the publication of such notice for 10 days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C.S., s. 4951.)

§ 106-514. Unlawful entry on grounds a misdemeanor.

If any person, after having been expelled from the fairgrounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over [open] the enclosing structure of said fairgrounds and enter the same, or shall enter the enclosure of said fairgrounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a Class 3 misdemeanor. (1870-1, c. 184, s. 3; Code, s. 2795; 1901, c. 291; Rev., s. 3669; C.S., s. 4952; 1993, c. 539, s. 793; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-515. Assisting unlawful entry on grounds a misdemeanor.

It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a Class 3 misdemeanor. (1915, c. 242, ss. 3, 4; C.S., s. 4953; 1993, c. 539, s. 794; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-516: Repealed by Session Laws 2013-316, s. 5(d), effective January 1, 2014.

§ 106-516.1. Carnivals and similar amusements not to operate without permit.

Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than 30 days prior to a regularly advertised agricultural fair. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a Class 1 misdemeanor: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854; 1963, c. 1127; 1991 (Reg. Sess., 1992), c. 1030, s. 26; 1993, c. 539, s. 795; 1994, Ex. Sess., c. 24, s. 14(c); 2005-435, s. 43.)

§§ 106-517 through 106-520: Repealed by Session Laws 2013-316, s. 5(d), effective January 1, 2014, and applicable to admissions purchased on or after that date.

Part 4. Supervision of Fairs and Animal Exhibitions.

§ 106-520.1. Definition.

As used in this Article, the word "fair" means a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.2. Use of "fair" in name of exhibition.

It shall be unlawful for any person, firm, corporation, association, club, or other group of persons to use the word "fair" in connection with any exhibition, circus, show, or other variety of exhibition unless such exhibition is a fair within the meaning of G.S. 106-520.1. (1949, c. 829, s. 1.)

§ 106-520.3. Commissioner of Agriculture to regulate.

The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, is hereby authorized, empowered and directed to make rules and regulations with respect to classification, operation and licensing of fairs, so as to insure that such fairs shall conform to the definition set out in G.S. 106-520.1, and shall best promote the purposes of fairs as set out in such definition. Every fair, and every exhibition using the word "fair" in its name, except fairs classified by the Commissioner of Agriculture as noncommercial community fairs, must comply with the standards, rules and regulations set up and promulgated by the Commissioner of Agriculture, and must secure a license from the Commissioner of Agriculture before such exhibition or fair is staged or operated. No license shall be issued for any such exhibition or fair unless it meets the standards and complies with the rules and regulations of the Commissioner of Agriculture with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.3A. Animal exhibition regulation; permit required; civil penalties.

(a) Title. – This section may be referred to as "Aedin's Law". This section provides for the regulation of animal exhibitions as they may affect the public health and safety.

(b) Definitions. – As used in this section, unless the context clearly requires otherwise:

(1) "Animal" means only those animals that may transmit infectious diseases.

(2) "Animal exhibition" means any sanctioned agricultural fair where animals are displayed on the exhibition grounds for physical contact with humans.

(c) Permit Required. – No animal exhibition may be operated for use by the general public unless the owner or operator has obtained an operation permit issued by the Commissioner. The Commissioner may issue an operation permit only after physical inspection of the animal exhibition and a determination that the animal exhibition meets the requirements of this section and rules adopted pursuant to this section. The Commissioner may deny, suspend, or revoke a permit on the basis that the exhibition does not comply with this section or rules adopted pursuant to this section.

(d) Rules. – For the protection of the public health and safety, the Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, and in consultation with the Division of Public Health of the Department of Health and Human Services, shall adopt rules concerning the operation of and issuance of permits for animal exhibitions. The rules shall include requirements for:

- (1) Education and signage to inform the public of health and safety issues.
- (2) Animal areas.
- (3) Animal care and management.
- (4) Transition and nonanimal areas.
- (5) Hand-washing facilities.
- (6) Other requirements necessary for the protection of the public health and safety.

(e) Educational Outreach. – The Department shall continue its consultative and educational efforts to inform agricultural fair operators, exhibitors, agritourism business operators, and the general public about the health risks associated with diseases transmitted by physical contact with animals.

(f) Civil Penalty. – In addition to the denial, suspension, or revocation of an operation permit, the Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this section or a rule adopted pursuant to this section. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) Legal Representation by Attorney General. – It shall be the duty of the Attorney General to represent the Department of Agriculture and Consumer Services or designate a member of the Attorney General's staff to represent the Department in all actions or proceedings in connection with this section. (2005-191, s. 1(b).)

§ 106-520.4. Local supervision of fairs.

No county or regional fairs shall be licensed to be held unless such fair is operated under supervision of a local board of directors who shall employ appropriate managers, who shall be responsible for the conduct of such fair, and otherwise comply with the standards, rules and regulations promulgated by the Commissioner of Agriculture. The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, shall make rules and regulations requiring county and regional fairs to emphasize agricultural, educational, home and industrial exhibits by providing adequate premiums. (1949, c. 829, s. 1.)

§ 106-520.5. Reports.

Every fair shall make such reports to the Commissioner of Agriculture, as said Commissioner may require. (1949, c. 829, s. 1.)

§ 106-520.6. Premiums and premium lists supplemented.

The State Board of Agriculture may supplement premiums and premium lists for county and regional fairs and the North Carolina State Fair, and improve and expand the facilities for exhibits at the North Carolina State Fair, at any time or times, out of any funds which may be available for such purposes. (1949, c. 829, s. 1.)

§ 106-520.7. Violations made misdemeanor.

Any person who violates any provision of G.S. 106-520.1 through G.S. 106-520.6 is guilty of a Class 1 misdemeanor. (1949, c. 829, s. 1; 1993, c. 539, s. 797; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 46.

Erosion Equipment.

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

Article 47.

State Marketing Authority.

§ 106-528: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

§ 106-529: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

§ 106-530: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

§ 106-531: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

§ 106-532: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

§ 106-533: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

§ 106-534: Repealed by Session Laws 2021-90, s. 25(a), effective July 22, 2021.

Article 48.

Relief of Potato Farmers.

§§ 106-535 through 106-538: Repealed by Session Laws 1987, c. 244, s. 1(k).

Article 49.

Poultry; Hatcheries; Chick Dealers.

§ 106-539. National poultry improvement plan.

In order to promote the poultry industry of the State, the North Carolina Department of Agriculture and Consumer Services 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; 1997-261, s. 109.)

§ 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.
- (2) Set up minimum standards for the operation of hatcheries.

- (3) Regulate hatching egg dealers, chick dealers, poult dealers, poultry dealers, ratite dealers, and jobbers.
- (4) Regulate the shipping into this State of baby chicks, turkey poults and hatching eggs.
- (5) Facilitate the control and eradication of contagious and infectious diseases of poultry.
- (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; 1998-212, s. 13.10(a).)

§ 106-541. Definitions.

For the purpose of this Article, the following definitions apply:

- (1) "Hatchery" means any establishment that operates hatchery equipment for the production of baby chicks or poults.
- (2) "Hatching egg dealer, chick dealer, or jobber" means any person, firm, or corporation that buys hatching eggs, baby chicks, or turkey poults and sells or offers them for sale.
- (3) "Live poultry or ratite dealer" means a person who sells or offers for sale to the general public live poultry or ratites. Live poultry or ratite dealer does not include persons who sell on their own premises live poultry or ratites that were raised on the same premises.
- (4) "Mixed chicks" or "assorted chicks" means chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed.
- (5) "Poultry" means live chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, or turkeys other than chicks or poults.
- (6) "Ratite" has the same meaning as in G.S. 106-549.15. (1945, c. 616, s. 3; 1969, c. 464; 1998-212, s. 13.10(b).)

§ 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 and Consumer Services 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 and Consumer Services for a fee of ten dollars (\$10.00) per year.

(b1) It shall be unlawful for any person, firm, or corporation to operate as a live poultry or ratite dealer without first registering with the Department of Agriculture and Consumer Services.

(b2) It shall be unlawful for a specialty market operator, as defined in G.S. 66-250, to knowingly and willfully permit an unregistered poultry or ratite dealer to operate on the premises of the specialty market, as defined in G.S. 66-250, more than 10 days after being notified in writing by the Department of Agriculture and Consumer Services that the dealer is not registered.

(c) The Department of Agriculture and Consumer Services 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; 1997-261, s. 56; 1998-212, s. 13.10(c).)

§ 106-543. Requirements of National Poultry Improvement Plan must be met.

(a) All baby chicks, turkey poults and hatching eggs 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 Consumer Services 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.

(b) The Department of Agriculture and Consumer Services shall charge the following fees for certification in the National Poultry Improvement Plan to cover the costs of pullorum testing:

- (1) An initial certification fee of fifty dollars (\$50.00), plus ten cents (10¢) per bird.
- (2) An annual recertification fee of ten dollars (\$10.00), plus ten cents (10¢) per bird. (1945, c. 616, s. 5; 1969, c. 464; 1983, c. 290, s. 5; 1997-261, s. 109; 2014-100, s. 13.11(a).)

§ 106-544. Shipments from out of State.

All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum and typhoid disease control provided for in this Article and the regulations issued by authority of this Article, and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin certifying same. (1945, c. 616, s. 6; 1969, c. 464.)

§ 106-545. False advertising.

No hatchery, hatchery dealer, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7; 1969, c. 464.)

§ 106-546. Notice describing grade of chicks to be posted.

All hatcheries, chick dealers or jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the North Carolina Department of Agriculture and Consumer Services describing the grade of chicks approved by the North Carolina Department of Agriculture and Consumer Services. (1945, c. 616, s. 8; 1969, c. 464; 1997-261, s. 109.)

§ 106-547. Records to be kept.

Every hatchery, hatching egg dealer, chick dealer, poultry dealer, ratite dealer, or jobber shall keep such records of operation as the regulations of the Department of Agriculture and Consumer Services may require for the proper inspection of said hatchery, dealer, or jobber. (1945, c. 616, s. 9; 1969, c. 464; 1997-261, s. 109; 1998-212, s. 13.10(d).)

§ 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.)

§ 106-549. Violation a misdemeanor.

Any person, firm or corporation who shall willfully violate any provision of this Article or any rule or regulation duly established by authority of this Article, shall be guilty of a Class 2 misdemeanor. (1945, c. 616, s. 11; 1969, c. 464; 1993, c. 539, s. 798; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-549.01. Civil penalties.

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 12; 1997-261, s. 57; 1998-215, s. 16.)

Article 49A.

Voluntary Inspection of Poultry.

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

Article 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.15. Definitions.

As used in this Article, except as otherwise specified, the following terms shall have the meanings stated below:

- (1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:
 - 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 article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;
 - b. 1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the

- judgment of the Commissioner, make such article unfit for human food;
2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;
 3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;
 4. If it bears or contains any color additive which is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive or color additive in or on such article is prohibited by order of the Commissioner in establishments at which inspection is maintained under this Article;
- c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;
 - d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
 - e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;
 - 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 section 409 of the Federal Food, Drug, and Cosmetic Act;
 - h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or
 - i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.
- (2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in

- part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.
- (3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture and Consumer Services.
 - (4) "Board" means the North Carolina Board of Agriculture.
 - (5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.
 - (6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.
 - (7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.
 - (8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).
 - (9) "Firm" means any partnership, association, or other unincorporated business organization.
 - (10) "Intrastate commerce" means commerce within this State.
 - (11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.
 - (12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.
 - (13) "Meat broker" means any person, firm, corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, bison, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.
 - (14) "Meat food product" means any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, bison, fallow deer, or red deer, excepting products that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and that are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, goats, and bison.
 - (15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:
 - a. If its labeling is false or misleading in any particular;

- b. If it is offered for sale under the name of another food;
- c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
- d. If its container is so made, formed, or filled as to be misleading;
- e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this paragraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;
- f. If any word, statement, or other information required by or under authority of this or the subsequent Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;
- h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition,

exemptions shall be established by regulations promulgated by the Board;

- j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;
- k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this paragraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or
- l. If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

- (16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent Article.
- (17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.
- (18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent Article.
- (19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent Article.
- (20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
- (21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.
- (21a) "Ratite" means a bird whose breastbone is smooth so that flight muscles cannot attach, such as an ostrich, an emu, and a rhea. These birds are subject to the provisions of this Article and Article 49C to the same extent as any other meat food product.
- (22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, fallow deer, red deer, horses, mules, or other equines, except rendering conducted under inspection under this Article. (1969, c. 893, s. 1; 1991, c. 317, ss. 4, 5; 1993, c. 311, s. 1; 1995, c. 194, ss. 1, 2; 1997-142, ss. 4, 5; 1997-261, s. 58; 2017-108, s. 11(a).)

§ 106-549.16. Statement of purpose.

Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and results in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by North Carolina and the United States as contemplated by this and the subsequent Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this and the subsequent Article. (1969, c. 893, s. 2; 1971, c. 54, s. 3.)

§ 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, fallow deer, red deer, bison, 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, fallow deer, red deer, bison, 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, fallow deer, red deer, bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, red deer, bison, 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, fallow deer, red deer, bison, 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, fallow deer, red deer, bison, 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, fallow deer, red deer, bison, 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; 1991, c. 317, s. 6; 1995, c. 194, s. 3; 1997-142, s. 6.)

§ 106-549.18. Inspection; stamping carcass.

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof. (1969, c. 893, s. 4; 1991, c. 317, s. 7; 1995, c. 194, s. 4; 1997-142, s. 7.)

§ 106-549.19. Application of Article; place of inspection.

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he

may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article. (1969, c. 893, s. 5; 1991, c. 317, s. 8; 1995, c. 194, s. 5; 1997-142, s. 8.)

§ 106-549.20. Inspectors' access to businesses.

For the purposes hereinbefore set forth the Commissioner or his authorized representative shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times during regular business hours to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "North Carolina Department of Agriculture and Consumer Services Inspected and Passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "North Carolina Department of Agriculture and Consumer Services Inspected and Condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy such condemned meat food products. (1969, c. 893, s. 6; 1997-261, s. 109.)

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

(a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "North Carolina Department of Agriculture and Consumer Services Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "North Carolina Department of Agriculture and Consumer Services Inspected and Passed" under the provisions of this Article, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this Article and found to be not adulterated shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner or authorized representative may require, the information required under subdivision (15) of G.S. 106-549.15.

(c) The Board whenever it determines such action is necessary for the protection of the public, may prescribe:

- (1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this and the subsequent Article;
- (2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic

Act, or under the Federal Meat Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this Article shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading, and which are approved by the Commissioner or the Commissioner's authorized representative, are permitted.

(e) If the Commissioner or the Commissioner's 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 Article is false or misleading in any particular, the Commissioner or the authorized representative may direct that this use be withheld unless the marking, labeling, or container is modified in such a manner as the Commissioner or the authorized representative prescribes 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 the Commissioner's authorized representative, the 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; 1997-261, s. 109; 2015-264, s. 8(b).)

§ 106-549.22. Rules and regulations of Board.

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture and Consumer Services Inspected and Passed." (1969, c. 893, s. 8; 1991, c. 317, s. 9; 1995, c. 194, s. 6; 1997-142, s. 9; 1997-261, s. 109.)

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

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, red deer, bison, 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; 1991, c. 317, s. 10; 1995, c. 194, s. 7; 1997-142, s. 10.)

§ 106-549.24. Prohibited acts regarding certificate.

(a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner or his authorized representative.

(b) No person, firm, or corporation shall

- (1) Forge any official device, mark or certificate;
- (2) Without authorization from the Commissioner or his authorized representative use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;
- (3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;
- (4) Knowingly possess, without promptly notifying the Commissioner or his authorized representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;
- (5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board;
- (6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1969, c. 893, s. 10.)

§ 106-549.25. Slaughter, sale and transportation of equine carcasses.

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and

conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11; 1991, c. 317, s. 11; 1995, c. 194, s. 8; 1997-142, s. 11.)

§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a Class I felony which may include a fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000); and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction thereof, be summarily discharged from office and may be punished by a fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000). (1969, c. 893, s. 12; 1991, c. 317, s. 12; 1993, c. 539, s. 1298; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 194, s. 9; 1997-142, s. 12.)

§ 106-549.27. Exemptions from Article.

(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

- (1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor
- (2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, fallow deer, red deer, bison, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats, fallow deer, red deer, bison, or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. Meat food products coming under this subsection may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products bearing the official mark of inspection while in the freezer locker plant.

(c) In order to accomplish the objectives of this Article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this Article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) The slaughter of animals and preparation of articles referred to in paragraphs (a)(2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a Class 2 misdemeanor.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13; 1971, c. 54, ss. 1, 2; 1991, c. 317, s. 13; 1993, c. 539, s. 799; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 194, s. 10; 1997-142, s. 13.)

§ 106-549.28. Regulation of storage of meat.

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any

person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a Class 2 misdemeanor. (1969, c. 893, s. 14; 1991, c. 317, s. 14; 1993, c. 539, s. 800; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 194, s. 11; 1997-142, s. 14.)

Article 49C.

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

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

(a) The North Carolina Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous Article in such a manner as will effectuate the purposes of this and the previous Article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture and Consumer Services 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.

(c) The North Carolina Department of Agriculture and Consumer Services is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of Section 301 of said act. (1969, c. 893, s. 15; 1985 (Reg. Sess., 1986), c. 1014, s. 155(a); 1997-261, s. 59.)

§ 106-549.29:1. Repealed by Session Laws 1969, c. 893, s. 26.

§ 106-549.30. Refusal of Commissioner to inspect and certify meat.

The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this and the previous Article) refuse to provide, or withdraw, inspection service under Article 49B with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Article 49B because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (i) any felony, or (ii) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this or the previous Article for withdrawal of inspection services under Article 49B from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section 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. The determination and order of the Commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the appropriate court as provided in G.S. 106-549.33. (1969, c. 893, s. 16.)

§ 106-549.31. Enforcement against uninspected meat.

Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any inspector of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture and Consumer Services upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of Article 49B or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such inspector, upon approval of his supervisor, for a period not to exceed 20 days, pending action under G.S. 106-549.33, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by the area supervisor of the Meat and Poultry Inspection Service. All official marks may be required by such inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the area supervisor that the article or animal is eligible to retain such marks. (1969, c. 893, s. 17; 1997-261, s. 109.)

§ 106-549.32. Enforcement against condemned meat; appeal.

(a) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this State after such transportation, and that (i) is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of this or the previous Article, or (ii) is capable of use as human food and is adulterated or misbranded, or (iii) in any other way is in violation of this or the previous Article, shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any proper court as provided in G.S. 106-549.33 within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the order be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or animals shall not be sold contrary to the provisions of this or the previous Article. Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this or the previous Article, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by the authorized representative of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if

any, intervening as claimant of the article or animal. The proceedings in such cases shall be heard by the superior court without a jury, with the right of the aggrieved party to appeal to the Court of Appeals, and all such proceedings shall be at the suit of and in the name of this State. No appeal shall lie from the Court of Appeals.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this or the previous Article, or other laws. (1969, c. 893, s. 18.)

§ 106-549.33. Jurisdiction of superior court.

The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this and the previous Article, and shall have jurisdiction in all other kinds of cases arising under this and the previous Article, provided however, all prosecutions for criminal violations under this and the previous Article shall be in any court having jurisdiction over said violation. (1969, c. 893, s. 19.)

§ 106-549.34. Interference with inspector.

Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this or the previous Article shall be guilty of a Class 2 misdemeanor. For the purposes of this section, "impede," "oppose," and "intimidate," or "interfere" shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector or the Meat and Poultry Inspection Service. Whoever, in the commission of any such acts, uses a deadly weapon, shall be guilty of a Class A1 misdemeanor. (1969, c. 893, s. 20; 1993, c. 539, s. 801; 1994, Ex. Sess., c. 24, s. 14(c); 2023-63, s. 5.1(b).)

§ 106-549.35. Punishment for violation.

(a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article is guilty of a Class 2 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation is guilty of a Class H felony which may include a fine of not more than ten thousand dollars (\$10,000). Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for prosecution or for the institution of condemnation or injunction proceedings, minor violations of this Article whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(c) The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or Article 49B, or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1969, c. 893, s. 21; 1995, c. 516, s. 5; 1998-215, s. 17; 1999-408, s. 6.)

§ 106-549.36. Gathering information; reports required; use of subpoena.

(a) The Commissioner shall also have power –

- (1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, or corporations;
- (2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) For the purposes of this and the previous Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

- (1) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.33 in requiring the attendance and testimony of witnesses and the production of documentary evidence.
- (2) Any of the courts designated in G.S. 106-549.33 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation, to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.
- (3) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this or the previous Article or any order of the Commissioner made in pursuance thereof.

- (4) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.
- (5) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.
- (6) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceedings, criminal or otherwise, based upon or growing out of any alleged violation of this or the previous Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a Class 2 misdemeanor.

- (1) Any person, firm, or corporation that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person,

firm, or corporation in his possession or within his control, shall be deemed guilty of a Class 2 misdemeanor.

- (2) If any person, firm, or corporation required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit to this State the sum of one hundred dollars (\$100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person, firm, or corporation has his or its principal office or in Wake County. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.
- (3) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a Class 2 misdemeanor. (1969, c. 893, s. 22; 1993, c. 539, s. 802; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-549.37. Jurisdiction coterminous with federal law.

The requirements of this Article shall apply to persons, firms, corporation establishments, animals, and articles regulated under the Federal Meat Inspection Act only to the extent provided for in section 408 of said federal act. (1969, c. 893, s. 23.)

§ 106-549.38. Rules and regulations of State Department of Agriculture and Consumer Services.

All rules and regulations of the Department of Agriculture and Consumer Services not inconsistent with the provisions of this Article shall remain in full force and effect until amended or repealed by the Board. (1969, c. 893, s. 27; 1997-261, s. 60.)

§ 106-549.39. Hours of inspection; overtime work; fees.

(a) Overtime Fees. – The Commissioner is not required to furnish meat inspection services during the following times unless the establishment under inspection pays the Department for the services:

- (1) More than eight hours in a day.
- (2) More than 40 hours in a calendar week.
- (3) On a Sunday.
- (4) On a legal holiday.

The Commissioner may establish a fee at an hourly rate to be paid by an establishment inspected during the times listed above. The fee shall be credited to the Department as a departmental receipt and applied to the cost of inspecting the establishment.

(b) Inspection Fees. – The Commissioner may establish a fee at an hourly rate to be paid by an establishment preparing an animal listed in this subsection as a meat food product. The fee shall be credited to the Department as a departmental receipt and applied to the cost of inspecting these animals to be used for food. The animals whose inspection is subject to the fee imposed under this subsection are:

- (1) Bison.

- (2) Repealed by Session Laws 2009-102, s. 1, effective June 15, 2009. (1969, c. 893, s. 27(a); 1993, c. 311, s. 2; 1995, c. 194, s. 12; 2009-102, s. 1.)

§§ 106-549.40 through 106-549.48. Repealed by Session Laws 1969, c. 893, s. 26.

Article 49D.

Poultry Products Inspection Act.

§ 106-549.49. Short title.

This Article shall be designated as the North Carolina Poultry Products Inspection Act. (1971, c. 677, s. 1.)

§ 106-549.50. Purpose and policy.

(a) Poultry and poultry products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that slaughtered poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by this State and the United States as contemplated by this Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this Article.

(b) It is hereby declared to be the policy of the General Assembly to provide for the inspection of poultry and poultry products and otherwise regulate the processing and distribution of such articles as hereinafter prescribed to prevent the movement or sale in intrastate commerce of poultry and poultry products which are adulterated or misbranded. It is the intent of the General Assembly that when poultry and poultry products are condemned because of disease, the reason for condemnation in such instances shall be supported by scientific fact, information, or criteria, and such condemnation under this Article shall be achieved through uniform inspection standards and uniform application thereof. (1971, c. 677, ss. 2, 3.)

§ 106-549.51. Definitions.

For purposes of this Article, the following terms shall have the meanings stated below:

- (1) "Adulterated" shall apply to any poultry product under one or more of the following circumstances:
 - 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 article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;
 - b. 1. If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) any added poisonous

- or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;
2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;
 3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;
 4. If it bears or contains any color additive which is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraphs 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board in official establishments;
- c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;
 - d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
 - e. If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;
 - 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 section 409 of the Federal Food, Drug, and Cosmetic Act; or
 - h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.
- (2) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.
 - (3) "Board" means the North Carolina Board of Agriculture.

- (4) "Capable of use of human food" shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.
- (5) "Color additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
- (6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.
- (7) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.
- (8) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.
- (9) "Federal Poultry Products Inspection Act" means the act so entitled, approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791).
- (10) "Food additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
- (11) "Immediate container" includes any consumer package; or any other container in which poultry products, not consumer packaged, are packed.
- (12) "Inspection service" means the official government service within the Department of Agriculture and Consumer Services designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.
- (13) "Inspector" means an employee or official of the Department of Agriculture and Consumer Services authorized by the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department and such governmental subdivision.
- (14) "Intrastate commerce" means commerce within this State.
- (15) "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.
- (16) "Labeling" means all labels and other written, printed, or graphic matter
 - a. Upon any article or any of its containers or wrappers, or
 - b. Accompanying such article.
- (17) "Misbranded" shall apply to any poultry product under one or more of the following circumstances:
 - a. If its labeling is false or misleading in any particular;
 - b. If it is offered for sale under the name of another food;
 - c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
 - d. If its container is so made, formed, or filled as to be misleading;
 - e. Unless it bears a label showing

1. The name and place of business of the manufacturer, packer, or distributor; and
2. An accurate statement of the quantity of the product in terms of weight, measure, or numerical count;

Provided, that under paragraph 2 of this subdivision e, reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established, by regulations prescribed by the Board;

- f. If any word, statement, or other information required by or under authority of this Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.55 unless
 1. It conforms to such definition and standard, and
 2. Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;
- h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.55, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- i. If it is not subject to the provisions of subdivision g, unless its label bears
 1. The common or usual name of the food, if any there be, and
 2. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause 2 of this subdivision i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;
- j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board, after consultation with the Secretary of Agriculture of the United States, determines to be,

and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

- k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subdivision k is impracticable, exemptions shall be established by regulations promulgated by the Board; or
- l. If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses (if the Commissioner so requires) directly thereon, as the Board may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

- (18) "Official certificate" means any certificate prescribed by regulation of the Board for issuance by an inspector or other person performing official functions under this Article.
- (19) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.
- (20) "Official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this Article.
- (21) "Official inspection legend" means any symbol prescribed by regulation of the Board showing that an article was inspected for wholesomeness in accordance with this Article.
- (22) "Official mark" means the official inspection legend or any other symbol prescribed by regulation of the Board to identify the status of any article or poultry under this Article.
- (23) "Person" means any individual, partnership, corporation, association, or other business entity.
- (24) "Pesticide chemical" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
- (25) "Poultry" means any domesticated bird, whether live or dead.
- (25a) "Poultry composting facility" means a structure or enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe by-product that can be used for plant food.
- (26) "Poultry product" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Board from definition as a poultry product under such conditions as the Board may prescribe to assure

- that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.
- (27) "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.
 - (28) "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.
 - (29) "Raw agricultural commodity" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
 - (30) "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, or poultry, except rendering conducted under inspection or exemption under this Article.
 - (31) "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. (1971, c. 677, s. 4; 1995, c. 543, s. 3; 1997-261, s. 61; 2017-108, s. 11(b).)

§ 106-549.51A: Repealed by Session Laws 2009-102, s. 2, effective June 15, 2009.

§ 106-549.52. State and federal cooperation.

(a) The Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department 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.

(c) The Department is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act. (1971, c. 677, s. 5; 1985 (Reg. Sess., 1986), c. 1014, s. 155(b); 1997-261, s. 62.)

§ 106-549.53. Inspection; condemnation of adulterated poultry.

(a) For the purpose of preventing the entry into or flow or movement in intrastate commerce of any poultry product which is capable of use as human food and is adulterated, the Commissioner shall, where and to the extent considered by him necessary, cause to be made by inspectors antemortem inspection of poultry in each official establishment engaged in processing poultry or poultry products solely for intrastate commerce.

(b) The Commissioner, whenever processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcass of each bird processed, and at any

time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment engaged in processing such poultry or poultry products solely for intrastate commerce.

(c) All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall, if no appeal be taken from such determination of condemnation, be destroyed for human food purposes under the supervision of an inspector: Provided, that carcasses, parts, and products, which may by reprocessing be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Commissioner determines that the appeal is frivolous. If the determination of condemnation is sustained the carcasses, parts, and products shall be destroyed for food purposes under the supervision of an inspector. (1971, c. 677, s. 6.)

§ 106-549.54. Sanitation of premises; regulations.

(a) Each official establishment slaughtering poultry or processing poultry products solely for intrastate commerce shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Board for the purpose of preventing the entry into or flow or movement in intrastate commerce of poultry products which are adulterated.

(b) The Commissioner shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. (1971, c. 677, s. 7.)

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

(a) All poultry products inspected at any official establishment under the authority of this Article and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers as the Commissioner may require, the information required under subdivision (17) of G.S. 106-549.51. In addition, the Commissioner whenever he determines such action is practicable and necessary for the protection of the public, may require nonconsumer packaged carcasses at the time they leave the establishment to bear directly thereon in distinctly legible form any information required under such subdivision (17).

(b) The Board, whenever it determines such action is necessary for the protection of the public, may prescribe:

- (1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marking or otherwise labeling any articles or poultry subject to this Article;
- (2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug and Cosmetic Act, or under the Federal Poultry Products Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such

standards to avoid inconsistency between such standards and the federal standards.

(c) No article subject to this Article shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Commissioner, are permitted.

(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; 1989, c. 770, s. 26.)

§ 106-549.56. Prohibited acts.

(a) No person shall:

- (1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles solely for intrastate commerce, except in compliance with the requirements of this Article;
- (2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce,
 - a. Any poultry products which are capable of use as human food and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or
 - b. Any poultry products required to be inspected under this Article unless they have been so inspected and passed;
- (3) Do, with respect to any poultry products 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 such products to be adulterated or misbranded;
- (4) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Board, except as may be authorized by regulations of the Board;
- (5) Use to his own advantage, or reveal other than to the authorized representatives of the State government or any other government in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this Article concerning any matter which is entitled to protection as a trade secret.

(b) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner.

(c) No person shall:

- (1) Forge any official device, mark or certificate;
- (2) Without authorization from the Commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;
- (3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;
- (4) Knowingly possess, without promptly notifying the Commissioner, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;
- (5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board; or
- (6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1971, c. 677, s. 9.)

§ 106-549.57. No poultry in violation of Article processed.

No establishment processing poultry or poultry products solely for intrastate commerce shall process any poultry or poultry product capable of use as human food except in compliance with the requirements of this Article. (1971, c. 677, s. 10.)

§ 106-549.58. Poultry not for human consumption; records; registration.

(a) Inspection shall not be provided under this Article at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Board to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(b) The following classes of persons shall, for such period of time as the Board may by regulations prescribe, not to exceed two years unless otherwise directed by the Commissioner for good cause shown, keep such records as are properly necessary for the effective enforcement of this Article in order to insure against adulterated or misbranded poultry products for the American consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Department of Agriculture and Consumer Services, afford such representative access to their places of business and opportunity to examine the

facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

- (1) Any person that engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;
- (2) Any person that engages in the business of buying or selling (as poultry products brokers; wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any poultry;
- (3) Any person that engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter.

(c) No person shall engage in business, in or for intrastate commerce, as a poultry products broker, renderer, or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the Board, he has registered with the Commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

(d) No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Board may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. (1971, c. 677, s. 11; 1997-261, s. 109.)

§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement.

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 is guilty of a Class 1 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person is guilty of a Class H felony which may include a fine of not more than ten thousand dollars (\$10,000). When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(a1) The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule adopted under this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to

this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article is guilty of a Class 2 misdemeanor which may include a fine of not more than five thousand dollars (\$5,000). Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, is guilty of a Class A1 misdemeanor which may include a fine of not more than ten thousand dollars (\$10,000). (1971, c. 677, s. 12; 1997-261, s. 109; 1999-408, s. 7; 2007-361, s. 1.)

§ 106-549.60. Notice of violation.

Before any violation of this Article is reported by the Commissioner to any North Carolina district attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for criminal prosecution of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1971, c. 677, s. 13; 1973, c. 47, s. 2.)

§ 106-549.61. Regulations authorized.

(a) The Commissioner may by regulations prescribe conditions under which poultry products capable of use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

(b) The Board shall promulgate such other rules and regulations as are necessary to carry out the provisions of this Article.

(c) When opportunity is afforded for submission of comments by interested persons on proposed rules or regulations under this Article, it shall include opportunity for oral presentation of views. (1971, c. 677, s. 14.)

§ 106-549.62. Intrastate operations exemptions.

(a) The Board shall, by regulation and under such conditions, including requirements, as to sanitary standards, practices, and procedures as it may prescribe, exempt from specific provisions

of this Article with respect to processing of poultry or poultry products solely for intrastate commerce and distribution of poultry or poultry products only in such commerce:

- (1) Retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up of poultry products on the premises where such sales to consumers are made;
- (2) For such period of time as the Commissioner determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this Article, any person engaged in the processing of poultry or poultry products and the poultry or poultry products processed by such person: Provided, however, that no such exemption shall continue in effect more than 120 days after enactment of this Article;
- (3) Persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the Commissioner determines necessary to avoid conflict with such requirements while still effectuating the purposes of this Article;
- (4) The slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees;
- (5) The custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: Provided, that such custom slaughterer does not engage in the business of buying or selling any poultry products capable of use as human food;
- (6) The slaughtering and processing of poultry products by any poultry producer on his own premises with respect to sound and healthy poultry raised on his premises and the distribution by any person of the poultry products derived from such operations, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of such poultry producer, and if they are not otherwise misbranded, and are sound, clean, and fit for human food when so distributed; and
- (7) The slaughtering of sound and healthy poultry or the processing of poultry products of such poultry by any poultry producer or other person for distribution by him directly to household consumers, restaurants, hotels, and boardinghouses, for use in their own dining rooms, or in the preparation of meals for sales direct to consumers, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of the processor, and if they are not otherwise misbranded and are sound, clean, and fit for human food when distributed by such processor.

(b) In addition to the specific exemptions authorized in subsection (a), the Board shall, when it determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with subsection (c) for the exemption of the operation and products of small enterprises (including poultry producers), not exempted under subsection (a), which are engaged in slaughtering and/or cutting up poultry for

distribution as carcasses or parts thereof, solely for distribution within this State, from such provisions of this Article as it deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as it shall prescribe to effectuate the purposes of this Article.

(c) The exemptions provided for in subdivisions (a)(6) and (7) above shall not apply if the poultry producer or other person engages in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in such subdivisions. No exemption under subdivisions (a)(6) or (7) or subsection (b) shall apply to any poultry producer or other person who slaughters or processes the products of more than 20,000 birds of all species during the calendar year for which this exemption is being applied.

(d) The provisions of this Article requiring inspection shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments, if no poultry or poultry products are processed at the establishment for distribution outside this State or otherwise subject to inspection under the Federal Poultry Products Inspection Act.

(e) The provisions of this Article shall not apply to poultry producers with respect to poultry of their own raising on their own farms if (i) such producers slaughter not more than 1,000 birds of all species during the calendar year for which this exemption is being determined; (ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; and (iii) such poultry moves only in intrastate commerce.

(f) The adulteration and misbranding provisions of this Article, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (a), (b), or (e).

(g) The Commissioner may by order suspend or terminate any exemption under subsections (a) or (b) of this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this Article. (1971, c. 677, s. 15; 2009-102, ss. 3, 4.)

§ 106-549.63. Commissioner may limit entry of products to establishments.

The Commissioner may limit the entry of poultry products and other materials into any official establishment, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this Article. (1971, c. 677, s. 16.)

§ 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. (1971, c. 677, s. 17; 1973, c. 1331, s. 3; 1987, c. 827, s. 37.)

§ 106-549.65. Product detained if in violation.

Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by any inspector of the Meat and Poultry Inspection Service of the Department of Agriculture and Consumer Services upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this Article or of any other State or federal law or that it has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under G.S. 106-549.66 or notification of any federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or poultry before it is released unless it appears to the satisfaction of the area supervisor of the Department of Agriculture and Consumer Services Poultry Inspection Service that the article or poultry is eligible to retain such marks. (1971, c. 677, s. 18; 1997-261, s. 109.)

§ 106-549.66. Seizure or condemnation proceedings.

(a) Any poultry product, or any dead, dying, or disabled, or diseased poultry, that is being transported in intrastate commerce, subject to this Article, or is held for sale in this State after such transportation, and that

- (1) Is or has been processed, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Article, or
- (2) Is capable of use as human food and is adulterated or misbranded, or
- (3) In any other way is in violation of this Article, shall be liable to be proceeded against and seized and condemned, at any time, on an affidavit filed in any superior court within the jurisdiction of which the article or poultry is found. If the article or poultry is condemned it shall, after entry of the judgment, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or poultry shall not be sold contrary to the provisions of this Article, or the Federal Poultry Products Inspection Act or the Federal Food, Drug, and Cosmetic Act: Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or poultry shall not be sold or otherwise disposed of contrary to the

provisions of this Article or the laws of the United States, the court may direct that such article or poultry be delivered to the owner thereof subject to such supervision by authorized representatives of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or poultry and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or poultry. The proceedings in such cases shall conform, as nearly as may be, to civil actions and either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the State.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Article, or other laws. (1971, c. 677, s. 19.)

§ 106-549.67. Superior court jurisdiction; proceedings in name of State.

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 kinds of cases arising under this Article. All proceedings for the enforcement or to restrain violations of this Article shall be by and in the name of this State. (1971, c. 677, s. 20.)

§ 106-549.68. Powers of Commissioner; subpoenas; mandamus; self-incrimination; penalties.

(a) The Commissioner shall also have power:

- (1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons;
- (2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) (1) For the purposes of this Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

- (2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.67 in requiring the attendance and testimony of witnesses and the production of documentary evidence.
 - (3) Any of the courts designated in G.S. 106-549.67 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.
 - (4) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs or [of] mandamus commanding any person to comply with the provisions of this Article or any order of the Commissioner made in pursuance thereof.
 - (5) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.
 - (6) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.
 - (7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- (c) (1) Any person that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do

so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a Class 1 misdemeanor.

- (2) Any person that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of any person subject to this Article or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this Article in his or its possession or within his or its control, shall be deemed guilty of a Class 1 misdemeanor.
- (3) If any person required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of one hundred dollars (\$100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.
- (4) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a Class 1 misdemeanor. (1971, c. 677, s. 21; 1993, c. 539, ss. 803-805; 1994, Ex. Sess., c. 14, s. 55; c. 24, s. 14(c).)

§ 106-549.68A. Article applicable to those regulated by federal act.

The requirements of this Article shall apply to persons, establishments, poultry, poultry products and other articles regulated under the Federal Poultry Products Inspection Act only to the extent provided for in section 23 of said federal act. (1971, c. 677, s. 22.)

§ 106-549.69. Inspection costs.

The cost of inspection rendered under the requirements of this Article, shall be borne by this State, except as provided in G.S. 106-549.52 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this Article, at such rates as the Commissioner may determine shall be borne by such establishments. Sums received by the Department of Agriculture and Consumer Services in reimbursement for sums paid out for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section. (1971, c. 677, s. 23; 1997-261, s. 109.)

Article 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

§ 106-549.70. Disposal pit, incinerator, or poultry composting facility required.

Every person, firm or corporation engaged in raising or producing poultry for commercial purposes shall provide and maintain a disposal pit, incinerator, or poultry composting facility of a size and design, approved by the Department of Agriculture and Consumer Services, in which all dead poultry carcasses are disposed. This section does not apply to poultry producers with flocks of 200 or less. The definitions provided in Article 49D of this Chapter apply in this Article. (1961, c. 1197, s. 1; 1995, c. 543, s. 2; 1997-261, s. 109.)

§ 106-549.71. Penalty for violation.

Any person, firm or corporation violating the provisions of this Article is guilty of a Class 1 misdemeanor. (1961, c. 1197, s. 2; 1999-408, s. 8.)

§ 106-549.72. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 13; 1998-215, s. 18.)

§§ 106-549.73 through 106-549.80. Reserved for future codification purposes.

Article 49F.

Biological Residues in Animals.

§ 106-549.81. Definitions.

For the purpose of this Article, the following terms shall have the meanings ascribed to them in this section:

- (1) "Animal" means any member of the animal kingdom except man.
- (2) "Animal feed" means any meat, grain, forage, or other food of any plant, animal or mineral origin, or any combination thereof, which is normally fed to any animal.
- (3) "Animal produce" means any product derived from any animal, whether suitable or not for human consumption.
- (4) "Biological residue" means any substance, including metabolites, remaining in or on any animal prior to or at the time of slaughter or in any of its tissues after slaughter, or in or on any animal product or animal feed, as the result of treatment with, or exposure, of the animal, animal product, or animal feed to any pesticide, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.
- (5) "Board" means the North Carolina Board of Agriculture.
- (6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized delegate.

- (7) "Person" means any individual, partnership, corporation, association, cooperative or other legal entity.
- (8) "State" means the State of North Carolina. (1971, c. 1183, s. 1.)

§ 106-549.82. Detention or quarantine; lifting quarantine; burden of proof.

Any animal, animal product, or animal feed which the Commissioner has reasonable cause to believe contains or bears any biological residue may be immediately detained or quarantined by written order of the Commissioner until it can be determined in a manner acceptable to the Commissioner that the animal, animal feed, or animal product does not contain or bear a biological residue, or that the biological residue therein is within tolerances which are established by, or approved by, the Board, and the detention or quarantine is removed; or the animal, animal product or animal feed is destroyed or otherwise disposed of in a manner acceptable to the Commissioner; or in the case of a live animal, it has been treated in a manner acceptable to the Commissioner to reduce the level of any biological residue to a level acceptable to the Commissioner. The burden of proof under this section shall be on the owner or custodian of such animal, animal feed or animal product. (1971, c. 1183, s. 2.)

§ 106-549.83. Appellate review; order pending appeal; bond.

Any order or [of] quarantine or detention made by the Commissioner may be appealed by the aggrieved party to the superior court of the county wherein such animal, animal product or animal feed is quarantined or detained. The superior court judge, on at least 24 hours' notice, may hear said appeal in or out of term, in court or in chambers and may affirm, reverse or modify the order of quarantine or detention imposing such conditions as he may deem just and proper. Any party may appeal from the superior court to the Court of Appeals. Pending an appeal from the Commissioner or the superior court, any regular or special superior court judge residing in or holding court in the district may enter such orders as he deems necessary for the preservation or disposition of the animal, animal product or feed, and may require the posting of a bond for the faithful performance of such order. (1971, c. 1183, s. 3.)

§ 106-549.84. Movement of contaminated animals forbidden.

(a) No person shall ship, transport, or otherwise move, or deliver, or receive for movement, any animal, animal product, or animal feed under detention or quarantine pursuant to G.S. 106-549.82, except under written permit of the Commissioner and in accordance with the conditions stated in such written permission, or until the detention or quarantine order has been revoked by written order of the Commissioner.

(b) No person shall ship, transport, or otherwise move, or deliver or receive for movement any animal, animal product, or animal feed which he knows, or by the exercise of reasonable care would know, contains or bears a biological residue which exceeds the tolerances established or approved by the Board. (1971, c. 1183, s. 4.)

§ 106-549.85. Inspection of animals, records, etc.

The Commissioner may enter any place within the State at all reasonable times where any animal, animal product or animal feed is kept to examine the facilities, inventory and/or copy the records thereof, and to take reasonable samples of any such animal, animal product or animal feed after giving notice in writing to the owner or custodian of the premises to be entered. If such person shall refuse to consent to such entry, the Commissioner may apply to any district court judge and

such judge may order, without notice, that the owner or custodian of any place where any animal, animal product or animal feed is kept to permit the Commissioner to enter such place for the purposes herein stated and failure by any person to obey such order may be punished as for contempt. (1971, c. 1183, s. 5.)

§ 106-549.86. Investigation to discover violation.

The Commissioner shall make such investigations or inspections as he deems necessary to determine whether any person has violated, or is violating, any provision of this Article or any regulation promulgated thereunder, and when any biological residue is found in or on any animal, animal product, or animal feed, the Commissioner may make such investigation or inspection as he deems necessary to determine the source of the substance which resulted in the biological residue. (1971, c. 1183, s. 6.)

§ 106-549.87. Promulgation of regulation.

The North Carolina Board of Agriculture is hereby authorized to promulgate regulations as it may deem necessary to effectuate the purposes of this Article, including but not limited to, tolerances for biological residues. It shall be unlawful for any person to violate any provision of this Article or any regulation promulgated by the Board under authority of this Article. (1971, c. 1183, s. 7.)

§ 106-549.88. Penalties.

Any person who violates any provisions of this Article or any regulations thereunder is guilty of a Class 2 misdemeanor. (1971, c. 1183, s. 8; 1999-408, s. 9.)

§ 106-549.89. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 14; 1998-215, s. 19.)

§§ 106-549.90 through 106-549.93. Reserved for future codification purposes.

Article 49G.

Production and Sale of Pen-Raised Quail.

§ 106-549.94. Regulation of pen-raised quail by Department of Agriculture and Consumer Services; certain authority of North Carolina Wildlife Resources Commission not affected.

(a) The Department of Agriculture and Consumer Services 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; 1997-261, ss. 63, 109.)

§ 106-549.95. Reserved for future codification purposes.

§ 106-549.96. Reserved for future codification purposes.

Article 49H.

Production, Sale, and Transportation of Farmed Cervids.

§ 106-549.97. Regulation by Department of Agriculture and Consumer Services of farmed cervids produced and sold for commercial purposes; definitions.

(a) Repealed by Session Laws 2015-263, s. 14(a), effective September 30, 2015.

(a1) The following definitions apply in this Article:

- (1) Commission. – The North Carolina Wildlife Resources Commission.
- (2) Department. – The North Carolina Department of Agriculture and Consumer Services.
- (3) Farmed Cervid. – Any cervid, as defined by the USDA Standards, that is susceptible to Chronic Wasting Disease, or any other member of the Cervidae family that is not susceptible to Chronic Wasting Disease, that is held in captivity and produced, bought, or sold for commercial purposes. With regard to cervids that are susceptible to Chronic Wasting Disease, the term "farmed cervid" shall only include any cervid that was bred in captivity and has been continuously maintained within a herd that is enrolled in and complies with a USDA-approved Herd Certification Program. Any animal registered or tagged in any licensed captive cervid facility existing within the State as of July 1, 2015, is deemed to be a farmed cervid.
- (4) Non-Farmed Cervid. – All animals in the family Cervidae other than farmed cervids.
- (5) USDA. – The United States Department of Agriculture.
- (6) USDA Standards. – The United States Department of Agriculture's Chronic Wasting Disease Program Standards, May 2014 edition, and subsequent updates.

(a2) The Department of Agriculture and Consumer Services shall regulate the production, sale, possession, and transportation, including importation and exportation, of farmed cervids. The Department shall have sole authority with regard to farmed cervids, including administration of the North Carolina Captive Cervid Herd Certification Program. The Department shall allow the sale of farmed cervids, whether alive or dead, whole or in part, including, but not limited to, the sale of antlers, antler velvet, hides, or meat from captive populations of farmed cervids. The Department shall follow the USDA Standards and the provisions set forth in 9 C.F.R. Part 55 and 9 C.F.R. Part 81 in the implementation of this Article with regard to cervids susceptible to Chronic Wasting Disease. The Department may adopt rules to implement this Article, including, but not limited to, requirements for captivity licenses, captivity permits, transportation permits, importation permits, and exportation permits. The Department may issue new captivity licenses or permits for farmed cervid facilities that will hold cervids susceptible to Chronic Wasting Disease only if Chronic

Wasting Disease-susceptible source animals are from a certified herd in accordance with USDA Standards from an existing licensed facility. Nothing in this section shall limit the Department's ability to issue new captivity licenses and permits for farmed cervid facilities that will hold cervids that are not susceptible to Chronic Wasting Disease. The Department shall not issue an importation permit for any farmed cervid from a Chronic Wasting Disease-positive, exposed, or suspect farmed cervid facility. Until such time as the USDA has adopted an approved method of testing for Chronic Wasting Disease in living cervids, cervids susceptible to Chronic Wasting Disease shall not be imported into North Carolina.

(a3) All free-ranging cervids shall be removed from any new captive cervid facility prior to stocking the facility with farmed cervids.

(a4) Hunt facilities as defined by USDA Standards are prohibited. Any farmed cervid killed on the premises of a licensed facility shall be killed only by the licensee, the owner of the facility, an employee of the facility, or a qualified veterinarian administering euthanasia.

(a5) The Department and the Commission may develop a Memorandum of Agreement authorizing joint enforcement activities. The Memorandum of Agreement may allow for enforcement activities by the Commission on captive cervid facilities in instances of illegal importation. The Memorandum of Agreement may also provide for additional enforcement activities by the Commission on captive cervid facilities where appropriate as requested by the Department.

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation, including importation and exportation, of non-farmed cervids pursuant to G.S. 113-272.6. No action taken by the Department shall in any way limit the authority of the Commission to regulate non-farmed cervids as wildlife resources of the State belonging to the people of the State as a whole. Nothing in this Article shall authorize the Department to regulate hunting or any activity related to hunting.

(c) Repealed by Session Laws 2015-263, s. 14(a), effective September 30, 2015.

(d) No county, municipality, or any other unit of local government may adopt any ordinance, regulation, or law that is inconsistent with or more restrictive than the provisions of this Article. Any ordinance, regulation, or law that is currently enacted that is inconsistent with or more restrictive than the provisions of this Article is hereby repealed.

(e) In order to carry out the authority granted by this Article, the Department may enforce the rules adopted by the Wildlife Resources Commission under its prior authority pursuant to G.S. 150B-21.7, including the rules governing issuance of captivity licenses, captivity permits, transportation permits, importation permits, and exportation permits, until such time as the Department adopts rules for the implementation of this Article.

(f) The provisions of G.S. 113-129 shall not apply to the production, sale, transportation, importation, or exportation of farmed cervids under this Article, whether alive or dead, whole or in part.

(g) No live farmed cervid shall be transported on a public road within the State unless the cervid has an official form of identification approved by the State Veterinarian for this purpose and the appropriate transportation, importation, or exportation permit issued by the Department.

(h) Any live farmed cervid that is transported on a public road within the State shall be subject to inspection by a wildlife law enforcement officer to ensure that each farmed cervid has official identification required under this Article and that the appropriate permit has been obtained from the Department.

(i) Any person transporting a live farmed cervid on a public road within the State without the appropriate farmed cervid identification and permit may be subject to a civil penalty by the Department under this Article. Each cervid that fails to meet the tagging and transportation requirements of the Department shall constitute a separate violation.

(j) The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars (\$5,000) per animal against any person who violates a provision of this Article or any rule adopted thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 317, s. 1; 1997-142, s. 1; 1997-261, s. 109; 2003-344, s. 11; 2015-263, s. 14(a).)

§ 106-549.98: Repealed by Session Laws 2015-263, s. 14(a), effective September 30, 2015.

Article 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-550. Policy as to promotion of use of, and markets for, farm products; official marketing campaign.

(a) It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, seafood, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, porcine animals, or equines, with respect to which separate provisions have been made.

(b) The "Got to be NC" marketing campaign of the Department of Agriculture and Consumer Services shall be the official agricultural marketing campaign for the State. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1; 1957, cc. 260, 1352; 1989 (Reg. Sess., 1990), c. 1027, s. 1.1; 1991, c. 605, s. 2; 1995, c. 521, s. 1; 1998-154, s. 2; 2014-100, s. 13.4; 2014-103, s. 15.)

§ 106-551. Federal Agricultural Marketing Act.

The passage by the Seventy-Ninth Congress of a law designated as Public Law 733, and more particularly Title II of that act, cited as "Agricultural Marketing Act of 1946," makes it all the more important for producers, handlers, processors and others of specific agricultural commodities to associate themselves in action programs, separately and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of such law, in respect to research, studies and problems of marketing, transportation and distribution. (1947, c. 1018, s. 2.)

§ 106-552. Associations, activity, etc., deemed not in restraint of trade.

No association, meeting or activity undertaken in pursuance of the provisions of this Article and intended to benefit all of the producers, handlers and processors of a particular commodity shall be deemed or considered illegal or in restraint of trade. (1947, c. 1018, s. 3.)

§ 106-553. Policy as to referenda, assessments, etc., for promoting use and sale of farm products.

It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the State that farmers, producers and growers commercially producing the commodities herein referred to shall be permitted by referendum to be held among the respective groups and subject to the provisions of this Article, to levy upon themselves an assessment on such respective commodities or upon the acreage used in the production of the same and provide for the collection of the same, for the purpose of financing or contributing towards the financing of a program of advertising and other methods designed to increase the consumption of and the domestic as well as foreign markets for such agricultural products. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 4; 1951, c. 1172, s. 2.)

§ 106-554. Application to Board of Agriculture for authorization of referendum.

Any existing commission, council, board or other agency fairly representative of the growers and producers of any agricultural commodity herein referred to, and any such commission, council, board or other agency hereafter created for and fairly representative of the growers or producers of any such agricultural commodity herein referred to, may at any time after the passage and ratification of this Article make application to the Board of Agriculture of the State of North Carolina for certification and approval for the purpose of conducting a referendum among the growers or producers of such particular agricultural commodity, for commercial purposes, upon the question of levying an assessment under the provisions of this Article, collecting and utilizing the same for the purposes stated in such referendum. (1947, c. 1018, s. 5.)

§ 106-555. Action by Board on application.

Upon the filing with the Board of Agriculture of such application on the part of any commission, council, board or other agency, the said Board of Agriculture shall within 30 days thereafter meet and consider such application; and if upon such consideration the said Board of Agriculture shall find that the commission, council, board or other agency making such application is fairly representative of and has been duly chosen and delegated as representative of the growers producing such commodity, and shall otherwise find and determine that such application is in conformity with the provisions of this Article and the purposes herein stated, then and in such an event it shall be the duty of the Board of Agriculture to certify such commission, council, board or other agency as the duly delegated and authorized group or agency representative of the commercial growers and producers of such agricultural commodity, and shall likewise certify that such agency is duly authorized to conduct among the growers and producers of such commodity a referendum for the purposes herein stated. (1947, c. 1018, s. 6.)

§ 106-555.1. Official State board for federal assessment programs; no subsequent referenda required.

For the purpose of any federal commodity assessment program, the producers' agency certified by the Board of Agriculture pursuant to G.S. 106-555 shall be deemed to be the official State board for such commodity. No subsequent referenda shall be required under this Article in order for such producers' agency to maintain its status as the official State board for the purposes of such federal commodity assessment program. (1991, c. 99.)

§ 106-556. Conduct of referendum among growers and producers on question of assessments.

Upon being so certified by the said Board of Agriculture in the manner hereinbefore set forth, such commission, council, board or other agency shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of such particular agricultural commodity a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Such referendum may be conducted either on a statewide or area basis. (1947, c. 1018, s. 7.)

§ 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 ($\frac{1}{2}$ 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 United States Department of Agriculture. 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. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268; 1981, c. 216, s. 1; 1983, c. 246, s. 1; 1997-371, s. 1; 2004-199, s. 27(e); 2006-264, s. 24.)

§ 106-557.1. Ballot by mail.

(a) As an alternative method of conducting a referendum under the provisions of this Article, the certified agency in its discretion may conduct the referendum by a mail ballot as herein

provided. In the event that a certified agency determines in its discretion to conduct a mail ballot, public notice of said mail ballot shall be made at least 30 days before the date of said referendum. Said notice shall contain the same information required by G.S. 106-557, except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all persons known by the certified agency to be eligible to vote and that any person not receiving by mail an official ballot by a date specified in the notice will have 10 days thereafter to apply for an official ballot at the office of the certified agency. The notice shall state the deadline for the receipt of all ballots and the address of the certified agency.

Official ballots shall be prepared by the certified agency and mailed by first-class mail to the last known address of all persons known by the certified agency to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than 10 days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

Before any person shall receive an official ballot, he shall furnish such proof as the certified agency may require of his eligibility to vote in said referendum. The certified agency shall keep a list of those persons who receive official ballots. No person may receive more than one official ballot unless he satisfies the certified agency that his ballot has been lost or destroyed.

No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the certified agency at the place and by the deadline previously announced in the public notice of said referendum.

(b) The provisions of this section shall not apply to the North Carolina Potato Association and the North Carolina Soybean Association. (1969, c. 111.)

§ 106-558. Management of referendum; expenses.

The arrangements for and management of any referendum conducted under the provisions of this Article shall be under the direction of the commission, council, board or other agency duly certified and authorized to conduct the same, and any and all expenses in connection therewith shall be borne by such commission, council, board or agency. (1947, c. 1018, s. 9.)

§ 106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.

Any referendum conducted under the provisions of this Article may be held either on an area or statewide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or statewide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. Provided, that notwithstanding any other provision of this Chapter, the North Carolina Cotton Promotion Association, Inc., in 1967 shall hold a referendum, pursuant to law, for the years 1969 and 1970, or for the years 1969 through 1973, in its discretion. Thereafter, the North Carolina Cotton Promotion Association, Inc. shall conduct either triennial or sexennial referendums as provided by law. (1947, c. 1018, s. 10; 1967, cc. 213, 561.)

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

Notwithstanding any other provision of this Article, any milk product assessment referendum conducted pursuant to this Article shall be conducted on the basis of one vote per base holder. (1981, c. 216, s. 2; 2023-63, s. 5.4(b).)

§ 106-560. Effect of more than one-third vote against assessment.

If in such referendum with respect to any agricultural commodity herein referred to more than one third of the farmers and producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1947, c. 1018, s. 11.)

§ 106-561. Effect of two-thirds vote for assessment.

If in such referendum called under the provisions of this Article two thirds or more of the farmers or producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the agricultural commodity covered thereby, then such assessment shall be collected in the manner determined and announced by the agency conducting such referendum. (1947, c. 1018, s. 12.)

§ 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.)

§ 106-563. Distribution of ballots; arrangements for holding referendum; declaration of results.

The duly certified agency of the producers of any agricultural product among whom a referendum shall be conducted under the provisions of this Article shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated by said agency, arrange for the necessary poll holders for

conducting the said referendum; and following such referendum and within 10 days thereafter the said agency shall canvass and publicly declare the result of such referendum. (1947, c. 1018, s. 14.)

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

Notwithstanding any other provision of this Article, any milk product assessment referendum conducted pursuant to this Article 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; 2023-63, s. 5.4(c).)

§ 106-564. Collection of assessments; custody and use of funds.

In the event two thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually or at regular intervals during the year established by the rules and regulations of the duly certified commission, council, board or other agency for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from State or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3; 1965, c. 1046, s. 1; 1975, c. 708, s. 1.)

§ 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 and Consumer Services. 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 and Consumer Services. 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; 1997-261, s. 109.)

§ 106-564.2. Further alternative method for collection of assessments.

As an alternate method for the collection of assessments provided for in G.S. 106-564, the duly certified agency representing the producers of peaches, apples or other tree fruits, is hereby authorized to establish the names, addresses and number of trees or acres of trees and certify same to the Commissioner of Agriculture. The Commissioner of Agriculture shall then notify by registered letter such certified producers that on or before the date specified by the duly certified agency, the assessments shall be paid to the Commissioner of Agriculture by the producers. The date of collections of such assessments may be established by the duly certified agency representing the producers of any agricultural product referred to in G.S. 106-550. (1955, c. 374.)

§ 106-564.3. Alternative method for collection of assessments relating to cattle.

As an alternative method for the collection of assessments provided for in Article 50 of Chapter 106 of the General Statutes, as amended, and as the same relates to all cattle, including those cattle sold for slaughter, upon the request of the duly certified agency of the producers of all cattle, including those which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packinghouses, and any and all persons, firms and corporations, engaged in the buying, selling or handling of cattle in this State, and on and after the date specified in the letter, the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of all cattle bought, acquired or sold. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packinghouse or the administrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell any cattle, including cattle for slaughter, without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the twentieth day of the following month, be remitted by such purchaser as above described, 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 of all such cattle entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packinghouses, or persons, firms or corporations engaged in buying, acquiring or selling all cattle shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse,

abattoir, packinghouse, or any person, firm or corporation engaged in buying, selling or handling cattle in this State shall fail to collect or pay such assessments so deducted to the Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176; 1969, c. 184.)

§ 106-564.4. Alternative method for collection of assessments relating to sweet potatoes.

(a) In the event the producers of sweet potatoes approve an assessment pursuant to G.S. 106-564, which assessment shall be paid by the producer based on the number of acres produced, the producer shall report the number of acres planted and shall remit the assessment due to the Commissioner of Agriculture. Sweet potato producers shall report acreage planted at a time and place determined by the duly certified agency representing the producers of sweet potatoes.

(b) Assessments shall be due on September 1 of each year. Any producer who fails to pay assessments by September 30 of each year shall also pay a penalty of ten percent (10%) of the unpaid assessment, plus a penalty of one percent (1%) of the unpaid assessment for each month the assessment remains unpaid. The Commissioner of Agriculture shall remit all assessments received to the duly certified agency representing the producers of sweet potatoes. The duly certified agency representing the producers of sweet potatoes may conduct inspections and audits of sweet potato producers in order to verify the number of acres of sweet potatoes planted and may bring an action to recover unpaid assessments and penalties and the reasonable costs of such action, including attorneys' fees.

(c) There shall be no refund of assessments collected pursuant to this section.

(d) For the purposes of this section, "producer" shall be defined as a grower of one acre or more of sweet potatoes. (1995, c. 521, s. 2.)

§ 106-565. Subsequent referendum.

In the event such referendum so to be conducted as herein provided shall not be supported by two thirds or more of those eligible for participation therein and voting therein, then the duly certified agency conducting the said referendum shall have full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for three years. (1947, c. 1018, s. 16.)

§ 106-566. Referendum as to continuance of assessments approved at prior referendum.

In the event the first such referendum or any subsequent referendum is carried by the votes of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the period set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such first period or the last year of any subsequent period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years or continued for the next ensuing six years. (1947, c. 1018, s. 17; 1965, c. 1046, s. 2.)

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.

In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such assessments shall have been levied and collected under the provisions of this Article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such assessment so collected from such farmer or producer, provided such demand for refund is made in writing within 30 days from the date on which said assessment is collected or due to be collected, whichever is earlier from such farmer or producer under the rules and regulations of the duly certified commission, council, board or other agency. Provided, however, that as to growers or producers of potatoes, apples or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Provided further, that any farmer or producer of potatoes, apples or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within 30 days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. Provided further that on and after July 1, 1972, as to growers or producers of apples there shall be no right of refund of assessments levied pursuant to the referendum provided for by Article 50, Chapter 106 of the General Statutes of North Carolina. (1947, c. 1018, s. 18; 1959, c. 311; 1969, c. 605, ss. 1, 2; 1975, c. 708, ss. 3, 4.)

§ 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 the milk producer pursuant to this Article by making written demand in the first month of each calendar quarter upon the association receiving such assessment. (1981, c. 216, s. 4; 2023-63, s. 5.4(d).)

§ 106-568. Publication of financial statement by treasurer of agency; bond required.

In the event of the levying and collection of assessments as herein provided, the treasurer of the agency conducting same shall within 30 days after the end of any calendar year in which such assessments are collected, publish through the medium of the press of the State a statement of the amount or amounts so received and collected by him under the provisions of this Article. Before collecting and receiving such assessments, such treasurer shall give a bond in the amount of at least the estimated total of such assessments as will be collected, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency conducting such referendum and to be filed with the chairman or executive head of such agency. (1947, c. 1018, s. 19.)

Article 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.1. Policy as to joint action of farmers.

It is declared to be in the public interest that North Carolina farmers producing agricultural products of all kinds, including cotton, tobacco, peanuts, soybeans, potatoes, vegetables, berries, fruits, livestock, livestock products, poultry and turkeys, and any other agricultural products having domestic and/or foreign markets, be permitted to act jointly in cooperation with each other in encouraging an expanding program of agricultural research and the dissemination of agricultural research findings. (1951, c. 827, s. 1.)

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

It is 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 fifteen cents (15¢) 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.

It is further declared to be in the public interest and highly advantageous to the economic development of the State that tobacco producers be permitted by referendum to levy upon themselves an assessment not to exceed ten cents (10¢) per hundred pounds of tobacco marketed to provide funds through the North Carolina Tobacco Research Commission for research and dissemination of research facts concerning tobacco. (1951, c. 827, s. 2; 1981, c. 181, s. 1; 1991, c. 102, s. 1; 1999-172, s. 1.)

§ 106-568.3. Action of Board of Agriculture on petition for referendum; creation of the Tobacco Research Commission.

(a) The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this Article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Provided, that the petition for a tobacco referendum shall be signed by and, once approved, shall authorize the holding of a referendum by the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Agricultural Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated.

(b) There is hereby created a North Carolina Tobacco Research Commission within the Department of Agriculture and Consumer Services. The Commission shall consist of the Commissioner of Agriculture, or the Commissioner's designee; the President of the North Carolina Farm Bureau Federation, Inc., or the President's designee; the President of the Tobacco Growers Association of North Carolina, Incorporated, or the President's designee; the President of the North Carolina State Grange, or the President's designee; and, the President of the North Carolina Agricultural Foundation, Inc., or his designee. (1951, c. 827, s. 3; 1991, c. 102, s. 2; 1997-261, s. 109; 2023-63, s. 1.2(a).)

§ 106-568.4. By whom referendum to be managed; announcement.

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this Article but shall, 60 days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. Provided, that the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Agricultural Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated, shall arrange for and manage any referendum for tobacco poundage assessments under the provisions of this Article. (1951, c. 827, s. 4; 1991, c. 102, s. 3; 2023-63, s. 1.2(b).)

§ 106-568.5. When assessment shall and shall not be levied.

If in such referendum more than one third of the farmers and producers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such event no assessment shall be levied or collected, but if two thirds or more of such farmers and producers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment, then such assessment shall be collected in the manner hereinafter provided. (1951, c. 827, s. 5.)

§ 106-568.6. Determination and notice of date, area, hours, voting places, etc.

The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least 60 days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. Provided, that the four organizations designated to hold the referendum for tobacco poundage assessments shall perform the functions set forth in this section. (1951, c. 827, s. 6; 1991, c. 102, s. 4.)

§ 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within 10 days after the date of such referendum, canvass and publicly declare the results thereof. Provided, that for the tobacco poundage assessment referendum, the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Agricultural Foundation, Inc., and the Tobacco Growers Association of North Carolina,

Incorporated, shall perform the functions set forth in this section. (1951, c. 827, s. 7; 1991, c. 102, s. 5; 2023-63, s. 1.2(c).)

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

(a) Fertilizer and feed assessments. 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. 106-284.40 and 106-671. The Commissioner shall then remit the assessment 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 the assessment 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 and Consumer Services as provided for in G.S. 106-284.40(c).

(b) Tobacco Poundage Assessments. In the event two-thirds or more of the eligible farmers and producers participating in the tobacco referendum vote in favor of the tobacco poundage assessment authorized under this Article, then said assessment shall be collected for a period of six years under rules, regulations, and methods adopted by the North Carolina Tobacco Research Commission. The North Carolina Tobacco Research Commission is exempt from the provisions of Chapter 150B of the General Statutes.

The assessments collected shall be remitted to the Department of Agriculture and Consumer Services to be expended under the direction of the Tobacco Research Commission for research and dissemination of research facts concerning tobacco. Any person that receives assessment funds from the Tobacco Research Commission shall file quarterly written reports with the Tobacco Research Commission on the receipt and expenditure of assessment funds. The Tobacco Research Commission may transfer assessments to the North Carolina Agricultural Foundation, Inc., to be held and invested by the Agricultural Foundation until such time as the Commission shall direct

their expenditure for the purposes set forth in this section. (1951, c. 827, s. 8; 1967, c. 631, s. 1; 1975, c. 646; 1981, c. 181, s. 1; 1989, c. 770, s. 27; 1991, c. 102, s. 6; 1995, c. 239, s. 1; 1997-261, s. 109; 1999-172, s. 2; 2023-63, s. 1.2(d).)

§ 106-568.9. Refunds to farmers.

In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added 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 North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within 30 days from the date of which said assessment is collected from such farmer or producer. Provided, that the Department of Agriculture and Consumer Services shall make tobacco poundage assessment refunds to tobacco farmers when such demand for refund is made in writing by the tobacco farmer within 30 days of the close of the marketing season. (1951, c. 827, s. 9; 1991, c. 102, s. 7; 1997-261, s. 109.)

§ 106-568.10. Subsequent referenda; continuation of assessment.

If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. Provided, that if the tobacco poundage assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Agricultural Foundation, Inc., and Tobacco Growers Association of North Carolina, Incorporated, may call another referendum in the next succeeding year on the question of the annual assessment for six years. If the tobacco assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, the assessment shall be levied annually for the six years set forth in the call for the referendum and a new referendum may be called and conducted during the sixth year of the period on the question of whether or not the assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2; 1991, c. 102, s. 8; 2023-63, s. 1.2(e).)

§ 106-568.11. Effect of more than one-third vote against assessment.

If in such referendum called under the provisions of this Article more than one third of the farmers and producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1951, c. 827, s. 11.)

§ 106-568.12. Effect of two-thirds vote in favor of assessment.

If in such referendum called under the provisions of this Article two thirds or more of the farmers or producers in the State of North Carolina, eligible to participate and voting therein, shall

vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the commodities covered thereby, then such assessment shall be collected in the manner prescribed herein (determined and announced by the agencies conducting such referendum). (1951, c. 827, s. 12.)

Article 50B.

North Carolina Agricultural Hall of Fame.

§ 106-568.13. North Carolina Agricultural Hall of Fame created.

There is hereby created and established as an agency of the State of North Carolina the North Carolina Agricultural Hall of Fame. (1953, c. 1129, s. 1.)

§ 106-568.14. Board of directors; membership; compensation.

The North Carolina Agricultural Hall of Fame shall be under the general supervision and control of a board of directors consisting of the following: the Commissioner of Agriculture of the State of North Carolina, who shall act as chairman; the Director of the North Carolina Agricultural Extension Service; the State Supervisor of Vocational Agriculture; the President of the North Carolina Farm Bureau Federation; the Master of the State Grange, the foregoing being ex officio members; and three members who shall be appointed by the Governor of North Carolina. All of said members shall serve without compensation. (1953, c. 1129, s. 2.)

§ 106-568.15. Terms of directors.

One of the appointive members shall be appointed for a term of two years, one for a term of four years and one for a term of six years. The successor to each of the appointive members shall be appointed for a term of six years, and in case of a vacancy, the Governor is authorized to appoint a successor for the remainder of the unexpired term. The ex officio members shall serve so long as they hold their respective offices or positions which entitle them to ex officio membership on said board of directors. (1953, c. 1129, s. 3.)

§ 106-568.16. Admission of candidates to Hall of Fame.

The said board is hereby empowered to formulate rules and regulations governing acceptance and admission of candidates to said North Carolina Agricultural Hall of Fame, provided that no name shall be accepted until an authentic and written record of achievements of said person in agricultural activities shall have been presented to and accepted by a majority vote of said board created by this Article, and provided that both men and women are eligible for recognition. (1953, c. 1129, s. 4.)

§ 106-568.17. Acceptance of gifts, devises, and awards; display thereof.

The said board is hereby empowered to accept and receive gifts, devises, and awards which are to become the sole property of said North Carolina Agricultural Hall of Fame and are to be kept in a proper manner in a suitable room or hall in some state-owned building in Raleigh, provided that duplicates of such gifts, devises, and awards may be displayed in a suitable room or hall in the School of Agriculture of the North Carolina State College of Agriculture and Engineering at Raleigh, North Carolina. (1953, c. 1129, s. 5; 2011-284, s. 73.)

Article 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.18. Policy as to joint action of farmers.

It is hereby declared to be in the public interest that the farmers of North Carolina who produce flue-cured tobacco be permitted and encouraged to act jointly in promoting and stimulating, by organized methods and through the medium established for such purpose, export trade for flue-cured tobacco and the use of tobacco everywhere. (1959, c. 309, s. 1.)

§ 106-568.19. Policy as to referendum on question of annual assessment.

For the purpose of raising reasonable and necessary funds for producer participation in the operations of the agency set up under farmer sponsorship for the promotion of export trade in flue-cured tobacco and the use of tobacco everywhere, it is proper, desirable, necessary and in the public interest that the farmers in this State engaged in the production of flue-cured tobacco shall have the opportunity and privilege of participating in a referendum to be held as hereinafter provided, in which referendum there shall be determined the question of whether or not the farmers of the State engaged in the production of flue-cured tobacco shall levy upon themselves an annual assessment for the purposes herein stated. (1959, c. 309, s. 2.)

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

During the year 1989 or 1990 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, or 1990, 1991, and 1992, 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 four dollars (\$4.00) 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; 1989, c. 349, s. 1.)

§ 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.)

§ 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 four dollars (\$4.00) 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; 1989, c. 349, s. 2.)

§ 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.)

§ 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.)

§ 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 the next three tobacco marketing years, 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 four dollars (\$4.00) 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; 1989, c. 349, s. 3.)

§ 106-568.26. Collection of assessments; custody and use of funds.

In the event two-thirds or more of the eligible farmers voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the years herein set forth and under such method, rules and regulations as may be determined by the board of directors of the said Tobacco Associates, Incorporated, and the said assessment so collected shall be paid into the treasurer [treasury] of said Tobacco Associates, Incorporated, to be used along with funds from other sources, for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and encouraging the use of flue-cured tobacco everywhere. (1959, c. 309, s. 9.)

§ 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.

No assessment shall be made pursuant to this Article unless same shall receive the affirmative vote of not less than two-thirds of the members of the board of directors of Tobacco Associates,

Incorporated, including the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations. (1959, c. 309, s. 10.)

§ 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.)

§ 106-568.29. Subsequent referendum after defeat of assessment.

In the event any referendum conducted as provided for in this Article shall not be supported by two-thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three tobacco marketing years or less. If the referendum is carried as provided in this Article, then the assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 12; 1989, c. 349, s. 4.)

§ 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.)

§ 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.)

§ 106-568.32. Repealed by Session Laws 1987, c. 294, s. 11.

§ 106-568.33. Effect of Article on prior acts.

Insofar as the provisions of this Article are different from and in conflict with the provisions of Chapter 511, Session Laws of 1947 and Chapter 63, Session Laws of 1951, to the extent of such conflict the provisions of this Article shall be applicable and shall supersede and prevail over the provisions of said former acts and all provisions of this Article shall be in full effect. So long as assessments are made under this Article, no assessment shall be made and collected under the provisions of Chapter 511, Session Laws of 1947, as amended. (1959, c. 309, s. 16.)

§ 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 1988 shall exceed one-fifth cent (1/5¢) per pound 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; 1989, c. 349, s. 5.)

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

(a) At any time when it may be found that it is not desirable or reasonably possible to conduct a referendum by written ballots to be cast at polling places (as provided in G.S. 106-568.23 and 106-568.24 of this Article), the board of directors of Tobacco Associates, Incorporated, 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 such board members who were elected by North Carolina farm organizations), may prescribe and provide for a vote by mail by written or printed ballot.

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

§ 106-568.36. Maximum levy after 1988.

The maximum amount which may be authorized in any referendum held pursuant to the provisions of this Article during 1989 or thereafter, and the maximum amount which may be assessed, collected or levied for any year after 1988 by the Board of Directors of Tobacco Associates pursuant to the provisions of this Article, is four dollars (\$4.00) 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, one-fifth cent (1/5¢) per pound of the flue-cured tobacco marketed by each farmer. (1979, c. 474, s. 2; 1987, c. 294, s. 13; 1989, c. 349, s. 6.)

§ 106-568.37. Report on use of assessments.

The Board of Directors of the Tobacco Associates, Incorporated shall make an annual written report of the financial transactions and a financial statement concerning the receipts and disbursements of the revenue from the assessment. A copy of the report shall be provided by the Board of Directors of the Tobacco Associates, Incorporated to the Commissioner of Agriculture, the Dean of the College of Agriculture and Life Sciences at North Carolina State University, the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the Bright Belt Warehouse Association. (1989, c. 349, s. 7.)

§ 106-568.38: Reserved for future codification purposes.

§ 106-568.39: Reserved for future codification purposes.

Article 50D.

Tobacco Growers Assessment Act.

§ 106-568.40. Title.

This Article shall be known as the "Tobacco Growers Assessment Act." (2013-311, s. 1.)

§ 106-568.41. Purpose.

It is in the public interest for the State to enable growers of tobacco to assess themselves in order to raise funds to promote the interests of tobacco growers. This assessment shall be in addition to the assessment authorized by Article 50C of Chapter 106 of the General Statutes to promote export sales of tobacco and the assessment authorized by Article 50A of Chapter 106 of the General Statutes for tobacco research. (2013-311, s. 1.)

§ 106-568.42. Definitions.

The following definitions apply in this Article:

- (1) Association. – The Tobacco Growers Association of North Carolina, Inc., a North Carolina nonprofit corporation.
- (2) Buyer. – Any person engaged in the business of buying tobacco from a producer of tobacco grown in North Carolina, including a broker, dealer, or agent of the buyer.
- (3) Department. – The North Carolina Department of Agriculture and Consumer Services.
- (4) Person. – An individual, a partnership, a firm, or a corporation.
- (5) Tobacco. – Flue-cured tobacco.
- (6) Tobacco grower. – A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in tobacco production, and (iii) is actively involved in tobacco production. (2013-311, s. 1.)

§ 106-568.43. Referendum.

(a) The Association may conduct among tobacco growers a referendum upon the question of whether an assessment shall be levied on tobacco produced in this State.

(b) The Association shall determine the amount of the proposed assessment and the date by which the referendum ballot must be returned by mail as provided in this section.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed fifteen cents (15¢) for each hundred pounds of tobacco produced in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each hundred pounds of tobacco produced in this State. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of fifteen cents (15¢) for each hundred pounds.

(d) The Association shall mail a referendum ballot to all known tobacco growers in the State for whom the Association has a current and valid mailing address at least three months prior to the date the ballot must be returned. Additionally, the Association must, for the greater of three months or 90 days before the date the ballot must be returned, (i) provide a printable referendum ballot on the Association's official Web site and (ii) make hard copies of the referendum ballot available at all county North Carolina Cooperative Extension Service offices. The ballots shall be returned to the Commissioner of Agriculture by the date set by the Association. The Department shall be responsible for counting the votes and reporting the results of the referendum to the Association.

(e) All tobacco growers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide tobacco growers with notice of the referendum and an opportunity to vote. (2013-311, s. 1; 2014-115, s. 42.7(a).)

§ 106-568.44. Payment and collection of assessment.

(a) The assessment shall not be collected unless more than two-thirds of the votes cast in the referendum are in favor of the assessment. If more than two-thirds of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all tobacco buyers of the assessment.

(b) Each tobacco grower shall pay the assessment on all tobacco produced in this State and sold to a buyer.

(c) A buyer shall collect the assessment when buying tobacco produced in this State by deducting the assessment from the price paid to the grower. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars (\$25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars (\$25.00) or the end of the calendar quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter in which they purchase tobacco from a grower, regardless of the amount due.

(d) A buyer shall keep records of the amount of tobacco purchased and the date purchased. All information or records regarding purchases of tobacco by individual buyers shall be kept confidential by employees or agents of the Department and the Association and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorneys' fees, incurred in the action. (2013-311, s. 1; 2014-115, s. 42.7(b).)

§ 106-568.45. Use of assessments; refunds; annual audit.

(a) At least once per month, the Department shall remit all funds collected under this Article to the Association. The Association shall use the funds to promote the interests of tobacco growers. The Association shall prepare an annual report on the assessment funds collected and the use of assessment funds. The Association shall publicly post the annual report on its official Web site at least 30 days before the Association's annual meeting. Copies of the annual report shall be made available to growers at the Association's annual meeting, and a copy shall also be sent to the Commissioner of Agriculture.

(b) A tobacco grower may request a refund of the assessment collected under this Article by submitting a written request for a refund to the Association postmarked on or before December 31 of the same year. A refund request shall be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the grower within 30 days of receipt of a properly documented refund request.

(c) The Association shall designate a third party to conduct an annual audit of the implementation of this Article. The Association shall also designate the time at which the audit may be conducted each year, provided that the results of the audit be available before or in conjunction with the annual report. (2013-311, s. 1.)

§ 106-568.46. Termination of assessment.

Upon receipt of a petition signed by at least ten percent (10%) of the tobacco growers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years. (2013-311, s. 1.)

Article 50E.

Industrial Hemp.

§ 106-568.50. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.51. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.52. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.53. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.53A. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.54. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.55. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.56. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

§ 106-568.57. Expired pursuant to Session Laws 2015-299, s. 4, effective June 30, 2022.

Article 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§§ 106-569 through 106-579: Repealed by Session Laws 1975, c. 179, s. 16.

Article 51A.

North Carolina Antifreeze Law of 1975.

§ 106-579.1. Short title.

This Article shall be known as the "North Carolina Antifreeze Law of 1975." (1975, c. 719, s. 1.)

§ 106-579.2. Purpose.

It is desirable that there should be uniformity between the requirements of the several states. Therefore, the Board and Commission are directed, consistent with the purposes of this Article, to so enforce this Article as to strive for achievement of such uniformity and are also authorized and empowered to cooperate with and enter into agreements with any other agency of this State, or any other state regulating antifreeze, for the purpose of carrying out the provisions of this Article and securing uniformity of regulations in conformity to the primary standards established by this Article. (1975, c. 719, s. 2.)

§ 106-579.3. Definitions.

As used in this Article, the following words and phrases have the following meanings:

- (1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of antifreeze products.
- (2) "Antifreeze" means any substance or preparation sold, distributed or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point.
- (3) "Antifreeze-coolant" or "antifreeze and summer coolant" or "summer coolant" means any substance as defined in (2) above which also is sold, distributed or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."

- (4) "Board" means the North Carolina State Board of Agriculture, as defined by G.S. 106-2.
- (5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.
- (6) "Distribute" means to hold with intent to sell, offer for sale, to sell, barter or otherwise supply to the consumer.
- (7) "Home consumer-sized package" as used in G.S. 106-579.9(12) shall refer to packages of one fluid U.S. gallon or less.
- (8) "Label" means any display of written, printed, or graphic matter on, or attached to, a package, or to the outside individual container or wrapper of the package.
- (9) "Labeling" means (i) the labels and (ii) any other written, printed or graphic matter accompanying a package.
- (10) "Package" means (i) a sealed tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or (ii) a container from which the antifreeze may be installed directly by the seller into the cooling system, but does not include shipping containers containing properly labeled inner containers.
- (11) "Person," as used in this Article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165; 1975, c. 719, s. 3.)

§ 106-579.4. Registrations.

On or before the first day of July of each year, and before any antifreeze may be distributed for the permit year beginning July 1, the manufacturer, packager, or person whose name appears on the label shall make application to the Commissioner on forms provided by the latter for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes to be distributed, when requested by the Commissioner; a license and inspection fee of five hundred dollars (\$500.00) for each brand of antifreeze and a properly labeled sample of the antifreeze shall also be submitted at this time. The Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the Board, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner shall thereafter issue a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails to meet standards promulgated by the Board, or is in violation of this Article or regulations thereunder, the Commissioner shall refuse to register the antifreeze, and he shall return the application to the applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall, at a later date, find that a properly registered antifreeze product has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations, definitions or standards duly promulgated by the Board, he shall notify the applicant that the license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to modify his application in order to comply with the requirements of this Article and regulations, definitions, and standards promulgated by the Board. All fees received by the Commissioner shall be placed in the

Department of Agriculture and Consumer Services fund for the purpose of supporting the antifreeze enforcement and testing program. (1949, c. 1165; 1975, c. 719, s. 4; 1997-261, s. 109; 2011-145, s. 31.10.)

§ 106-579.5. Adulteration.

Antifreeze shall be deemed to be adulterated:

- (1) If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system in which it is installed, or if, when used in such cooling system, it would make the operation of the engine dangerous to the user.
- (2) If its strength, quality, or purity falls below the standard of strength, quality, or purity established by the Board for the particular type or composition of antifreeze product. (1949, c. 1165; 1975, c. 719, s. 5.)

§ 106-579.6. Misbranding.

Antifreeze shall be deemed to be misbranded:

- (1) If it does not bear a label which (i) specifies the identity of the product, (ii) states the name and place of business of the registrant, (iii) states the correct net quantity of contents (in terms of liquid measure) separately and accurately in a uniform location upon the principal display panel, and (iv) contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze, as provided by applicable federal and State product safety laws.
- (2) If the label on a container of less than five gallons, or the labeling for a container of five gallons or more, does not contain a statement or chart showing the appropriate amount, percentage, proportion or concentration of the antifreeze to be used to provide (i) claimed protection from freezing at a specified degree or degrees of temperature, (ii) claimed protection from corrosion, or (iii) claimed increase of boiling point or protection from overheating.
- (3) If its labeling contains any claim that it has been approved or recommended by the Commissioner or the State of North Carolina.
- (4) If its labeling is false, deceptive, or misleading. (1949, c. 1165; 1975, c. 719, s. 6.)

§ 106-579.7. Rules and regulations.

(a) The Board is authorized to promulgate such reasonable rules, regulations and standards for antifreezes as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article and the protection of the public. The Board is authorized to promulgate regulations banning the distribution in North Carolina of any type of product not suitable for antifreeze usage in modern internal combustion engines or motor vehicles, whether by reason of potential damage to the cooling system, improper heat transfer from the engine, absence of a convenient and suitable test method for measuring freeze protection, or other reason bearing upon the ultimate effect of the product when used in such automotive cooling systems. Before the issuance, amendment, or repeal of any rule, regulation or standard authorized by this Article, the Board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an

opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the Board shall take appropriate action as dictated by the material weight of objective information presented to the Board.

(b) The Commissioner shall administer this Article by inspections, chemical analyses and other appropriate methods. The Commissioner shall also execute all orders, rules and regulations established by the Board. All authority vested in the Commissioner by virtue of the provisions of this Article may, with like force and effect, be executed by such agents of the Commissioner as he shall designate for such purpose; provided, however, that confidential formula information referred to in G.S. 106-579.11 must be confined to the files of the administrative chemist specifically designated by the Commissioner to handle such information. (1949, c. 1165; 1975, c. 719, s. 7.)

§ 106-579.8. Inspection, sampling and analysis.

The Commissioner, or his authorized agent, shall have free access at reasonable hours to all places and property in this State where antifreeze is manufactured, stored, transported, or distributed, or offered or intended to be offered, for sale, including the right to inspect and examine all antifreeze there found, and to take reasonable samples of such antifreeze for analysis together with specimens of labeling. All samples so taken shall be properly sealed and sent to the Department of Agriculture and Consumer Services laboratories for examination together with all labeling appertaining thereto. It shall be the duty of the Commissioner to examine promptly all samples received in connection with the administration and enforcement of this Article and to report the results of such examination to the owner and registrant of the antifreeze. (1949, c. 1165; 1975, c. 179, s. 8; 1997-261, s. 109.)

§ 106-579.9. Prohibited acts.

It shall be unlawful to:

- (1) Distribute any antifreeze which is adulterated or misbranded.
- (2) Distribute any antifreeze which has been banned by the Board.
- (3) Distribute any antifreeze which has not been registered in accordance with G.S. 106-579.4 or whose labeling is different from that accepted for registration; provided, that any antifreeze declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued; provided further, that any antifreeze in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Commissioner, unless the antifreeze is acceptable for registration and is continued to be registered by the manufacturer or the person offering the antifreeze for wholesale or retail sale.
- (4) Refuse to permit entry or inspection or to permit the acquisition of a sample of antifreeze as authorized by G.S. 106-579.8.
- (5) Dispose of any antifreeze that is under "stop sale" or "withdrawal from distribution" order in accordance with G.S. 106-579.10.
- (6) Distribute any antifreeze unless it is in the registrant's or manufacturer's unbroken package or is installed by the seller into the cooling system of the purchaser's vehicle directly from the registrant's or manufacturer's package, and the label on such package if less than five gallons, or the labeling of such

- package if five gallons or more, does not bear the information required by G.S. 106-579.6(1), (2), (3), and (4).
- (7) Use the term "ethylene glycol" in connection with the name of a product which contains other glycols unless it is qualified by the word "base," "type," or similar word, and unless the product meets the following requirements:
 - a. It consists essentially of ethylene glycol;
 - b. If it contains suitable glycols other than ethylene glycol, that no more than a maximum of fifteen percent (15%) of such other glycols be present;
 - c. It contains a minimum total glycol content of ninety-three percent (93%) by weight;
 - d. The specific gravity is corrected to give reliable freezing-point readings on a commercial ethylene glycol type hydrometer; and
 - e. The freezing point of a fifty percent (50%) by volume aqueous mixture of the antifreeze shall not be above -34° F.
 - (8) Refuse, when requested, to permit a purchaser to see the container from which antifreeze is drawn for installation into the purchaser's vehicle.
 - (9) Refill any container bearing a registered label, unless by the registrant or his duly designated jobber, under regulations established by the Board.
 - (10) Distribute any antifreeze for which a practical, rapid means for measuring the freeze protection by the user is not readily available, whether by hydrometer or other means.
 - (11) Distribute antifreeze which is in violation of the Federal Poison Prevention Packaging Act and regulations and related federal and State product safety laws and regulations.
 - (12) Distribute antifreeze in home consumer-sized packages which are constructed of either transparent or translucent packaging materials.
 - (13) Disseminate any false or misleading advertisement relating to an antifreeze product. (1975, c. 719, s. 9.)

§ 106-579.10. Enforcement.

(a) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted under this Article by the Board, he may issue and enforce a written or printed "stop sale" or "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the Commissioner or the court. Copies of such orders shall also be sent by certified mail to the registrant and to the person whose name and address appears on the labeling of the antifreeze. The Commissioner shall release for distribution the lot of antifreeze so withdrawn when said provisions of this Article and applicable rules and regulations have been complied with. If compliance is not obtained within 30 days of the date of notification to the registrant and the person whose name and address appears on the label, the Commissioner may begin proceedings for condemnation.

(b) Notwithstanding the provisions of subsection (a) of this section, any lot of antifreeze not in compliance with said provisions and regulations shall be subject to seizure upon complaint of the Commissioner to the district court in the county in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this Article and its duly adopted

regulations, it may then order the condemnation of said antifreeze and the same shall be disposed of in any manner consistent with the rules and regulations of the Board and the laws of the State at the expense of the claimants thereof, under the supervision of the Commissioner; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, however, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving 30 days' notice, by certified mail at his last known address, to the owner of same, if he is known to the Commissioner, and to the registrant, if the antifreeze is registered, at the address shown on the label or on the registration certificate, so that such persons may apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this Article. When the violation can be corrected by proper labeling, processing of the product, or other action, the court, after all costs, fees and expenses incurred by the Commissioner have been paid and a good and sufficient bond, conditioned that such article shall be so corrected, has been executed, may by order direct that such article be delivered to the claimant thereof for such action as necessary to bring it into compliance with this Article and regulations under the supervision of the Commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner that the antifreeze is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(c) A copy of the analysis made by any chemist of the Department of Agriculture and Consumer Services of any antifreeze certified to by him shall be administered as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this Article.

(d) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted by the Board, he may request, and the person whose name and address appears on the labeling or the person who is primarily responsible for the product must promptly supply to him, the distribution data for such product in this State, so as to assure that violative products are not further distributed herein and that an orderly withdrawal from distribution may be attained where necessary to protect the public interest. (1949, c. 1165; 1975, c. 719, s. 10; 1997-261, s. 109.)

§ 106-579.11. Submission of formula.

When application for a license or permit to sell antifreeze in this State is made to the Commissioner, he may require the applicant to furnish a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Commissioner; provided, however, that the statement of formula or contents may state the content of inhibitor ingredients in generic terms if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the Commissioner with satisfactory evidence, other than by disclosure of the actual chemical names and percentages of the inhibitor ingredients, that the said antifreeze is in conformity with this Article and any rules and regulations promulgated and adopted by the Board. All statements of content, formulas or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the Commissioner. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the applicant furnishing such statements to the Commissioner; provided, however, that in emergency

situations information may be revealed to physicians or to other qualified persons for use in preparation of antidotes. The disclosure of any such information, except as provided in this section, shall be a Class 2 misdemeanor. (1949, c. 1165; 1975, c. 719, s. 11; 1993, c. 539, s. 806; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-579.12. Violation.

(a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed as requiring the Commissioner to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a "stop sale" or "withdrawal from distribution" order, as a result of minor violations of the Article, or when he believes the public interest will best be served by suitable notice of warning in writing to the registrant or the person whose name and address appears on the labeling.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rules or regulations promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Article 33 of Chapter 143 of the General Statutes. (1949, c. 1165; 1973, c. 47, s. 2; 1975, c. 719, s. 12; 1993, c. 539, s. 807; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-579.13. Publications.

(a) The Commission [Commissioner] may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the State Chemist during the fiscal year which have been found to be in accord with this Article and for which a license or permit for sale has been issued.

(b) The Commissioner may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Article including the nature of the charge and the disposition thereof.

(c) The Commissioner may also cause to be disseminated such information regarding antifreezes as he deems necessary in the interest of protection of the public. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigations of the Department. (1975, c. 719, s. 13.)

§ 106-579.14. Exclusive jurisdiction.

Jurisdiction in all matters pertaining to the distribution, sale and transportation of antifreeze by this Article are vested exclusively in the Board and Commissioner. (1975, c. 719, s. 15.)

Article 52.

Agricultural Development.

§ 106-580. Short title.

This Article may be cited as the "Agricultural Development Act." (1959, c. 1177, s. 1.)

§ 106-581. Intent and purpose.

It is hereby declared to be the intent and purpose of this Article to provide for a plan of assistance to the farmers and other citizens of this State in increasing agricultural income by making available to the various counties of the State the full resources of the Agricultural Extension Service, and other facilities, within the said counties, by means of the Farm and Home Development Program and the Rural Development Program as authorized by Title 7, United States Code, and other existing agricultural agencies. (1959, c. 1177, s. 2.)

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber, including pine orchards planted and maintained for the purpose of harvesting pine needles for sale, or the harvesting of pine needles for sale from land with a forest management plan.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, biofuel production for commercial sale, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm
- (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6; 2013-347, s. 2; 2017-108, s. 8.1; 2023-63, s. 1.5.)

§ 106-582. Counties authorized to utilize facilities to promote programs.

The several counties of this State are hereby authorized to utilize the facilities of existing extension and other agricultural advisory committees for the purpose of installing and promoting the Farm and Home Development Program and/or the Rural Development Program, or other

program within the purview of this Article, in the said counties; or, the several counties may, within their discretion, with the cooperation of the Agricultural Extension Service, create such new additional committees as may be needed for this purpose. (1959, c. 1177, s. 3.)

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

It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity. For the attainment of these objectives the North Carolina Department of Agriculture and Consumer Services, the School of Agriculture of North Carolina College and each and every other department and agency of the State of North Carolina is hereby empowered to cooperate with the Agricultural Extension Service and the committees authorized by this Article to provide: Development of new and improved methods of production, marketing, distribution, processing and utilization of plant and animal commodities at all stages from the original producer through to the ultimate consumer; development of present, new, and extended uses and markets for agricultural commodities and by-products as food or in commerce, manufacture or trade; introduction and breeding of new and useful agricultural crops, plants and animals, particularly those plants and crops which may be adapted to utilization in chemical and manufacturing industries; research, counsel and advice on new and more profitable uses of our resources of agricultural manpower, soils, plants, animals and equipment than those to which they are now devoted; methods of conservation, development, and use of land, forest, and water resources for agricultural purposes; guidance in the design, development, and more efficient and satisfactory use of farm buildings, farm homes, farm machinery, including the application of electricity, water and other forms of power; techniques relating to the diversification of farm enterprises, both as to the type of commodities produced, and as to the types of operations performed, on the individual farm; and assistance in appraising opportunities for making fuller use of the natural, human and community resources in the various counties of this State to the end that the income and level of living of rural people be increased. (1959, c. 1177, s. 4; 1997-261, s. 109; 1997-443, s. 11A.118(a).)

§ 106-584. Maximum use of existing research facilities.

In effectuating the purposes of this Article, maximum use may be made of existing research facilities owned or controlled by the State of North Carolina or by the federal government and of the facilities of the State and federal extension services. (1959, c. 1177, s. 5.)

§ 106-585. Appropriations by counties; funds made available by Congress.

The several counties of this State are hereby authorized to make such appropriations and expend such funds as shall be necessary to defray any part of the expenses of the programs authorized by this Article, including the salaries of the extension agents, special agents and other necessary personnel, and any funds made available by the Congress of the United States for this purpose may be accepted and used therefor. (1959, c. 1177, s. 6.)

§ 106-586. Authority granted by Article supplementary.

The authority granted by this Article is in addition to that granted to the Extension Service by the Congress of the United States and in no way infringes upon the administrative authority of the

director of the Extension Service or the existing policies of the Extension Service. (1959, c. 1177, s. 7.)

§ 106-587. Local appropriations.

Each county and city in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1959, c. 1177, s. 8; 1973, c. 803, s. 10.)

§ 106-588: Reserved for future codification purposes.

§ 106-589: Reserved for future codification purposes.

§ 106-590. Annual report on funds allocated to the North Carolina Agricultural Foundation, Inc.

The North Carolina Agricultural Foundation, Inc., shall do the following if the Department of Agriculture and Consumer Services allocates funds to it for programs of the North Carolina Future Farmers of America Association:

- (1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.
- (2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement. (2013-360, s. 13.7(b); 2020-78, s. 5.1(j).)

§ 106-591: Reserved for future codification purposes.

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Article 53.

Grain Dealers.

§ 106-601. Definitions.

(a) "Cash buyer" means any grain dealer who pays the producer, or his representative at the time of obtaining title, possession or control of grain, the full agreed price of such grain in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.

(b) "Commissioner" means the North Carolina Commissioner of Agriculture.

(c) "Department" means the North Carolina Department of Agriculture and Consumer Services.

(d) "Grain" as used herein shall be construed to include, but not by way of limitation, corn, wheat, rye, oats, sorghum, barley, mixed grain and soybeans.

(e) "Grain dealer" means any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor-trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange, or transfers grain of a North Carolina producer. The term "grain dealer" shall exclude producers or groups of producers buying grain for consumption on their farms.

(f) "Person" means an individual, partnership, corporation, association, syndicate or other legal entity.

(g) "Producer" means the owner, tenant or operator of land in this State who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon. (1973, c. 665, s. 1; 1997-261, s. 109.)

§ 106-602. License required.

No person shall act or hold himself out as a grain dealer without first having obtained a license as herein provided. (1973, c. 665, s. 2.)

§ 106-603. Application for license or renewal thereof.

Every grain dealer before transacting business within the State of North Carolina shall on or before July 1, 1974, and annually on or before June 15 of each year thereafter, file a written application for a license or for the renewal of a license with the Commissioner. The application shall be on a form furnished by the Commissioner and shall contain the following information:

- (1) The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within this State.
- (2) The kinds of grain the applicant proposes to handle.
- (3) The type of grain business proposed to be conducted. (1973, c. 665, s. 3.)

§ 106-604. License fee; bond required; exemption.

All applications shall be accompanied by an initial or renewal license fee of fifty dollars (\$50.00) plus thirty dollars (\$30.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of one hundred thousand dollars (\$100,000) to satisfy the initial license application. A fee of five dollars (\$5.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from the bonding requirements of this section. The exemption shall be granted

within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied. (1973, c. 665, s. 4; 1989, c. 544, s. 1; 2013-102, s. 1.)

§ 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.)

§ 106-606. Posting of license; decal on truck, etc.

The grain dealer license shall be posted in a conspicuous place in the place of business. In the case of a licensee operating a truck or tractor-trailer unit, the licensee is required to have a decal that the license is in effect and that a bond has been filed, such decal to be carried in each truck or tractor-trailer unit used in connection with the purchase of grain from producers. (1973, c. 665, s. 6.)

§ 106-607. Renewal of license.

Licenses shall be renewed upon application and payment of renewal fees on or before the fifteenth day of June following the date of expiration of any license hereunder issued. Applications received after June 15 of any year shall be subject to a late filing fee of twenty dollars (\$20.00) in addition to other applicable fees. (1973, c. 665, s. 7; 1989, c. 544, s. 3.)

§ 106-608. Disposition of fees.

All fees payable under this Article shall be collected by the North Carolina Department of Agriculture and Consumer Services for the administration of this Article. (1973, c. 665, s. 8; 1997-261, s. 109.)

§ 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.)

§ 106-610. Grounds for refusal, suspension or revocation of license.

The Commissioner may refuse to grant or renew any license, may suspend or may revoke any license upon a showing by substantial and competent evidence of any of the following:

- (1) The dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied.

- (2) The dealer has failed to promptly and properly account and pay for grain.
- (3) The dealer has failed to keep and maintain business records of his grain transactions as required by this Article.
- (4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer.
- (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.
- (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.
- (8) The applicant has acted or held himself or herself out as a grain dealer without first having obtained a license under the provisions of this Article.
- (9) The dealer has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying or selling of grain, or the handling of payments for grain.
- (10) The dealer or applicant has violated any provision of this Article or rules adopted pursuant to this Article. (1973, c. 665, s. 10; 1979, c. 589, s. 2; 2013-102, s. 2.)

§ 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.)

§ 106-612. Commissioner's authority to investigate.

In furtherance of any such investigation, inspection or hearing, the Commissioner or his duly authorized agent shall have full authority to make any and all necessary investigations relative to the complaint or matter being investigated; and they shall have free and unimpeded access during normal business hours to all buildings, yards, warehouses, storage and transportation facilities in which grain is kept, stored, handled, or transported, or where records of grain transactions are kept. (1973, c. 665, s. 12.)

§ 106-613. Rules and regulations.

The Board of Agriculture may adopt such rules and regulations as may be necessary to carry out the administration and enforcement of this Article. (1973, c. 665, s. 13.)

§ 106-614. Violation a misdemeanor.

Any person who violates any provision of this Article or any rule or regulation of the Board of Agriculture promulgated hereunder shall be guilty of a Class 2 misdemeanor. In case of a

continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense. (1973, c. 665, s. 14; 1993, c. 539, s. 808; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-615. Operation without license unlawful; injunction for violation.

It shall be unlawful for any person to be a grain dealer without securing a license as herein provided. In addition to the criminal penalties provided for herein, the Commissioner of Agriculture may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article. (1973, c. 665, s. 15.)

§§ 106-616 through 106-620. Reserved for future codification purposes.

Article 54.

Adulteration of Grains.

§ 106-621. Definitions.

For purposes of this Article, the following words or terms shall mean as follows:

- (1) Adulterated grain: Grain which contains any substance, such as, but not limited to, Captan, carbon tetrachloride, Malathion, Parathion, DDT, Dieldrin, Thiram, Endrin, Heptachlor, Maneb, Methoxychlor, 2, 6-dichloro, 4-nitroaniline, pentachloronitrobenzene, hexachlorobenzene, Demeton, Phorate, Carbophenothion, in excess of the tolerance for human or animal consumption established for such substances by the laws of the State or the regulations of the North Carolina Department of Agriculture and Consumer Services, or both the State and the Department.
- (2) Commissioner: North Carolina Commissioner of Agriculture.
- (3) Grain: Corn, soybeans, milo, barley, oats, rye, and mixtures of them.
- (4) Grain dealer: Any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor-trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange or transfers grain after obtaining title to the grain of a North Carolina producer. The term "grain dealer" shall exclude producers, groups of producers, or contract feeders buying grain for consumption in their operations.
- (5) Person: Any individual, partnership, corporation, association, syndicate or other legal entity. (1975, c. 659, s. 1; 1997-261, s. 109.)

§ 106-622. Prohibited acts.

It shall be unlawful for any person to commit a prohibited act under G.S. 106-122 with adulterated grain as defined in this Article and as the particular grain qualifies as adulterated food under G.S. 106-129. (1975, c. 659, s. 2.)

§ 106-623. Penalty.

Any person violating the provisions of this Article shall be subject to the provisions of G.S. 106-123, 106-124 and 106-125. (1975, c. 659, s. 3.)

§ 106-624. Sign furnished by Commissioner.

It shall be the duty of the Commissioner to cause to be prepared and furnished for a fee of ten dollars (\$10.00) each to all grain dealers, as defined in this Article, in the State a sign not less than

11 x 15 inches, which shall contain information that it is a violation of law for any person to sell, offer for sale or deliver adulterated grain. Said sign shall also set out the penalties for violation of this Article. Duplicate signs, and replacement for signs lost, stolen, worn or otherwise unusable, shall be purchased from the Department of Agriculture and Consumer Services for a fee of five dollars (\$5.00) per sign. (1975, c. 659, s. 4; 1989, c. 544, s. 2; 1997-261, s. 109.)

§ 106-625. Posting of sign.

It shall be the duty of the owner, manager, or person in charge of the elevator, mill, warehouse or other similar structure to post in a conspicuous place, in view of the public, a sign or signs furnished to the grain dealer by the Commissioner pursuant to this Article. (1975, c. 659, s. 5.)

§ 106-626. Nonposting not a defense.

It shall not be a defense to a prosecution under this Article that the sign required to be posted by G.S. 106-625 hereof was not posted on the date of the alleged violation. (1975, c. 659, s. 6.)

§ 106-627. Determination of adulteration.

For purposes of evidence under this Article, the grain dealer or his agent, upon receipt or pending receipt of suspected adulterated grain, may, at his discretion, call any law-enforcement officer to verify the sampling technique, [and] origin of sampled grain and subsequently send or request the law-enforcement officer to send the sample of grain in a sealed package to the Department of Agriculture and Consumer Services for inspection and analysis in order to protect only the chain of evidence.

Upon [a] finding by the Department that said sample is adulterated grain, the Department shall notify the grain dealer of the results and return the sample to the original sender in a sealed package. (1975, c. 659, s. 7; 1997-261, s. 66.)

§ 106-628. Applicability of Article.

The terms of this Article shall not apply to grain sold, offered for sale or delivered for purposes of planting. (1975, c. 659, s. 8.)

§§ 106-629 through 106-633. Reserved for future codification purposes.

Article 55.

North Carolina Bee and Honey Act of 1977.

§ 106-634. Declaration of policy.

The General Assembly hereby declares that it is in the public interest to promote and protect the bee and honey industry in North Carolina and to authorize the Commissioner of Agriculture and the Board of Agriculture to perform services and conduct activities to promote, improve, and enhance the bee and honey industry in North Carolina particularly relative to small beekeepers; to regulate all bees of the superfamily Apoidea in any stage of development; the causal agents of their disease or disorders, and their pests; to protect the bee and honey industry in North Carolina from bee diseases and disorders and to provide regulatory services in the areas of pollination of plants, honeybee poisonings, thefts, bee management and marketing. (1977, c. 238, s. 1.)

§ 106-635. Definitions.

As used in this Article:

- (1) The term "apiary" means bees, comb, hives, appliances, or colonies, wherever they are kept, located, or found.
- (2) The term "bee(s)" means insects of the superfamily Apoidea; in particular, the honeybees, *Apis mellifera* (L). It includes all life stages of such insects, their genetic material, and dead remains.
- (3) The term "beeyard" means a location or site where bees are located in hives.
- (4) The term "Board" means the North Carolina Board of Agriculture.
- (5) The term "Brazilian or African bee" means bees of the subspecies *Apis mellifera Adansonii* and their progeny.
- (6) The term "colony" means one hive and its contents, including bees, comb, and appliances.
- (7) The term "comb" includes all materials which are normally deposited into hives by bees. It does not include extracted honey or royal jelly, trapped pollen, and processed beeswax.
- (8) The term "commercial beekeeper" means a beekeeper who owns or operates 200 or more colonies of bees, or a beekeeper who moves bees across state lines.
- (9) The term "Commissioner" means the North Carolina Commissioner of Agriculture or his designated agents.
- (10) The term "Department" means the North Carolina Department of Agriculture and Consumer Services.
- (11) The term "disease" means any infectious disease, parasite, or pest that detrimentally affects bees.
- (12) The term "disorder" means any disease, poisoning, pest, parasite, or predator damage, toxic substance injury, or undesirable trait or genetic strain of the bee that detrimentally affects bees or the bee and honey industry.
- (13) The term "exposed" means having been in circumstances where the possibility of infection or damage by a disease or disorder occurred. Bees in an apiary where disease or disorder is present or where there has been an exchange of equipment with a diseased apiary may be considered exposed.
- (14) The term "health certificate" means a statement issued by the State Entomologist certifying that bees or regulated articles are apparently free of disease or disorder based on an inspection or freedom from exposure to disease or disorder.
- (15) The term "hive" means any receptacle or container, or part of receptacle or container, which is made or prepared for the use of bees, or which is inhabited by bees.
- (16) The term "honey" means for the purpose of defining honey as a regulated article in the control of bee diseases or disorders, the natural food product made by the honeybees from the nectar of flowers, the saccharine exudation of plants, honeydew, sugar, corn syrup, or any other material along with any adulterants.
- (17) The term "honeybees" means honey-producing insects of the genus *Apis*.
- (18) The term "honeyflow" means the seasonal yielding of nectar by honey plants.
- (19) The term "honey plants" means blooming plants from which bees gather nectar or pollen.
- (20) The term "infested or infected" means showing symptoms of or having been exposed to the causal agent of a bee disease or disorder to such a degree that

there is a possibility of the infected organisms or material transmitting the disease or disorder to other bees.

- (21) The term "moveable frame hive" means any hive where the frames can be removed without damaging the comb.
- (22) The term "permit" means an authorization to allow movement or other action involving bees or regulated articles.
- (23) The term "regulated article" means any bees, bee equipment, comb, beeswax, honey, pollen, causal agents of disease, toxic substances, products of the hive, containers, and any other item regulated under this Article or pursuant regulations.
- (24) The term "symptomless carrier" means to possess or bear a disease or disorder in a suppressed state having the potential for spreading the disease or disorder. (1977, c. 238, s. 2; 1997-261, s. 67.)

§ 106-636. Powers and duties of Commissioner generally.

The Commissioner shall promote the bee and honey industry in North Carolina. The Commissioner may perform services, cooperate in research activities, conduct investigations, publish information and cooperate with the beekeeping industry to protect and improve beekeeping in North Carolina. He may work toward enhancing honey plants and improving honeybees. He may investigate thefts of honeybees, equipment or products; cooperate in preventative measures; and assist in prosecution of suspects. (1977, c. 238, s. 3.)

§ 106-637. Authority of Board to accept gifts, enter contracts, etc.

The Board is authorized to accept gifts, grants, or donations from any source for the purpose of promoting and protecting the bee and honey industry. The Board is authorized to issue grants or enter contracts or agreements for the furtherance of the purpose of this Article. (1977, c. 238, s. 4.)

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

The Board may adopt regulations and set procedures for the purpose of carrying out the provisions of this Article. The Board may adopt minimum standards for colony strength and disease tolerance levels for hives rented for pollination of crops, and the Commissioner shall certify hives meeting those standards. The Board may adopt regulations to regulate or prohibit entrance into North Carolina of bees or regulated articles to protect the bee and honey industry from bee diseases, disorders, overcrowding of honey pasture, or other encroachments deemed by the Board not to be in the best interest of the beekeepers of North Carolina. The Board may adopt regulations relating to, but shall not be limited to, providing for inspection of bees; and surveying and developing regulations to control, eradicate, abate, prevent exposure to, or prevent the introduction of or movement into or within North Carolina of bee diseases, disorders, pests or enemies of bees; or products that are a threat to beekeeping in North Carolina. The diseases, disorders, and products regulated shall include, but not be confined to bee diseases, poisons, bee pests, pollen, causal agents of disease, bee parasites and predators and toxic substances. The Board may regulate undesirable species or strains of bees including but not limited to Brazilian or African strains of bees. Regulations may include articles, exposed to infection or infestation, bees, honey, honeycomb, beeswax, beeswax refuse, royal jelly, containers, and beekeeping equipment to include sale, exposure and shipment of said and like items. The Board may adopt regulations governing beeyards or sites of commercial beekeepers. The Board is authorized to adopt

regulations and set fees for extra or special inspections, issuance of certificates, permits, registrations, and regulatory activities. (1977, c. 238, s. 5.)

§ 106-639. Regulations for control and prevention of diseases and disorders.

The Board may adopt regulations and procedures for the disposition of bees infected or infested with diseases or disorders, beekeeping equipment, and other regulated articles kept or moved in violation of this Article and pursuant regulations. Such regulations may authorize the Commissioner to quarantine, destroy, confiscate, or otherwise dispose of, eradicate, establish cleanup areas, and require owners to disinfect, fumigate, treat with drugs, or destroy bees or articles at their own expense or to take measures to eradicate bee diseases or disorders.

The Board shall have authority to either allow, require, or forbid use of drugs in the control of bee diseases or disorders, and may define as infested or infected symptomless carriers of a disease or disorder, declare bees that have been treated with disease-masking drugs to be infested or infected, and consider bees or articles which have been exposed to a disease or disorder to be infected or infested.

The Board may also adopt regulations governing beeswax salvage operations and honey house sanitation for disease prevention. (1977, c. 238, s. 6.)

§ 106-639.1. Permit to sell bees.

Prior to selling bees in North Carolina, a person shall obtain a permit from the Commissioner. Application for the permit shall be made on a form provided by the Commissioner, and shall be accompanied by a nonrefundable fee of twenty-five dollars (\$25.00). The Commissioner may deny, suspend, or revoke a permit for any violation of this Article or rules adopted to implement the Article. Permits shall expire annually on December 31 and may be renewed upon payment of a fee of twenty-five dollars (\$25.00). All proceedings concerning the denial, suspension, or revocation of a permit shall be conducted in accordance with the Administrative Procedure Act, Chapter 150B of the General Statutes. No permit shall be required for (i) the sale of less than 10 bee hives in a calendar year, (ii) a one-time going-out-of-business sale of less than 50 bee hives, or (iii) the renting of bees for pollination purposes or the movement of bees to gather honey. (1991, c. 349, s. 1.)

§ 106-640. Authority of Commissioner to protect industry from diseases and disorders, etc.

The Commissioner shall protect the bee and honey industry from diseases and disorders of the honeybee (*Apis mellifera*) and other insects in the superfamily (Apoidea) and shall provide services and enforce provisions of this Article and pursuant regulations. The Commissioner may adopt regulations for prohibiting or regulating the movement of bees and regulated articles into and from quarantine or cleanup areas and enforce procedures for control and cleanup of diseases or disorders in such areas.

The Commissioner is authorized to establish postentry quarantines and issue hold orders for inspection of bees or regulated articles imported into North Carolina. (1977, c. 238, s. 7.)

§ 106-641. Giving false information to Commissioner; hives; certificates, permits, etc.

It is unlawful to knowingly give false information to the Commissioner concerning diseased bees or bees exposed to disease, their treatment, or disposition.

The Commissioner may require that bees be kept in moveable frame hives and be maintained in an inspectable condition or in other hives where an inspection for disease or disorder can be readily made.

The Board may adopt regulations for issuance of health certificates, moving permits, and the registration of honeybees and may require marking or identification of honeybee colonies or apiaries. (1977, c. 238, s. 8.)

§ 106-642. Emergency action by Commissioner.

The Commissioner may take emergency action with respect to Board authority in the provisions of this Article if needed to protect the bee and honey industry in North Carolina. Such action shall remain in force until rescinded by the Commissioner or acted on by the Board. (1977, c. 238, s. 9.)

§ 106-643. Designation of persons to administer Article; inspections, etc.

The Commissioner shall have the authority to designate such employees of the Department or persons collaborating with the Department as may seem expedient to carry out the duties and exercise the powers provided by this Article. The Commissioner is authorized to survey or inspect premises for the presence of bees or other regulated articles, inspect colonies for bee diseases and disorders, and otherwise enforce the provisions of this Article and pursuant regulations. The Commissioner or his designated agent shall have authority to inspect vehicles or other means of transportation and their cargo suspected of carrying bees or regulated articles, and enter upon any premises to inspect any bees or regulated articles to determine the presence or absence of diseases or disorders.

Such inspections and other activities may be conducted with the permission of the owner or person in charge. If permission is denied the Commissioner or his designated agent, such inspections and other activities may be conducted in a reasonable manner, with a warrant, with respect to any premises or vehicles. Such warrant shall be issued pursuant to Article 4A of Chapter 15. A superior court or district court judge may issue confiscation orders on any bees or articles for which confiscation is authorized in this Article or pursuant regulations. (1977, c. 238, s. 10.)

§ 106-644. Penalties.

(a) If anyone shall attempt to prevent inspection as provided in this Article or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaging in the performance of his duties under this Article, or shall violate any provisions of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a Class 3 misdemeanor. Each day's violation shall constitute a separate offense.

(b) The Commissioner may assess a civil penalty of not more than ten thousand dollars (\$10,000) against a person who violates this Article or a rule adopted to implement this Article. In determining the amount of the penalty, the Commissioner 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 the opportunity for a hearing pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful means for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1977, c. 238, s. 11; 1991, c. 349, s. 2; 1993, c. 539, s. 809; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 20.)

§ 106-645. Limitations on local government regulation of hives.

(a) Notwithstanding Article 6 of Chapter 153A of the General Statutes, no county shall adopt or continue in effect any ordinance or resolution that prohibits any person or entity from owning or possessing five or fewer hives.

(b) Notwithstanding Article 8 of Chapter 160A of the General Statutes, a city may adopt an ordinance to regulate hives in accordance with this subsection. The city shall comply with all of the following:

- (1) Any ordinance shall permit up to five hives on a single parcel within the land use planning jurisdiction of the city.
- (2) Any ordinance shall require that the hive be placed at ground level or securely attached to an anchor or stand. If the hive is securely attached to an anchor or stand, the city may permit the anchor or stand to be permanently attached to a roof surface.
- (3) Any ordinance may include regulation of the placement of the hive on the parcel, including setbacks from the property line and from other hives.
- (4) Any ordinance may require removal of the hive if the owner no longer maintains the hive or if removal is necessary to protect the health, safety, and welfare of the public.

(c) For purposes of this section, the term "hive" has the same definition as in G.S. 106-635(15). (2015-246, s. 8.)

Article 55A.

Beehive Grants.

§ 106-650. Beehive Grant Fund.

(a) Establishment. – The North Carolina Beehive Grant Fund is established as a special fund in the Department of Agriculture and Consumer Services. The Department is responsible for administering the Fund using personnel and other administrative resources of the Agricultural Development and Farmland Preservation Trust Fund program. The Fund may receive funds appropriated by the General Assembly and any gifts, grants, or donations from any public or private sources.

(b) Purposes. – Funds in the North Carolina Beehive Grant Fund shall be used, as available, to encourage the establishment of new beehives in the State. Grants from the Fund shall be made upon application to the Beehive Grant Program as set forth in G.S. 106-651. (2017-57, s. 12.6.)

§ 106-651. Beehive Grant Program.

(a) Definitions. – The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Eligible activity. – Any of the following:
 - a. The purchase of a new hive for bees.
 - b. The purchase of materials or supplies to be used for the construction of a new hive for bees.

- (2) Eligible beekeeper. – A resident of the State who meets the following requirements:
 - a. The person is at least 18 years of age.
 - b. The person is a Certified Beekeeper as determined by the North Carolina State Beekeepers Association at the time of filing of the grant application.
- (3) Fund. – The Beehive Grant Fund established by G.S. 106-650.

(b) Grants. – Any eligible beekeeper may apply for a grant from the Fund for an eligible activity. The Department shall specify the form and contents of the application, including procedures for the submission of applications electronically. The Board may establish a fee for grant applicants to recover the reasonable costs of reviewing and processing applications. Grants shall be limited to two hundred dollars (\$200.00) per new hive, up to a maximum grant of two thousand four hundred dollars (\$2,400) per grant recipient in any year, and shall be issued in the order that each completed eligible application is received. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund, the grants shall be paid in the next fiscal year in which funds are available.

(c) Rulemaking. – The Board may issue rules to implement the requirements of this Article. (2017-57, s. 12.6.)

Article 56.

North Carolina Commercial Fertilizer Law.

§ 106-655. Short title.

This Article shall be known as the "North Carolina Commercial Fertilizer Law." (1977, c. 303, s. 1.)

§ 106-656. 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 commercial fertilizer sold in this State, and to assure the safe handling of fluid fertilizers. (1977, c. 303, s. 2.)

§ 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.
- (2) The term "bulk fertilizer" means a commercial fertilizer distributed in non-package form.
- (3) The term "commercial fertilizer" includes both fluid and dry mixed fertilizer and/or fertilizer materials.
- (4) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person, who for hire or reward applies commercial fertilizer to the soil or crop of a consumer; provided, that this shall not apply to any consumer applying commercial fertilizer to only the land or crop that he owns or to which he otherwise holds rights, for the production of his own crops.

- (5) The term "distributor" means any person who offers for sale, sells, barter, or otherwise supplies mixed fertilizer or fertilizer materials.
- (6) The term "fertilizer material" means any substance containing either nitrogen, phosphorus, potassium, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.
- (7) The term "fluid fertilizer" means a nonsolid commercial fertilizer.
- (8) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphate and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however, that such percentages shall not exceed one percent (1%), respectively, subject to the same limits and tolerances set forth in this Chapter.

- (9) The term "grade" means the percentage of total nitrogen, available phosphate and soluble potash 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 phosphate and soluble potash 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.
- (12) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in, or claimed to have value in promoting plant growth.
- (13) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.
- (14) The term "natural organic fertilizer" means material derived from either plant or animal products containing one or more elements (other than carbon, hydrogen and oxygen) which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic, or

anaerobic/aerobic bacterial action, or any combination of these. These materials shall not be mixed with synthetic materials, or changed in any physical or chemical manner from their initial state except by physical manipulations such as drying, cooking, chopping, grinding, shredding or pelleting.

- (15) The term "official sample" means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the method prescribed in subsection (b) of G.S. 106-662.
- (16) The term "organic fertilizer" means a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth.
- (17) The term "percent" or "percentage" means the percentage by weight.
- (18) The term "person" includes individuals, partnerships, associations, firms, agencies, and corporations, or other legal entity.
- (19) The term "retailer" means any person who sells or delivers fertilizer to a consumer.
- (20) The term "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 the bailee, borrower, lessee, or licensee.
- (21) The term "sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
- (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.
- (23) The term "ton" means a net ton of two thousand pounds avoirdupois.
- (24) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
- (25) The term "wholesaler" shall mean any person who sells to any other person for the purpose of resale, and who also may sell to a consumer.
- (26) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.
- (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; 1993, c. 216, s. 3.)

§ 106-658. 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." (1947, c. 1086, s. 2; 1977, c. 303, s. 4.)

§ 106-659. Minimum plant food content.

Except as provided in this section, superphosphate containing less than eighteen percent (18%) available phosphate, or any mixed fertilizer in which the guarantees for the nitrogen, available phosphate, or soluble potash are in fractional percentages shall not be offered for sale, sold, or distributed in this State. Packages of 32 fluid ounces or less when in liquid form, or 32 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but these 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; 1993, c. 216, s. 4; 2003-71, s. 1.)

§ 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 five dollars (\$5.00) per brand and grade for all packages greater than five pounds. The registration fee for packages of five pounds or less shall be fifty-five dollars (\$55.00). All approved registrations expire on June 30 of each year. The application shall include such information as deemed necessary by the Board of Agriculture.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this Article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration. If the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review or by such other means as he may deem advisable.

(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. The Board shall charge a maximum of one hundred dollars (\$100.00) for said license. 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.

(e) When fluid fertilizer is offered for sale or sold in this State, the method of transfer of custody shall be by weight expressed in pounds, and shall be invoiced in such a manner as to show

the name of the seller, the name of the purchaser, the date of sale, the grade, and the net weight; provided, however, that fluid fertilizer may be measured in gallons of 231 cubic inches and its equivalent expressed in pounds, with a formula for converting from gallons to pounds shown on the invoice.

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

(g) Before any anhydrous ammonia installation that handles, stores, distributes, or applies anhydrous ammonia for fertilizer use shall be built in this State, a general layout of the installation shall be submitted in duplicate and approved by the Commissioner. In order that the layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, distribution, or application adopted by the Board of Agriculture. All storage tanks, transfer or transport containers, applicator containers, and attached equipment for fertilizer use shall conform to the minimum standards adopted by the Board of Agriculture. It shall be the duty of a contractor, as defined in G.S. 106-657 to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any equipment that the contractor 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; 1989, c. 544, s. 5; 2001-440, s. 2; 2013-360, s. 13.9(a).)

§ 106-661. Labeling.

(a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by G.S. 106-660(a), either (i) on tags to be affixed to the end of the package or (ii) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the containers shall not be less than two inches in height for containers of 100 pounds or more; not less than one inch for containers of 50 to 99 pounds; and not less than 1/2 inch for packages of 25 to 49 pounds. On packages of less than 25 pounds, the grade must appear in numerals at least one half as large as the letters in the brand name. In case of fertilizers sold in containers on which the brand name or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by G.S. 106-660(a), shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached on the end of each bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals.

(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; 1989, c. 770, s. 28.)

§ 106-662. Sampling, inspection and testing.

(a) It shall be the duty of the Commissioner to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Article. The Commissioner is authorized with permission or under court warrant to enter upon any public or private premises during regular business hours or at any time business is being conducted therein in order to have access to commercial fertilizers subject to the provisions of this Article and the rules and regulations thereto.

(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 and Consumer Services, setting forth the analysis made by the chemist of the Department 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.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Analytical Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least 10 days before the report is submitted to the purchaser. If, during that period, no adequate evidence to the contrary is made available to the Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed for available plant food, if taken in accordance with the following rules and regulations:

- (1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.
- (2) The sample shall be drawn in the presence of the manufacturer, seller, or representative designated by either party together with two disinterested adult persons; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested adult persons; provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture and Consumer Services in taking samples and shall be drawn, mixed, and divided, as directed in subdivisions (1), (2), (3), and (4) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.

- (3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State, as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.
- (4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this Article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this Article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this State during such season, employed such ingredients as are prohibited by the provisions of this Article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods or unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question, or a representative, agent or employee of the manufacturer, has violated any provisions of G.S. 106-663. (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; 1997-261, ss. 68, 69.)

§ 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.)

§ 106-664. Determination and publication of commercial values.

For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-665, the Commissioner shall determine and publish annually the values per pound of nitrogen, available phosphate, and soluble potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9; 1977, c. 303, s. 10; 1993, c. 216, s. 5.)

§ 106-665. Plant food deficiency.

(a) The Commissioner, in determining for administrative purposes, whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (15) of G.S. 106-657, and as provided for in subsections (b), (c), and (d) of G.S. 106-662.

(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 phosphate, or available potash: A penalty of three times the value of the deficiency if the deficiency is in excess of the following investigational allowances.

Guarantee Percentage	Total Nitrogen	Available Phosphate	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 shall 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 shall 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.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the clear proceeds of the penalty assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11; 1983, c. 146, s. 5; 1993, c. 216, s. 6; 1997-261, s. 109; 1998-215, s. 21.)

§ 106-666. "Stop sale," etc., orders.

(a) When the Commissioner finds that a lot of commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article, the Commissioner shall issue

and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and shall cause the fertilizer to be held at a designated place until (i) the law has been complied with and the commercial fertilizer is released in writing by the Commissioner or (ii) the violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

(b) If any manufacturer, dealer, or agent fails to pay a penalty owed on commercial fertilizer within 90 days after notice of assessment by the Commissioner, the Commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to that manufacturer, dealer, or agent and shall cause any commercial fertilizer distributed and offered by that manufacturer, dealer, or agent for sale in the State to be held until (i) the penalties are paid in full and the commercial fertilizer is released in writing by the Commissioner or (ii) the penalties have been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5; 1977, c. 303, s. 12; 1993, c. 216, s. 1.)

§ 106-667. Seizure, condemnation and sale.

Any lot of commercial fertilizer not in compliance with the provisions of this Article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this Article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this Article. (1947, c. 1086, s. 19; 1977, c. 303, s. 13.)

§ 106-668. Punishment for violations.

Each of the following offenses shall be a Class 1 misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of Class 1 misdemeanors:

- (1) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance with the effect of defrauding the purchaser.
- (2) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.
- (3) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under

a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

- (4) The filing with the Commissioner of any false statement of fact in connection with the registration under G.S. 106-660 of any commercial fertilizer.
- (5) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this Article.
- (6) Knowingly taking a false sample of commercial fertilizer for use under provisions of this Article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.
- (7) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this Article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this Article, if done prior to such analysis and disposition of the sample under the direction of the Commissioner.
- (8) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this Article.
- (9) Selling or offering for sale in this State commercial fertilizer without marking the same as required by G.S. 106-661.
- (10) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by G.S. 106-659.
- (11) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G.S. 106-671 before selling, offering, or exposing for sale or distributing commercial fertilizers in this State.
- (12) Failure of any manufacturer or contractor to procure a license under the provisions of G.S. 106-660(d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11; 1977, c. 303, s. 14; 1993, c. 539, s. 810; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 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.)

§ 106-670. Appeals from assessments and orders of Commissioner.

Nothing contained 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. (1947, c. 1086, s. 22; 1977, c. 303, s. 16.)

§ 106-671. Inspection fees; reporting system.

(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture and Consumer Services a charge of fifty cents (50¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. Individual packages of five pounds or less shall be exempt from the tonnage fee; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons shall be subject to the charge of fifty cents (50¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System. – Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture and Consumer Services an inspection fee of fifty cents (50¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or the Commissioner's duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. If the records are available electronically, the electronic records shall be made available to the Commissioner or the Commissioner's authorized representative. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7; 1973, c. 611, s. 5; 1977, c. 303, s. 17; 1991, c. 98, s. 2; 1997-261, s. 109; 2009-451, s. 11.1; 2011-145, s. 31.8(a); 2013-360, s. 13.9(b); 2021-78, s. 8(d).)

§ 106-672. 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, mixing, or manufacturing commercial fertilizers, in order to insure the manufacturer, distributor and consumer of the correct quantity and quality of all commercial fertilizer 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, mixing or manufacturing commercial fertilizer. (1977, c. 303, s. 18.)

§ 106-673. Authority of Board of Agriculture to make rules and regulations.

Because legislation with regard to commercial fertilizer sold or offered for sale in this State must be 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 this Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer 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) The maximum chlorine guarantee permitted for tobacco fertilizer;
- (2) The maximum chlorine guarantee permitted in tobacco top dressers;
- (3) Which grades of fertilizer may be branded top dressers;
- (4) The labeling of the grade of fertilizer when such fertilizer is sold in plain or unbranded bags;
- (5) The labeling requirements for all containers of liquid commercial fertilizer for direct application to the soil;
- (6) The bag sizes which may be used in the sale of commercial fertilizer;
- (7) The labeling requirements for packages containing a combination of any nonfertilizer material and mixed tobacco fertilizer;
- (8) Registration and labeling requirements for grades and brands of fertilizer carrying any guarantee of boron; the tolerance allowances for the percentage of boron in fertilizer mixtures;
- (9) The required composition for boron-landplaster mixtures before they may be registered and sold for use on peanuts in this State; the labeling requirements for each container of such mixture;
- (10) The monetary penalties assessed for excesses or deficiencies of boron and all other minor elements above or below the tolerances allowed;
- (11) The registration and labeling of general crop grades and tobacco grades;
- (12) The method, and the time limitations for the reporting to the Commissioner of Agriculture of the tonnage of each grade of fertilizer shipped to each destination in the State by each manufacturer or firm having fertilizer registered in this State;
- (13) The required composition, before such mixtures may be registered and sold in this State, of fertilizer-pesticide, landplaster-pesticide, and fertilizer-landplaster-pesticide, when to be used for peanuts alone;
- (14) The labeling and bag requirements of fertilizer-landplaster-pesticide mixtures;
- (15) The standards and requirements which must be met before fertilizer-pesticide mixtures may be registered in this State. These requirements may include, but are not limited to, approval in North Carolina of both the pesticide and the fertilizer grades, approval of the mixture by the Board of Agriculture, and any labeling requirements;
- (16) The standards and requirements which must be complied with before fertilizers-pesticides may, without registering the mixture, be mixed for direct application at the farmer's request;
- (17) Requests for mixing any pesticide with fertilizer, for products not previously approved by the Board of Agriculture;

- (18) Packaging requirements for fertilizer-pesticide mixtures sold either in bulk or in bags, such that dusting, spillage, sifting, or a loss of any fertilizer-pesticide mixture will not occur;
- (19) The percentages of nitrogen required to be in nitrogen solutions, before such solutions may be registered and sold in this State;
- (20) The labeling of fertilizer products to ascertain their compliance to the Fertilizer or Lime and Landplaster Law;
- (21) Requesting substantiating data to back up claims made about a fertilizer product; registration may be denied if such data is not furnished;
- (22) The denial of approval of the registration of fertilizer products when such products will not, when used as directed, supply deficient needs of a plant;
- (23) Safety requirements for the movement, handling and storage of fluid fertilizers;
- (24) Standards and requirements for equipment and tanks for handling liquid fertilizer;
- (25) Refusing registration as a result of information or recommendations from the director of research stations;
- (26) Establishing minimum guarantees permissible for registering secondary elements and micronutrients;
- (27) Establishing minimum standards for containment of fertilizer materials in storage to prevent contamination of groundwater and surface water; and
- (28) Standards and labeling requirements for specialty fertilizers. (1947, c. 1086, s. 15; 1949, c. 637, s. 4; 1977, c. 303, s. 19; 1991, c. 100; 1993, c. 216, s. 2.)

§ 106-674. Short weight.

If any commercial fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the registrant of said commercial fertilizer shall within 30 days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner may in his discretion allow reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16; 1977, c. 303, s. 20.)

§ 106-675. Publication of information concerning fertilizers.

The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with a report of the results of the analyses based on official samples of commercial fertilizers sold or offered for sale within the State; such data on their production and use as he may consider advisable; provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14; 1959, c. 706, s. 9; 1977, c. 303, s. 21.)

§ 106-676. Sales or exchanges between manufacturers, etc.

Nothing in this Article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who have registered their brands as required by the provisions of this Article. (1947, c. 1086, s. 21; 1977, c. 303, s. 22.)

§ 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 and Consumer Services 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; 1997-261, s. 109.)

§ 106-678. Authority to regulate fertilizers.

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Chapter 160D of the General Statutes or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environmental Quality or the Environmental Management Commission to enforce water quality standards. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from adopting ordinances regulating fertilizers to protect water quality, provided that the ordinances have been approved by the Environmental Management Commission or the Department of Environmental Quality as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality as established by the Environmental Management Commission under Part 1 of Article 21 of Chapter 143 of the General Statutes. Nothing in this section shall prohibit a county or city from exercising its authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to G.S. 153A-128 or G.S. 160A-183. (2014-103, s. 2.4(b); 2015-241, s. 14.30(u); 2022-62, s. 9.)

§ 106-679: Reserved for future codification purposes.

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- § 106-699: Reserved for future codification purposes.

Article 57.

Nuisance Liability of Agricultural and Forestry 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 and forestland for the production of food, fiber, and other products. When other land uses extend into agricultural and forest areas, agricultural and forestry operations often become the subject of nuisance suits. As a result, agricultural and forestry operations are sometimes forced to cease. Many others are discouraged from making investments in farm and forest improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural and forestry resources by limiting the circumstances under which an agricultural or forestry operation may be deemed to be a nuisance. (1979, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 892, s. 1.)

§ 106-701. Right to farm defense; nuisance actions.

(a) No nuisance action may be filed against an agricultural or forestry operation unless all of the following apply:

- (1) The plaintiff is a legal possessor of the real property affected by the conditions alleged to be a nuisance.
- (2) The real property affected by the conditions alleged to be a nuisance is located within one half-mile of the source of the activity or structure alleged to be a nuisance.
- (3) The action is filed within one year of the establishment of the agricultural or forestry operation or within one year of the operation undergoing a fundamental change.

(a1) For the purposes of subsection (a) of this section, a fundamental change to the operation does not include any of the following:

- (1) A change in ownership or size.
- (2) An interruption of farming for a period of no more than three years.
- (3) Participation in a government-sponsored agricultural program.
- (4) Employment of new technology.
- (5) A change in the type of agricultural or forestry product produced.

(a2) Repealed by Session Laws 2018-113, s. 10(a), effective June 27, 2018.

(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.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of trees.

(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 him 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 or forestry 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 shall not apply whenever a nuisance results from an agricultural or forestry 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.

(f) In a nuisance action against an agricultural or forestry operation, the court shall award costs and expenses, including reasonable attorneys' fees, to:

- (1) The agricultural or forestry operation when the court finds the operation was not a nuisance and the nuisance action was frivolous or malicious; or
- (2) The plaintiff when the court finds the agricultural or forestry operation was a nuisance and the operation asserted an affirmative defense in the nuisance action that was frivolous and malicious. (1979, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 892, s. 1; 2013-314, s. 1; 2018-113, s. 10(a).)

§ 106-702. Limitations on private nuisance actions against agricultural and forestry operations.

(a) The compensatory damages that may be awarded to a plaintiff for a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation shall be as follows:

- (1) If the nuisance is a permanent nuisance, compensatory damages shall be measured by the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.
- (2) If the nuisance is a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the plaintiff's property caused by the nuisance.

(a1) A plaintiff may not recover punitive damages for a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation that has not been subject to a criminal conviction or a civil enforcement action taken by a State or federal environmental regulatory agency pursuant to a notice of violation for the conduct alleged to be the source of the nuisance within the three years prior to the first act on which the nuisance action is based.

(b) If any plaintiff or plaintiff's successor in interest brings a subsequent private nuisance action against any agricultural or forestry operation, the combined recovery from all such actions shall not exceed the fair market value of the property at issue. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(c) This Article applies to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation.

(d) This Article does not apply to any cause of action brought against an agricultural or forestry operation for negligence, trespass, personal injury, strict liability, or other cause of action for tort liability other than nuisance, nor does this Article prohibit or limit any request for injunctive relief that is otherwise available. (2017-11, s. 1; 2018-113, s. 10(b); 2018-142, s. 14.)

Article 57A.

Civil Liability of Farmers.

§ 106-706. Exemption from civil liability for farmers permitting gleaning.

Any farmer, as an owner, lessee, occupant, or otherwise in control of land, who allows without compensation another person to enter upon the land for the purpose of removing any crops remaining in the farmer's fields following the harvesting of the crops, owes that person the same duty of care the farmer owes a trespasser. (1991 (Reg. Sess., 1992), c. 868, s. 1.)

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.)

§ 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 and Consumer Services. (1981, c. 552, s. 1; 1997-261, s. 70.)

§ 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.)

§ 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.)

§ 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 Class 2 misdemeanor. 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; 1993, c. 539, s. 811; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-715. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 15; 1998-215, s. 22.)

§§ 106-716 through 106-718. Reserved for future codification purposes.

Article 59.

Northeastern North Carolina Farmers Market Commission.

§§ 106-719 through 106-725. Repealed by Session Laws 1999-44, s. 6, effective May 13, 1999.

Article 60.

Southeastern North Carolina Farmers Market Commission.

§§ 106-726 through 106-734. Repealed by Session Laws 1999-44, s. 7, effective May 13, 1999.

Article 61.

Agricultural Development and Preservation of Farmland.

Part 1. General Provisions.

§ 106-735. Short title, purpose, and administration.

(a) This Article shall be known as "The Agricultural Development and Farmland Preservation Enabling Act."

(b) The purpose of this Article is to authorize counties and cities to undertake a series of programs to encourage the preservation of qualifying farmland, as defined herein, and to foster the growth, development, and sustainability of family farms.

(c) This Article shall be administered and supervised by the Department of Agriculture and Consumer Services. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 2, 9; 2011-251, s. 1.)

§ 106-736. Agricultural Development/Farmland preservation programs authorized.

(a) A county or a city 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.

(b) A county or a city may develop programs to promote the growth, development, and sustainability of farming and assist farmers in developing and implementing plans that achieve these goals. For purposes of this Article, the terms "agriculture", "agricultural", and "farming" have the same meaning as set forth in G.S. 106-581.1. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 2, 10.)

Part 2. Voluntary Agricultural Districts.

§ 106-737. Qualifying farmland.

In order for farmland to qualify for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real property that:

- (1) Is used for bona fide farm purposes, as that term is defined in G.S. 106-743.4(a) and G.S. 160D-903.
- (2) Repealed by Session Laws 2005-390, s. 11 effective September 13, 2005.
- (3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodible land; and
- (4) Is the subject of a conservation agreement, as defined in G.S. 121-35, between the local government administering the voluntary agricultural district program 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 and municipal zoning and subdivision regulations. The form of the conservation agreement shall be approved by the agricultural advisory board created under G.S. 106-739. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 11; 2011-219, s. 1; 2021-78, s. 1.)

§ 106-737.1. Revocation of conservation agreement.

By written notice to the local government administering the voluntary agricultural district program, 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; 2005-390, s. 3; 2021-78, s. 1.)

§ 106-738. Voluntary agricultural districts.

- (a) An ordinance adopted under this Part shall provide:
- (1) For the establishment of voluntary agricultural districts upon the execution of a conservation agreement as provided in G.S. 106-737(4).
 - (2) Repealed by Session Laws 2021-78, s. 1, effective July 2, 2021.
 - (3) Repealed by Session Laws 2021-78, s. 1, effective July 2, 2021.
 - (4) Repealed by Session Laws 2021-78, s. 1, effective July 2, 2021.
 - (5) The minimum size, including acreage; number of tracts; and appropriate proximity of multiple tracts of agricultural land, forestland, or horticultural land that may comprise a voluntary agricultural district.

(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 decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors, and other negative impacts on properly managed farms. The county or city that adopted an ordinance under this Part may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160D-903(e) with regard to agricultural districts within its planning jurisdiction. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 12; 2021-78, s. 1; 2022-62, s. 10.)

§ 106-739. Agricultural advisory board.

(a) An ordinance adopted under this Part or Part 3 of this Article shall provide for the establishment of an agricultural advisory board, organized and appointed by the board of county commissioners or the city council adopting the ordinance. The county or city that adopted the ordinance may confer upon this advisory board authority to:

- (1) Review and make recommendations or decisions concerning the establishment and modification of agricultural districts. The board of county commissioners or the city council may make decisions regarding the establishment and modification of voluntary agricultural districts or may delegate that authority to the agricultural advisory board. If the authority is delegated to the agricultural advisory board, the agricultural advisory board's decisions shall be appealable to the board of county commissioners or city council by an owner of land that has been denied enrollment in a voluntary agricultural district or has been removed from a voluntary agricultural district by the agricultural advisory board.
 - (1a) Execute agreements with landowners necessary for enrollment of land in a voluntary agricultural district.
- (2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Part or Part 3 of 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 governing board of the county or city that adopted the ordinance 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 governing board of the county or city that adopted the ordinance.

(b) The members of the agricultural advisory board shall be chosen to provide the broadest possible representation of the geographical regions of the local government and to represent, to the extent possible, all segments of agricultural production existing within the local government. A majority of the members of the agricultural advisory board shall be actively engaged in agriculture.

(c) The agricultural advisory board may, at the discretion of the board of county commissioners or the city council, utilize an existing local government agency for the purpose of administration, record keeping, and other related tasks or duties. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 13; 2021-78, s. 1.)

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

An ordinance adopted under this Part or Part 3 of 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 under this Part or an enhanced voluntary agricultural district under Part 3 of this Article 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; 2005-390, ss. 3, 14.)

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

(a) All counties shall require that land 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 the property line of any tract of land enrolled in 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.

(d) In no event shall any cause of action arise out of the failure of a person licensed under Chapters 93A or 93E of the General Statutes for failure to report to any person the proximity of a tract to a qualifying farm or voluntary agricultural district as defined in this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, s. 3; 2018-113, s. 9; 2021-78, s. 1.)

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

(a) A county or a city that has adopted an ordinance under this Part 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 of the General Statutes or Article 10 of Chapter 160A of the General Statutes, whichever applies, 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 or cities to hold assessments in abeyance under G.S. 153A-201 or G.S. 160A-237. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 15.)

§ 106-743. Local ordinances.

A county or a city adopting an ordinance under this Part or Part 3 of this Article may consult with the North Carolina Commissioner of Agriculture or the Commissioner's staff before adoption, and shall record the ordinance with the Commissioner's office after adoption. Thereafter, the county or city shall submit to the Commissioner at least once a year, a written report including the status, progress, number of enrolled farms and acres, and activities of its farmland preservation program under this Part or Part 3 of this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 16; 2021-78, s. 1.)

Part 3. Enhanced Voluntary Agricultural Districts.

§ 106-743.1. Enhanced voluntary agricultural districts.

(a) A county or a municipality may adopt an ordinance establishing an enhanced voluntary agricultural district. An ordinance adopted pursuant to this Part shall provide:

(1) For the establishment of an enhanced voluntary agricultural district that initially consists of at least the number of contiguous acres of agricultural land, and forestland and horticultural land that is part of a qualifying farm under G.S. 106-737 or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance.

(2) For the formation of the enhanced voluntary agricultural district upon the execution of a conservation agreement, as defined in G.S. 121-35, that meets the condition set forth in G.S. 106-743.2 by the landowners of the requisite acreage to sustain agriculture in the enhanced voluntary agricultural district.

(3) That the form of the agreement under subdivision (2) of this subsection be reviewed and approved by an agricultural advisory board established under G.S. 106-739, or other governing board of the county or city that adopted the ordinance.

(4) Repealed by Session Laws 2021-78, s. 1, effective July 2, 2021.

(b) The purpose of establishing an enhanced voluntary agricultural district is to allow a county or a city to provide additional benefits to farmland beyond that available in a voluntary

agricultural district established under Part 2 of this Article, when the owner of the farmland agrees to the condition imposed under G.S. 106-743.2. The county or city that adopted the ordinance may take any action it deems appropriate to encourage the formation of these districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160D-903(e) with regard to agricultural districts within its planning jurisdiction.

(d) A county or city ordinance adopted pursuant to this Part may be adopted simultaneously with the creation of a voluntary agricultural district pursuant to G.S. 106-738. (2005-390, s. 5; 2021-78, s. 1; 2022-62, s. 11.)

§ 106-743.2. Conservation agreements for farmland in enhanced voluntary agricultural districts; limitation.

A conservation agreement entered into between a county or city and a landowner pursuant to G.S. 106-743.1(a)(2) shall be irrevocable for a period of at least 10 years from the date the agreement is executed. At the end of its term, a conservation agreement shall automatically renew for a term of three years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced voluntary agricultural district. The benefits set forth in this Part shall be available to the farmland that is the subject of the conservation agreement for the duration of the conservation agreement. (2005-390, s. 5.)

§ 106-743.3. Enhanced voluntary agricultural districts entitled to all benefits of voluntary agricultural districts.

The provisions of G.S. 106-739 through G.S. 106-741 and G.S. 106-743 apply to an enhanced voluntary agricultural district under this Part, to an ordinance adopted under this Part, and to any person, entity, or farmland subject to this Part in the same manner as they apply under Part 2 of this Article. (2005-390, s. 5.)

§ 106-743.4. Enhanced voluntary agricultural districts; additional benefits.

(a) Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) of its gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from zoning regulations under G.S. 160D-903. For purposes of G.S. 160D-903, the production of any nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm that is subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed twenty-five percent (25%) of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. 106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to Article 72 of this Chapter for funds to benefit that farmland.

(c) State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to any person who farms land that is subject to a conservation

agreement under G.S. 106-743.2 that remains in effect. (2005-390, s. 5; 2011-145, s. 13.22A(cc); 2017-108, s. 9(b); 2022-55, s. 7(a); 2022-62, s. 12(a), (b).)

§ 106-743.5. Waiver of utility assessments.

(a) In the ordinance establishing an enhanced voluntary agricultural district under this Part, a county or a city may provide that all assessments for utilities provided by that county or city are held in abeyance, with or without interest, for farmland subject to a conservation agreement under G.S. 106-743.2 that remains in effect until improvements on the farmland property are connected to the utility 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 under this section without interest.

(d) If an ordinance is adopted by a county or a city under this section, then the assessment procedures followed under Article 9 of Chapter 153A or Article 10 of Chapter 160A of the General Statutes, respectively, 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 or cities to hold assessments in abeyance under G.S. 153A-201 and G.S. 160A-237. (2005-390, s. 5.)

Part 4. Agricultural Conservation Easements.

§ 106-744. Purchase of agricultural conservation easements; establishment of North Carolina Agricultural Development and Farmland Preservation Trust Fund and Advisory Committee.

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

- (1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations;
- (1a) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and
- (2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for any of the following purposes:

- (1) For the purchase of agricultural conservation easements, including transaction costs.
- (2) For the costs of public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.
- (3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.
- (4) For the costs of administering the program under this Article, including the cost of staff and staff support.

(c1) The Commissioner shall distribute Trust Fund monies for only the purposes under subsection (c) of this section, including transaction costs, as follows:

- (1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.
- (2) To counties according to the match requirements under subsection (c2) of this section.
- (3) To the Department of Agriculture and Consumer Services for the purchase of agricultural conservation easements or agreements to be held by the Department.

(c2) A county that is a development tier two or three county, as these tiers are defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is a development tier one county, as defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c3) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection (c2) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

- (1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.
- (2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

- (3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.
- (4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.
- (5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.

(g) There is established the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee. The Advisory Committee shall be administratively located within the Department of Agriculture and Consumer Services and shall advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina. The Advisory Committee shall be composed of 19 members as follows:

- (1) The Commissioner of Agriculture or the Commissioner's designee, who shall serve as the Chair of the Advisory Committee.
- (2) The Secretary of Commerce or the Secretary's designee.
- (3) The Secretary of Environmental Quality or the Secretary's designee.
- (4) Three practicing farmers, one appointed by the Governor, one appointed by the President Pro Tempore of the Senate, and one appointed by the Speaker of the House of Representatives.
- (5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
- (6) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
- (7) The chair of the Rural Infrastructure Authority within the Department of Commerce or the chair's designee.
- (8) The Executive Director of the Conservation Trust for North Carolina or the Executive Director's designee.
- (9) The Executive Director of the North Carolina Farm Transition Network or the Executive Director's designee.
- (10) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (11) The Executive Director of the Rural Advancement Foundation International – USA or the Executive Director's designee.

- (12) The Executive Director of the North Carolina Agribusiness Council or the Executive Director's designee.
- (13) The President of the North Carolina State Grange or the President's designee.
- (14) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
- (15) The President of the North Carolina Black Farmers and Agriculturalists Association or the President's designee.
- (16) The President of the North Carolina Forestry Association or the President's designee.
- (17) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(h) The Advisory Committee shall meet at least quarterly. The Department of Agriculture and Consumer Services shall provide the Advisory Committee with administrative and secretarial staff. Members of the Advisory Committee shall be entitled to per diem pursuant to G.S. 138-5 or G.S. 138-6, as appropriate. The Advisory Committee shall make recommendations to the Commissioner on the distribution of monies from the Trust Fund at least annually. The Commissioner shall take the recommendations of the Advisory Committee into consideration in making decisions on the distribution of monies from the Trust Fund.

(i) The Advisory Committee shall report no later than October 1 of each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous fiscal year. (1991, c. 734, s. 1; 2000-171, ss. 1, 2; 2005-390, ss. 4, 17; 2006-252, s. 2.12; 2007-495, s. 23; 2009-303, ss. 1, 2, 3; 2009-484, s. 12; 2013-360, s. 15.26(a); 2015-241, s. 14.30(v); 2015-263, s. 13(b); 2020-78, s. 5.1(c).)

§§ 106-745 through 106-749. Reserved for future codification purposes.

Article 61A.

North Carolina Sentinel Landscapes Committee.

§ 106-747. North Carolina Sentinel Landscapes Committee.

(a) Committee Established. – There is established the North Carolina Sentinel Landscape Committee (Committee).

(b) Findings and Purpose. – The General Assembly finds that sentinel landscapes are places where preserving the working and rural character of the State's private lands is important for both national defense and conservation priorities. It is the intent of the General Assembly to direct the Committee to coordinate the overlapping priority areas in the vicinity of and where testing and training occur near or adjacent to major military installations, as that term is defined in G.S. 143-215.115, or other areas of strategic benefit to national defense. Further, the Committee shall assist landowners in improving their land to benefit their operations and enhance wildlife habitats while furthering the State's vested economic interest in preserving, maintaining, and sustaining land uses that are compatible with military activities at major military installations and National Guard facilities. In its work, the Committee shall develop and implement programs and

strategies that (i) protect working lands in the vicinity of and where testing and training occur near or adjacent to major military installations or other areas of strategic benefit to national defense, (ii) address restrictions that inhibit military testing and training, and (iii) forestall incompatible development in the vicinity of and where testing and training occur near or adjacent to military installations or other areas of strategic benefit to national defense.

(c) Powers and Duties. – The Committee shall:

- (1) Recognize all lands in the State as sentinel landscapes areas that are so designated by the United States Department of Defense.
- (2) Identify and designate certain additional lands to be contained in the sentinel landscapes of this State that are of particular import to the nation's defense and in the vicinity of and where testing and training occur on, near, or adjacent to major military installations or are of other strategic benefit to the nation's defense. In this work, the Committee may seek advice and recommendations from stakeholders who have experience in this sort of identification and designation.
- (3) In designating sentinel lands as directed by subdivision (1) of this subsection, the Committee shall evaluate all working or natural lands that the Committee identifies as contributing to the long-term sustainability of the military missions conducted in this State. In its evaluation of which lands to designate as sentinel lands, the Committee shall consult with and seek input from:
 - a. The United States Department of Defense.
 - b. The North Carolina Commander's Council.
 - c. The United States Department of Agriculture.
 - d. The United States Department of the Interior.
 - e. Elected officials from units of local government located in the vicinity of and where testing and training occur on the proposed sentinel lands.
 - f. Any other stakeholders that the Committee deems appropriate.
- (4) Develop recommendations to encourage landowners located within the sentinel landscape designated pursuant to subdivision (1) of this subsection to voluntarily participate in and begin or continue land uses compatible with the United States Department of Defense operations in this State.
- (5) Provide technical support services and assistance to landowners who voluntarily participate in the sentinel landscape program.

(d) Membership. – The Committee shall consist of at least the five following members:

- (1) The Commissioner of Agriculture, or the Commissioner's designee.
- (2) The Secretary of the Department of Military and Veterans Affairs, or the Secretary's designee.
- (3) The Secretary of Natural and Cultural Resources, or the Secretary's designee.
- (4) The Executive Director of the Wildlife Resources Commission, or the Executive Director's designee.
- (5) The Dean of the College of Natural Resources at North Carolina State University, or the Dean's designee.

The Commissioner of Agriculture or the Commissioner's designee shall serve as Committee chair for an initial two-year term. Thereafter, the Committee chair shall be one of the five listed members above. The Committee chair may appoint members representing other State agencies,

local government officials, and nongovernmental organizations that are experienced in land management activities within sentinel lands.

(e) Transaction of Business. – The Committee shall meet, at a minimum, at least once during each calendar quarter and at other times at the call of the chair. A majority of members of the Committee shall constitute a quorum. The first Committee meeting shall take place within 30 days of the effective date of this act.

(f) Reports. – The Committee shall report on its activities conducted to implement this section, including any findings, recommendations, and legislative proposals, to the North Carolina Military Affairs Commission, the Agriculture and Forestry Awareness Study Commission, and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources beginning September 1, 2017, and annually thereafter, until such time as the Committee completes its work.

(g) Administrative Assistance. – All clerical and other services required by the Committee shall be supplied by the membership and shall be provided with funds available. (2017-10, s. 3.19(a)-(g); 2020-78, s. 5.1(d).)

Article 62.

[Redesignated.]

§§ 106-750 through 106-755: Redesignated as **Part 2J of Article 10 of Chapter 143B by Session Laws 2005-380, s. 4(a)**, effective September 8, 2005.

Article 62.

[Redesignated.]

§§ 106-750 through 106-755: Redesignated as **part 2J of Article 10 of Chapter 143B by Session Laws 2005-380, s. 4(a)**, effective September 8, 2005.

Article 62A.

Wine and Grape Growers Council.

§ 106-755.1. North Carolina Wine and Grape Growers Council – Creation; powers and duties.

There is created the North Carolina Wine and Grape Growers Council of the Department of Agriculture and Consumer Services. The North Carolina Wine and 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.
- (14) By September 1 of each year, to report to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on the activities of the Council, the status of the wine and grape industry in North Carolina and the United States, progress on the development and implementation of the State Viticulture Plan, and any contracts or agreements entered into by the Council for research, education, or marketing. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109; 2005-380, s. 4(a); 2006-264, s. 98.3; 2010-31, s. 14.10; 2011-145, s. 14.3B; 2011-391, s. 38.1(b); 2012-142, s. 13.9A(b); 2020-78, s. 5.1(e).)

§ 106-755.2. North Carolina Wine and Grape Growers Council – Composition; terms; reimbursement.

(a) The North Carolina Wine and Grape Growers Council shall consist of 10 members who shall be appointed by the Commissioner of Agriculture as provided in this section. The members of the Council shall be divided into an advisory committee for the Vinifera Group and an advisory committee for the Muscadines Group for the purpose of performing the powers and duties prescribed in G.S. 143B-437.90 and for the purpose of promoting North Carolina wineries and tourism related to the wineries.

(b) Each advisory committee shall consist of five members, who shall be appointed by the Commissioner of Agriculture to serve two-year terms, which shall be staggered. The members appointed shall be chosen from among individuals who have education or experience in the wine industry or in the field of tourism. No member of an advisory committee may serve for more than two consecutive terms. Initial terms shall commence September 1, 2011.

(c) Each advisory committee shall meet at least twice each calendar year during which time each committee shall discuss issues related to the Council's powers and duties, including ways in which to promote and advertise North Carolina wineries and ways in which to improve, use, and distribute State maps showing winery locations. The Vinifera Group shall meet at the NC Shelton Badgett Viticulture Center at Surry Community College, and the Muscadines Group shall meet at Duplin Community College. After each meeting, each advisory committee shall report to the Commissioner of Agriculture with its recommendations. Notwithstanding any other provision of law, committee members shall receive no salary, per diem, subsistence, travel reimbursement, or other stipend or reimbursement as a result of serving on their respective committees.

(d) Each advisory committee shall elect from the membership of each committee a chair and vice-chair. Vacancies resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. A majority of the members of each committee shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of each committee shall be necessary for action to be taken by the committee. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109; 2005-380, s. 4(a); 2006-264, s. 98.3; 2011-145, s. 14.3B; 2011-391, s. 38.1(b), (c); 2012-142, s. 13.9A(b).)

Article 62B.

Spirituos Liquor Advisory Council.

§ 106-755.10. North Carolina Spirituous Liquor Advisory Council established.

The Commissioner shall appoint a North Carolina Spirituous Liquor Advisory Council (Council) to consist of individuals who have education or experience in the spirituous liquor industry or in the field of tourism. The membership shall be comprised of members of the spirituous liquor industry in North Carolina, at least one representative of the North Carolina Restaurant and Lodging Association, at least one representative of the North Carolina Association of ABC Boards, at least one representative of the ABC Commission, and any other person selected by the Commissioner. Notwithstanding any other provision of law, Council members shall receive no salary, per diem, subsistence, travel reimbursement, or other stipend or reimbursement as a result of serving on the Council. (2021-150, s. 5.1.)

§ 106-755.11. Powers and duties of the Council.

The Council shall have all of the following powers and duties:

- (1) To identify and implement methods for improving North Carolina's rank as a spirituous liquor-producing State.
- (2) To assure orderly growth and development of North Carolina's spirituous liquor industry.
- (3) To increase public awareness of the quality of North Carolina spirituous liquor.
- (4) To coordinate the interaction of North Carolina's spirituous liquor 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 spirituous liquor 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 spirituous liquor industry.
- (7) To enter into agreements with any local, State, or national organizations or agencies engaged in education for the purpose of disseminating information on spirituous liquor projects.
- (8) To develop a plan that identifies problems and constraints of the spirituous liquor industry, proposes solutions to those problems, and delineates planning mechanisms for the orderly growth of the industry.
- (9) To render advice and recommendations, including legislative recommendations, to the Commissioner regarding all of the above powers and duties. (2021-150, s. 5.1.)

Article 63.

Aquaculture Development Act.

§ 106-756. Legislative findings and purpose.

The General Assembly finds and declares that it is in the best interest of the citizens of North Carolina to promote and encourage the development of the State's aquacultural resources in order to augment food supplies, expand employment, promote economic activity, increase stocks of native aquatic species, enhance commercial and recreational fishing and protect and better use the land and water resources of the State. (1989, c. 752, s. 147.)

§ 106-757. Short title.

This Article shall be known as the Aquaculture Development Act. (1989, c. 752, s. 147.)

§ 106-758. Definitions.

In addition to the definitions in G.S. 113-129, the following definitions shall apply as used in this Article,

- (1) "Aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching;
- (2) "Aquaculture facility" means any land, structure or other appurtenance that is used for aquaculture, including, but not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;
- (3) "Aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes" as defined in G.S. 113-129(7);
- (4) "Commissioner" means the Commissioner of Agriculture;
- (5) "Department" means the North Carolina Department of Agriculture and Consumer Services. (1989, c. 752, s. 147; 1993, c. 18, s. 1; 1997-261, s. 71.)

§ 106-759. Lead agency; powers and duties.

(a) For the purposes of this Article, aquaculture is considered to be a form of agriculture and thus the Department of Agriculture and Consumer Services is designated as the lead State agency in matters pertaining to aquaculture.

(b) The Department shall have the following powers and duties:

- (1) To provide aquaculturalists with information and assistance in obtaining permits related to aquacultural activities;
- (2) To promote investment in aquaculture facilities in order to expand production and processing capacity; and
- (3) To work with appropriate State and federal agencies to review, develop and implement policies and procedures to facilitate aquacultural development. (1989, c. 752, s. 147; 1997-261, s. 109.)

§ 106-760: Repealed by Session Laws 2011-266, s. 1.4, effective July 1, 2011.

§ 106-761. Aquaculture facility registration and licensing.

(a) Authority. The North Carolina Department of Agriculture and Consumer Services shall regulate the production and sale of commercially raised freshwater fish and freshwater crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of Agriculture and Consumer Services or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any other State agency.

(b) Species subject to this section. The following species are exempt from special restrictions on introduction of exotic species promulgated by the Wildlife Resources Commission except to prevent disease. All other species are prohibited from propagation and production unless the applicant for the permit first obtains written permission from the Wildlife Resources Commission.

- | | |
|--|--|
| (1) Bluegill | <u>Lepomis macrochirus</u> |
| (2) Redear Sunfish | <u>Lepomis microlophus</u> |
| (3) Redbreast Sunfish | <u>Lepomis auritus</u> |
| (4) Green Sunfish | <u>Lepomis cyanellus</u> |
| (5) Any hybrids using above species of the genus | <u>Lepomis</u> |
| (6) Black Crappie | <u>Pomoxis nigromaculatus</u> |
| (7) White Crappie | <u>Pomoxis annularis</u> |
| (8) Largemouth Bass | <u>Micropterus salmoides (northern strain)</u> |
| (9) Smallmouth Bass | <u>Micropterus dolomieu</u> |
| (10) White Catfish | <u>Ictalurus catus</u> |
| (11) Channel Catfish | <u>Ictalurus punctatus</u> |
| (12) Golden Shiner | <u>Notemigonus crysoleucas</u> |
| (13) Fathead Minnow | <u>Pimephales promelas</u> |
| (14) Goldfish | <u>Carassius auratus</u> |
| (15) Rainbow Trout | <u>Oncorhynchus mykiss</u> |
| (16) Brown Trout | <u>Salmo trutta</u> |
| (17) Brook Trout | <u>Salvelinus fontinalis</u> |

(18) Common Carp

Cyprinus carpio

(19) Crayfish

Procambarus species

(c) Exceptions for Species Not Listed. – The following fish species that are not listed in subsection (b) of this section may be produced and sold as if they were listed in that subsection with the following restrictions:

(1) Hybrid striped bass. – Production, propagation, and holding facilities in the Neuse, Roanoke, or Tar/Pamlico River basins for the hybrid striped bass shall comply with additional escapement prevention measures prescribed by the Wildlife Resources Commission.

(2) Yellow perch. – A letter of approval from the Wildlife Resources Commission is required before the yellow perch, *perca flavescens*, may be raised at a facility located west of Interstate Highway 77.

(d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the Department shall be valid for a period of five years.

(e) Commercial Catchout Facility License.

(1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation and conditions under which fish from such ponds may be taken, transported, possessed, bought, and sold.

(2) The Commercial Catchout Facility License shall be valid for a period of five years. A pond owner or operator licensed under this subsection shall be authorized to sell fish taken by fishermen from the pond to such fishermen. Fish sold at such facilities shall be limited to those fish covered under this section.

(3) The holder of the Catchout Facility License shall provide receipts to the purchasers of fish. The receipt shall describe the species, number, total weight, and the location of the catchout facility.

(4) No fish taken from a commercial catchout facility may be resold by the purchasing angler for any purpose.

(5) No fishing, special trout, or other license shall be required of anglers fishing in licensed commercial catchout facilities.

(f) Holding Pond/Tank Permit. All facilities holding live food or bait species for sale must obtain a Holding Pond/Tank Permit. Permits shall be valid for a period of two years and shall only authorize possession of fish specified in this section. All fish held live for sale shall be kept in accordance with rules promulgated by the Board of Agriculture. Possession of an Aquaculture Propagation and Production Facility or Commercial Catchout Facility License shall serve in lieu of a Holding Pond/Tank Permit for possession both on and off their facilities premises. No permit shall be required for holding lobsters for sale.

(g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources

Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission.

(h) Nothing in this act shall apply to the aquarium or ornamental trade in fish. The Wildlife Resources Commission may by rule identify species for which possession in the State is prohibited. (1993, c. 18, s. 2; 1997-198, s. 1; 1997-261, ss. 73-76.)

§ 106-762. Fish disease management.

(a) The North Carolina Department of Agriculture and Consumer Services shall, with the assistance of the Wildlife Resources Commission, develop and implement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State.

(b) Release of fish. It shall be unlawful to willfully release domestically raised fish into the waters of the State, other than in private ponds as defined by G.S. 113-129, without written permission of the Wildlife Resources Commission, or the Division of Marine Fisheries of the Department of Environmental Quality. (1993, c. 18, s. 2; 1997-261, s. 77; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§ 106-763. Fish passage and residual stream flow.

(a) Natural watercourses as designated by law or regulation shall not be blocked with a stand, dam, weir, hedge, or other water diversion structure to supply an aquaculture facility that in any way prevents or fails to maintain the free passage of anadromous or indigenous fish.

(b) Residual flow in a natural watercourse below the point of water withdrawal supplying an aquaculture operation shall be sufficient to prevent destruction or serious diminution of downstream fishery habitat and shall be consistent with rules adopted by the Environmental Management Commission. (1993, c. 18, s. 2.)

§ 106-763.1. Propagation and production of American alligators.

(a) License Required. – A person who intends to raise American alligators commercially must first obtain an Aquaculture Propagation and Production Facility License from the Department. The Board of Agriculture may regulate a facility that raises American alligators to the same extent that it can regulate any other facility licensed under this Article.

(b) Requirements. – A facility that raises American alligators commercially must comply with all of the following requirements:

- (1) Before a facility begins operation, it must prepare and implement a confinement plan. After a facility begins operation, it must adhere to the confinement plan. A confinement plan must comply with guidelines developed and adopted by the Wildlife Resources Commission. The Department may inspect a facility to determine if the facility is complying with the confinement plan. As used in this subdivision, "confinement" includes production within a building or similar structure and a perimeter fence.
- (2) A facility can possess only hatchlings that have been permanently tagged and have an export permit from their state of origin. The facility must keep records of all hatchlings it receives and must make these records available for

inspection by the Wildlife Resources Commission and the Department upon request.

- (3) If the facility uses swine, poultry, or other livestock for feed, it must have a disease management plan that has been approved by the State Veterinarian, and it must comply with the plan.
- (4) The activities of the facility must comply with the Endangered Species Act and the Convention on International Trade in Endangered Species. The Department is the State agency responsible for the administration of this program for farm-raised alligators.

(c) Sanctions. – The operator of a facility that possesses an untagged or undocumented alligator commits a Class H felony if the operator knows the alligator is untagged or undocumented. Conviction of an operator of a facility under this section revokes the license of the facility for five years beginning on the date of the conviction. An operator convicted under this section may not be the operator of any other facility required to be licensed under this Article for five years beginning on the date of the conviction. (1997-198, s. 2.)

§ 106-764. Violation.

A person who violates this act or a rule of the Board of Agriculture adopted hereunder is guilty of a Class 3 misdemeanor. (1993, c. 18, s. 2; 1994, Ex. Sess., c. 14, s. 56.)

Article 64.

Genetically Engineered Organisms Act.

§§ 106-765 through 106-777: Expired.

§§ 106-778 through 106-780. Reserved for future codification purposes.

Article 65.

Strawberry Assessment Act.

§ 106-781. Title.

This Article shall be known as the "Strawberry Assessment Act." (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

§ 106-782. Findings and purpose.

The General Assembly hereby finds that strawberry production makes an important contribution to the State's economy; and that it is appropriate for the State to provide a means whereby strawberry producers may voluntarily assess themselves in order to provide funds for strawberry research and marketing. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

§ 106-783. Definitions.

As used in this Article:

- (1) "Association" means the North Carolina Strawberry Association, Inc.
- (2) "Commercial production" means the production of strawberries for sale.
- (3) "Department" means the North Carolina Department of Agriculture and Consumer Services.

- (4) "Strawberry plant seller" means a person who sells strawberry plants to growers for commercial production of strawberries. (1989 (Reg. Sess., 1990), c. 1027, s. 1; 1997-261, s. 78; 1997-371, s. 2.)

§ 106-784. Referendum.

(a) At any time after the effective date of this Article, the Association may conduct a referendum among strawberry producers upon the question of whether an assessment shall be levied as provided for herein.

(b) The Association shall determine:

- (1) The amount of the proposed assessment;
- (2) The period for which the assessment shall be levied, not to exceed three years;
- (3) The time and place of the referendum;
- (4) Procedures for conducting the referendum and counting of votes; and
- (5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot; provided that no annual assessment shall exceed five percent (5%) of the value of the previous year's strawberry plant sales.

(d) All persons engaged in the commercial production of strawberries, including owners of farms, tenants and sharecroppers shall be eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the Board of Directors of the Association. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

§ 106-785. Two-thirds vote required; collection of assessment; penalties; audits.

(a) The assessment shall not be collected unless at least two-thirds of the votes cast in the referendum are in favor of the assessment. If at least two-thirds of the votes cast in the referendum are in favor of the assessment, then the Department shall notify all strawberry plant sellers of the assessment. The assessment shall be added by the strawberry plant sellers to the price of all strawberry plants sold for commercial planting in North Carolina. The Department shall provide forms to the strawberry plant sellers for reporting the assessment. All strawberry plant sellers shall provide each purchaser of strawberry plants for commercial production with an invoice that sets forth the amount of the assessment on the purchase covered by the invoice. Persons who purchase strawberry plants for commercial production on which the assessment has not been collected by the seller shall report such purchases and pay the assessment to the Department.

(b) Each strawberry plant seller shall remit to the Department no later than the tenth day following the end of each calendar quarter the assessment on strawberry plants sold during that quarter. Any strawberry plant seller who fails to remit the assessment for the previous year's sales by January 10 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of one percent (1%) of the unpaid assessment for each month after January 10 that the assessment remains unpaid.

(c) The Association may conduct inspections or audits of the books of any strawberry plant seller. If the inspection or audit reveals that a strawberry plant seller has willfully failed to remit assessments when due, the seller shall pay the Association the reasonable costs of the inspection or audit.

(d) The Association may bring an action to collect unpaid assessments, penalties, and reasonable costs of any inspection or audit as provided in subsection (c) of this section, against any strawberry plant seller who fails to pay the assessment, penalties, or costs. If successful, the

Association shall also recover the cost of such action, including attorneys' fees. (1989 (Reg. Sess., 1990), c. 1027, s. 1; 1997-371, s. 3.)

§ 106-786. Use of funds; refunds.

The Department shall remit all funds collected under this Article to the Association at least monthly.

The Association shall use such funds for research and marketing related to strawberries including such administrative expenses as may be reasonably necessary to carry out this function. A funding committee composed of seven members of the Association appointed by the Commissioner of Agriculture, shall approve all expenditures of such funds. Funding committee members may be reimbursed for necessary expenses as determined by the Association's Board of Directors.

Any person who has purchased strawberry plants upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Association within 30 days of purchase of the plants. Such demand must be accompanied by proof of purchase satisfactory to the funding committee. (1989 (Reg. Sess., 1990), c. 1027, s. 1.)

§§ 106-787 through 106-789. Reserved for future codification purposes.

Article 66.

Pork Promotion Assessment Act.

§ 106-790. Title.

This Article shall be known as the "Pork Promotion Assessment Act." (1991, c. 605, s. 1.)

§ 106-791. Purpose.

It is in the public interest for the State to enable producers of porcine animals to assess themselves in order to raise funds to promote the interests of the pork industry. (1991, c. 605, s. 1.)

§ 106-792. Definitions.

The following definitions apply in this Article:

- (1) Association. – The North Carolina Pork Producers Association, Inc., a North Carolina nonprofit corporation.
- (2) Buyer. – Any person engaged as (i) a commission merchant, (ii) an auction market, or (iii) a livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a pork producer.
- (3) Department. – The North Carolina Department of Agriculture and Consumer Services.
- (4) Market. – To sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.
- (5) Person. – An individual, a partnership, a firm, or a corporation.
- (6) Porcine animal. – Swine raised for seed stock, market hogs, or slaughter.
- (7) Pork producer. – A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in pork production, and (iii) is actively involved in the production of porcine animals. (1991, c. 605, s. 1; 1997-261, s. 79.)

§ 106-793. Referendum.

(a) The Association may conduct among pork producers a referendum upon the question of whether an assessment shall be levied on porcine animals sold in this State.

(b) The Association shall determine:

- (1) The amount of the proposed assessment.
- (2) The time and place of the referendum.
- (3) Procedures for conducting the referendum and counting of votes.
- (4) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed five cents (5¢) for each porcine animal sold in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each porcine animal. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of five cents (5¢) for each porcine animal.

(d) All pork producers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide pork producers with notice of the referendum and an opportunity to vote. (1991, c. 605, s. 1.)

§ 106-794. Payment and collection of assessment.

(a) The assessment shall not be collected unless more than half of the votes cast in the referendum are in favor of the assessment. If more than half of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all buyers and pork producers of the assessment.

(b) Each pork producer must pay an assessment on each porcine animal sold to a buyer.

(c) A buyer of a porcine animal shall collect the assessment when buying a porcine animal by deducting the assessment from the price paid for the animal. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars (\$25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars (\$25.00) or the end of the quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter, regardless of the amount due.

(d) A buyer of porcine animals shall keep records of the number of porcine animals purchased and the date purchased. All information or records regarding purchases of porcine animals by individual buyers shall be kept confidential by employees or agents of the Department and the Association, and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorney fees, incurred in the action. (1991, c. 605, s. 1.)

§ 106-795. Use of assessments; refunds.

(a) The Department shall remit all funds collected under this Article to the Association at least monthly. The Association shall use the funds to promote the interests of the pork industry. In

order to prevent duplication of effort, these funds shall not be used for activities funded under 7 U.S.C. Chapter 79, Pork Promotion, Research, and Consumer Information.

(b) A pork producer may request a refund of an assessment deducted from the sales price of a porcine animal sold by the producer by submitting a written request for a refund to the Association within 30 days after the buyer of the animal collected the assessment. A refund request must be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the producer within 30 days of receipt of a properly documented refund request. (1991, c. 605, s. 1.)

§ 106-796. Termination of assessment.

Upon receipt of a petition signed by at least ten percent (10%) of the pork producers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years. (1991, c. 605, s. 1.)

§ 106-797. Reserved for future codification purposes.

Article 66A.

Transportation of Swine.

§ 106-798. Identification required to transport swine.

(a) No live swine shall be transported on a public road within the State unless the swine has an official form of identification approved by the State Veterinarian for this purpose.

(b) Any live swine that is transported on a public road within this State without identification as required by this section is presumed to be a feral swine and is also subject to regulation by the Wildlife Resources Commission under Chapter 113 of the General Statutes. Any person transporting a swine without identification is subject to a civil penalty under this Article.

(c) Swine that do not leave the premises of the swine owner are not subject to the identification requirement under this section.

(d) The Board of Agriculture shall adopt rules to charge any swine owner a fee for the identification required under this section. The fee may not exceed the actual cost to the Department of Agriculture and Consumer Services for the identification approved by the State Veterinarian and any direct administrative costs associated with providing the identification to swine owners. The Board of Agriculture shall adopt any other rules necessary to implement this Article. (2011-326, s. 19.7; 2011-369, s. 1.)

§ 106-798.1. Penalty for unlawful transport of swine without identification.

Any person who fails to obtain identification as required under this Article shall be subject to a civil penalty of up to five thousand dollars (\$5,000) for each violation. Each swine that has no identification is a separate violation. (2011-326, s. 19.7; 2011-369, s. 1.)

§ 106-798.2. Penalty for misuse of identification.

Any person who misuses the identification required under this Article shall be subject to a civil penalty of one thousand dollars (\$1,000) for each occurrence. A person misuses identification required under this Article by knowingly providing it to other than the owner of the swine or by engaging in other activity that is in violation of this Article. (2011-326, s. 19.7; 2011-369, s. 1.)

Article 67.

Swine Farms.

§ 106-800. Title.

This Article shall be known as the "Swine Farm Siting Act". (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property. (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

§ 106-802. Definitions.

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

- (1) "Lagoon" means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.
- (2) Repealed by Session Laws 1995 (Regular Session, 1996), c. 626, s. 7.
- (3) "Occupied residence" means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.
- (3a) "Outdoor recreational facility" means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.
- (4) "Site evaluation" means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.
- (5) "Swine farm" means a tract of land devoted to raising 250 or more animals of the porcine species.
- (6) "Swine house" means a building that shelters porcine animals on a continuous basis. (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); c. 743, s. 3; 1997-443, s. 11A.119(a); 1997-456, s. 15; 1997-458, s. 4.1; 1997-496, s. 12.)

§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

- (a) A swine house or a lagoon that is a component of a swine farm shall be located:

- (1) At least 1,500 feet from any occupied residence.
- (2) At least 2,500 feet from any school; hospital; church; outdoor recreational facility; national park; State Park, as defined in G.S. 143B-135.44; historic property acquired by the State pursuant to G.S. 121-9 or listed in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1; or child care center, as defined in G.S. 110-86, that is licensed under Article 7 of Chapter 110 of the General Statutes.
- (3) At least 500 feet from any property boundary.
- (4) At least 500 feet from any well supplying water to a public water system, as defined in G.S. 130A-313.
- (5) At least 500 feet from any other well that supplies water for human consumption. This subdivision does not apply to a well located on the same parcel or tract of land on which the swine house or lagoon is located and that supplies water only for use on that parcel or tract of land or for use on adjacent parcels or tracts of land all of which are under common ownership or control.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 75 feet from any boundary of property on which an occupied residence is located and from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds. (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1; 2015-241, s. 14.30(mm).)

§ 106-804. Enforcement.

(a) Any person who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against the owner or operator of a swine farm who has violated G.S. 106-803 and may seek any one or more of the following:

- (1) Injunctive relief.
- (2) An order enforcing the siting requirements under G.S. 106-803.
- (3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person owns a facility or property located within the siting requirements specified under G.S. 106-803.

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief. (1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

§ 106-805. Written notice of swine farms.

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, notify all adjoining property owners; all property owners who own property located across a public road, street, or highway from the swine farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners. Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

- (1) The name and address of the person intending to construct a swine farm.
- (2) The type of swine farm and the design capacity of the animal waste management system.
- (3) The name and address of the technical specialist preparing the waste management plan.
- (4) The address of the local Soil and Water Conservation District office.
- (5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Resources, Department of Environmental Quality. (1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1996, 2nd Ex. Sess., c. 18, s. 27.34(d); 1997-443, s. 11A.119(a); 1997-458, s. 4.1; 2013-413, s. 57(d); 2015-241, s. 14.30(u).)

§ 106-806. Construction or renovation of swine houses at preexisting swine farms.

(a) As used in this section, the following definitions apply:

- (1) "Farm digester system" means a farm digester system as defined in G.S. 143-213(12a).
- (2) "New swine farm" means any swine farm the operations of which were sited on or after October 1, 1995. "New swine farm" does not include any preexisting swine farm, even if a subsequent site evaluation is performed on or after October 1, 1995, at the preexisting swine farm.
- (3) "Preexisting swine farm" means any swine farm either the operations of which were begun prior to October 1, 1995, or the site evaluation of which was approved prior to October 1, 1995, by the Department of Environmental Quality under Part 1A of Article 21 of Chapter 143 of the General Statutes.
- (4) "Renovation or construction," "renovated or constructed," and any similar phrase mean any activity to renovate, construct, reconstruct, rebuild, modify, alter, change, restructure, upgrade, improve, enlarge, reduce, move, or otherwise perform construction work on a swine house that is a component of a swine farm.

(b) Notwithstanding any other provisions of this Article, a swine house that is a component of a preexisting swine farm can be constructed or renovated if the construction or renovation of that swine house satisfies all of the following requirements:

- (1) The construction or renovation of the swine house does not result in an increase in the permitted capacity of the swine farm, as measured in the annual steady state live weight capacity of the swine farm.
- (2) The construction or renovation of the swine house does not result in requiring an increase in the total permitted capacity of the animal waste management systems located at the swine farm.
- (3) Except as provided in subsection (c) of this section, for any swine house that fails to meet any siting requirement for a swine house under G.S. 106-803, the construction or renovation of the swine house does not result in any portion of the constructed or renovated swine house being located any closer to the building or the property that is the object of the siting requirement that the swine house fails to meet.
- (4) Regardless of the footprint of the existing swine house, renovation or construction of a swine house shall not be allowed in the 100-year floodplain.

(c) A swine house that is a component of a preexisting swine farm can be constructed or renovated such that it results in a portion of the constructed or renovated swine house being located closer to a residence, school, hospital, church, or a property boundary than is allowed under subdivision (3) of subsection (b) of this section if written permission is given by the owner or owners of the property directly affected by the siting requirements specified under G.S. 106-803 and recorded with the register of deeds.

(d) This section does not apply to the construction or renovation of a swine house that is a component of a new swine farm.

(e) Notwithstanding any other provision of this Article, a farm digester system that is a component of a preexisting swine farm may be constructed or renovated if the construction or renovation of the farm digester system satisfies all of the following requirements:

- (1) The construction or renovation of the farm digester system does not result in an increase in the permitted capacity of the swine farm, as measured by the annual steady state live weight capacity of the swine farm.
- (2) The construction or renovation of the farm digester system does not result in requiring an increase in the total permitted capacity of the animal waste management system or systems located at the swine farm.
- (3) The construction or renovation of the farm digester system shall comply with the siting requirements set out in G.S. 106-803 to the maximum extent practicable. Except as provided in subsection (c) of this section, construction or renovation of the farm digester system shall not result in any portion of the constructed or renovated farm digester system being located closer to the building, property, or well that is the object of the siting requirement than any existing component of the animal waste management system that fails to meet the siting requirements of G.S. 106-803.
- (4) Renovation or construction of a farm digester system shall not be allowed in the 100-year floodplain. (2011-118, s. 1; 2015-241, s. 14.30(u); 2021-78, s. 11(g).)

§ 106-807. Reserved for future codification purposes.

§ 106-808. Reserved for future codification purposes.

§ 106-809. Reserved for future codification purposes.

Article 68.

Southern Dairy Compact.

§§ 106-810, 106-811: Repealed by Session Laws 2014-115, s. 43, effective August 11, 2014.

Article 68A.

North Carolina Dairy Stabilization and Growth Program.

§ 106-812. Findings.

(a) The General Assembly finds that North Carolina has suffered a significant loss of its traditional industrial and agricultural economic base. The State's dairy industry is at serious risk of total collapse unless milk prices reach levels sufficient to allow dairy farmers to meet production costs. At the same time, North Carolina is experiencing rapid population growth and urbanization. This growth and urbanization have fueled a rapid loss of prime agricultural land and green space, resulting in a decline in the quality of life for which the State is known.

(b) The General Assembly finds that the dairy industry in North Carolina makes a substantial economic, environmental, and quality-of-life contribution to the well-being of the citizens of the State. The dairy industry, including both producers and processors, currently contributes over six hundred million dollars (\$600,000,000) and 3,000 jobs to the State's economy. Properly managed dairy farms help maintain green space, keep prime agricultural land under production, maintain water quality, enhance food security, and provide a local supply of fresh milk at a reasonable cost to the consumer and to processors in the State. An adequate local milk supply has become increasingly important as transportation costs escalate, making the importation of milk from out-of-state increasingly expensive. The General Assembly finds, however, that despite its importance to the State's economic and environmental well-being, North Carolina's dairy industry is under severe economic pressure, and milk production is declining at an alarming rate. According to United States Department of Agriculture statistics, since 1985 the State has lost sixty-seven percent (67%) of its dairy farms and thirty-five percent (35%) of its processing facilities. North Carolina dairy farms no longer produce sufficient milk for North Carolina's processing facilities to operate. Milk must be imported 10 out of 12 months each year to keep these processing facilities functioning. Further, farm prices for milk exhibit great volatility, creating financial risk and discouraging investment. The General Assembly finds that it is essential to a viable North Carolina dairy industry to have locally produced milk available to processors in the State. The General Assembly further finds that it is essential to the well-being of the citizens of the State to have a local supply of fresh milk available at reasonable cost and not subject to the vagaries of transportation costs and production conditions in other regions of the country.

(c) The General Assembly finds that one of the primary reasons for the decline in milk production in the State is the gap between the price paid to farmers for milk under the federal milk programs and the actual cost of production. Inability to meet production costs combined with increasing land prices have led many milk producers to sell their farms for development and retire or turn to other employment. The General Assembly finds that the most effective means to ensure the continuation of a viable dairy industry in this State is to establish a price floor for milk to enable

dairy farmers to meet their production costs. It is the intent of the General Assembly to establish a price support program that will stabilize and reverse the decline in the local milk supply and in the dairy industry in the State and encourage new producers to enter the dairy industry. Sustaining and growing North Carolina's dairy industry will advance the State's goals of preserving and enhancing its economic base and improving the quality of life in the State through maintaining green space and water quality and assuring an adequate local supply of fresh milk. (2006-139, s. 1.)

§ 106-813. North Carolina Dairy Stabilization and Growth Fund.

(a) The North Carolina Dairy Stabilization and Growth Fund is created as a nonreverting account in the Department of Agriculture and Consumer Services. The Fund shall consist of any money appropriated to the Fund by the General Assembly and money made available to it from grants, donations, and other sources. The Board of Agriculture shall actively seek donations, grants, and other sources of money for the Fund.

(b) The Board shall use the monies in the Fund as follows:

- (1) Up to two percent (2%) of the money appropriated annually by the General Assembly may be used by the Department for the costs of administering the Dairy Stabilization and Growth Program. In the event that the General Assembly does not make an appropriation to the Fund in a given year, up to two percent (2%) of the balance remaining in the Fund may be used by the Department for the costs of administering the Program.
- (2) The monies remaining after administrative expenses are deducted shall be used to provide assistance to North Carolina dairy farmers in accordance with the provisions of G.S. 106-814.
- (3) At the end of any fiscal year in which the total payments to North Carolina dairy farmers under G.S. 106-814 are less than fifty percent (50%) of the amount appropriated by the General Assembly for the year, five percent (5%) of the unspent appropriation for the year may be set aside for use in that year and subsequent years for programs to support the development of the dairy industry. (2006-139, s. 1.)

§ 106-814. Dairy Stabilization and Growth Program.

(a) On July 1 of each year the Board of Agriculture shall set a milk support baseline price. The baseline price per hundredweight of milk shall be the average United States Department of Agriculture Federal Milk Market Order Class I price mover for the previous 10 years less fifty cents (50¢).

(b) The Board shall adopt rules implementing the provisions of this Article. The rules shall include criteria for eligibility for distributions from the Fund, procedures for applications for distributions from the Fund, the method by which the amount of a payment to a producer shall be calculated, and the manner of payment to producers.

(c) Each month the Board shall determine whether the monthly announced United States Department of Agriculture Federal Milk Market Order Class I price mover has dropped below the baseline price set for the year. If the monthly announced Class I price mover is lower than the baseline price, then each producer who meets the requirements of subsection (f) of this section shall become eligible for a distribution from the Fund in an amount equal to the difference between the baseline price and the monthly announced Class I price mover multiplied by the hundredweight of milk sold by the producer for the month.

(d) Under exceptional circumstances, and in the discretion of the Board, the amount of any monthly distribution as calculated by the formula set forth in subsection (c) of this section may be increased by an amount not to exceed one dollar (\$1.00) per hundredweight of milk sold in that month.

(e) Distributions shall be made to eligible producers at least quarterly, unless in the judgment of the Board the payment amounts are trivial. All payments under the Program are subject to the availability of funds.

(f) To be eligible to receive assistance from the Dairy Stabilization and Growth Fund, a dairy farmer shall demonstrate to the satisfaction of the Board that they are in compliance with the following rules and regulations:

- (1) For Grade A milk producers, the federal Grade A milk regulations.
- (2) For non-Grade A producers, Article 26 of Chapter 106 of the General Statutes and the rules implementing that Article.

(g) Farmers who fail to demonstrate compliance with applicable rules and regulations shall become ineligible for assistance from the Fund until compliance is attained. (2006-139, s. 1.)

§ 106-815: Repealed by Session Laws 2015-263, s. 25(a), effective September 30, 2015.

Article 68B.

Grade "A" Dairy Assessment Act.

§ 106-816. Title.

This Article shall be known as the "Grade "A" Dairy Assessment Act." (2023-63, s. 5.4(a).)

§ 106-816.1. Purpose.

It is in the public interest for the State to enable dairy producers to assess themselves in order to raise funds to promote the interests of the dairy industry. (2023-63, s. 5.4(a).)

§ 106-816.2. Definitions.

The following definitions apply in this Article:

- (1) Association. – The North Carolina Dairy Producers Association.
- (2) Dairy cooperative. – An association of dairy producers owned by its members and organized to provide services to its members, including finding markets for milk produced by its members.
- (3) Dairy producer. – A person who is a North Carolina resident, produces Grade "A" milk for commercial sale, and holds a Grade "A" milk permit from the Department.
- (4) Department. – The North Carolina Department of Agriculture and Consumer Services.
- (5) Grade "A" milk. – Fluid milk and milk products which have been produced, transported, handled, processed, and distributed in accordance with the provisions of the rules adopted by the Board of Agriculture.
- (6) Milk. – The lacteal secretion practically free from colostrum obtained by the milking of one or more cows.
- (7) Milk handler. – Any person, firm, corporation, or dairy cooperative engaged in the receiving, handling, distribution, or sale of fluid milk or milk products that

are intended for bottling, manufacturing, processing, distribution, or sale in this State. (2023-63, s. 5.4(a).)

§ 106-816.3. Referendum.

(a) The Association may conduct among dairy producers a referendum upon the question of whether an assessment shall be levied as provided for herein.

(b) The Association shall determine all of the following:

- (1) The amount of the proposed assessment.
- (2) The time and place of the referendum.
- (3) Procedures for conducting the referendum and counting of votes.
- (4) Any other matters pertaining to the referendum.

(c) The amount of the proposed referendum shall be stated on the referendum ballot. The amount may not exceed five cents (5¢) for each hundredweight of Grade "A" milk produced by a dairy producer in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each hundredweight of Grade "A" milk. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of five cents (5¢) for each hundredweight of Grade "A" milk.

(d) All dairy producers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide dairy producers with notice of the referendum and an opportunity to vote. (2023-63, s. 5.4(a).)

§ 106-816.4. Payment and collection of assessment.

(a) The assessment shall not be collected unless more than half of the votes cast in the referendum are in favor of the assessment. If more than half of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all dairy producers of the assessment.

(b) Each dairy producer shall pay an assessment on each hundredweight of Grade "A" milk produced in this State and sold commercially.

(c) Each milk handler or dairy cooperative shall collect the assessment by deducting the amount of the assessment from the proceeds of the sale of Grade "A" milk. The milk handler or dairy cooperative shall remit to the Department no later than the twentieth day following the end of each calendar month the assessment on Grade "A" milk sold during that month. Any fluid milk producer-processor who markets Grade "A" milk of its own production directly to consumers, or any dairy producer who does not use the services of a milk handler or dairy cooperative located in this State, shall also pay the assessment under this section. Any dairy producer who fails to remit the assessment for the previous year's sales by January 20 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of one percent (1%) of the unpaid assessment for each month after January 20 that the assessment remains unpaid.

(d) The Association may conduct inspections or audits of the books of any dairy producer. If the inspection or audit reveals that a dairy producer has willfully failed to remit assessments

when due, the dairy producer shall pay the Association the reasonable costs of the inspection or audit.

(e) The Association may bring an action to collect unpaid assessments, penalties, and reasonable costs of any inspection or audit as provided in subsection (c) of this section against any dairy producer who fails to pay the assessment, penalties, or costs. If successful, the Association shall also recover the cost of such action, including attorneys' fees. (2023-63, s. 5.4(a).)

§ 106-816.5. Use of assessments; refunds.

(a) The Department shall remit all funds collected under this Article to the Association at least quarterly. The Association shall use the funds to promote the interests of the dairy industry. The Association shall use such funds for research and marketing related to dairy products and the dairy industry, including such administrative expenses as may be reasonably necessary to carry out this function.

(b) A dairy producer may request a refund of the assessment collected under this Article by requesting in writing a refund form from the Association. The Association shall determine the contents of the refund form. The Association shall provide the dairy producer with a refund form within one week of receiving the dairy producer's request. After receiving the refund form from the Association, the dairy producer shall complete the form and provide proof of payment of the assessment to the Association no earlier than December 15 and no later than December 31 of a calendar year. The Association shall mail a refund to the dairy producer within 120 days of receipt of a properly completed and documented refund form. (2023-63, s. 5.4(a).)

§ 106-816.6. Termination of assessment.

Upon receipt of a petition signed by at least fifty percent (50%) of the dairy producers in North Carolina known to the Association, the Department shall notify the Association and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. The referendum shall be conducted in the same manner as the initial referendum upon the question of whether an assessment shall be levied. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years. (2023-63, s. 5.4(a).)

§ 106-817. Reserved for future codification purposes.

§ 106-818. Reserved for future codification purposes.

§ 106-819. Reserved for future codification purposes.

Article 69.

Horse Industry Promotion Act.

§ 106-820. Title.

This Article may be cited as the Horse Industry Promotion Act. (1998-154, s. 1.)

§ 106-821. Findings.

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry. (1998-154, s. 1.)

§ 106-822. Definitions.

As used in this Article:

- (1) "Commercial horse feed" means any commercial feed, as defined in G.S. 106-284.33, labeled or marketed for equine use.
- (2) "Council" means the North Carolina Horse Council.
- (3) "Department" means the Department of Agriculture and Consumer Services.
- (4) "Equine" means a horse, pony, mule, donkey, or hinny.
- (5) "Horse owner" means a person who (i) is a North Carolina resident and (ii) owns or leases an equine. (1998-154, s. 1; 2014-103, s. 8.)

§ 106-823. Referendum.

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

- (1) The amount of the proposed assessment, not to exceed four dollars (\$4.00) per ton of commercial horse feed.
- (2) The period for which the assessment shall be levied, not to exceed 10 years.
- (3) The time and place of the referendum.
- (4) Procedures for conducting the referendum and counting votes.
- (5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. The Council shall send press releases about the referendum to at least 10 daily and 10 weekly or biweekly newspapers having general circulation in a county in the State, and to any trade journals deemed appropriate by the Council. Notice of the referendum also shall be posted in every place the Council identifies as selling commercial horse feed. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council. (1998-154, s. 1; 2015-263, s. 1.)

§ 106-824. Majority vote required; collection of assessment.

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum are in favor of the assessment. If a majority of the votes cast in the referendum are in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The Council may bring an action to collect unpaid assessments against any feed manufacturer or distributor who fails to pay the assessment. (1998-154, s. 1.)

§ 106-825. Use of funds; refunds.

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Council within one year of purchase of the feed. This demand shall be accompanied by proof of purchase satisfactory to the Council. (1998-154, s. 1.)

§ 106-826: Reserved for future codification purposes.

§ 106-827: Reserved for future codification purposes.

§ 106-828: Reserved for future codification purposes.

§ 106-829: Reserved for future codification purposes.

Article 70.

North Carolina Sustainable Local Food Advisory Council.

§§ 106-830 through 106-833: Expired. See note.

§ 106-834: Reserved for future codification purposes.

§ 106-835: Reserved for future codification purposes.

§ 106-836: Reserved for future codification purposes.

§ 106-837: Reserved for future codification purposes.

§ 106-838: Reserved for future codification purposes.

§ 106-839: Reserved for future codification purposes.

Article 71.

Soil and Water Conservation Commission.

§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

- a. To approve petitions for soil conservation districts.
 - b. To approve application for watershed plans.
 - c. Such other duties as specified in Chapter 139.
 - d. To conduct any inspections in accordance with subsection (b) of this section.
- (2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor. (1973, c. 1262, s. 34; 1977, c. 771, s. 4; 1989, c. 727, s. 194; 1997-173, s. 1; 1997-443, s. 11A.119(a); 2011-145, s. 13.22A(e), (f).)

§ 106-841. Soil and Water Conservation Commission – members; selection; removal; compensation; quorum; services.

(a) The Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

- (1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;
- (2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;
- (3) One member appointed at large by the Governor.

(b) The members of the Commission, except those members serving in an ex officio capacity, shall be appointed for terms of three years and shall serve until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(c) The office of member of the Soil and Water Conservation Commission may be held concurrently with any other elective or appointive office, in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(d) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(e) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Commission shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Commission shall be supplied by the Department of Agriculture and Consumer Services. (1973, c. 1262, s. 35; 1977, c. 771, s. 4; 1989, c. 727, s. 218(136); 1997-443, s. 11A.119(a); 2002-176, s. 2; 2003-198, s. 1; 2011-145, s. 13.22A(e), (g).)

§ 106-842. Soil and Water Conservation Commission – officers.

The Soil and Water Conservation Commission shall have a chair and a vice-chair. The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chair's regularly appointed term. (1973, c. 1262, s. 36; 2006-79, s. 7; 2011-145, s. 13.22A(e).)

§ 106-843. Soil and Water Conservation Commission – meetings.

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least four members. (1973, c. 1262, s. 37; 2006-79, s. 8; 2011-145, s. 13.22A(e).)

§ 106-844. Soil and Water Conservation Account.

The Soil and Water Conservation Account is established as a nonreverting account within the Department of Agriculture and Consumer Services. The Account consists of revenue credited to the Account from the sale of soil and water conservation special license plates. The Commission shall use the revenue from the account to fund environmental education and water quality education in North Carolina. (1997-477, s. 5; 1997-443, s. 11A.123; 2011-145, s. 13.22A(e), (dd).)

§ 106-845: Reserved for future codification purposes.

§ 106-846: Reserved for future codification purposes.

§ 106-847: Reserved for future codification purposes.

§ 106-848: Reserved for future codification purposes.

§ 106-849: Reserved for future codification purposes.

Article 72.

Nonpoint Source Pollution Control Program.

§ 106-850. Agriculture cost share program.

(a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The program shall be created, implemented, and supervised by the Soil and Water Conservation Commission.

(b) The program shall be subject to the following requirements and limitations:

- (1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the watercourses of the State.
- (2) The program shall include the entire State.
- (3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.
- (4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.
- (5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sedimentation control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality.
- (6) Except as provided in subdivision (8) of this subsection, State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the cost, which may include in-kind support of the practice, with a maximum of seventy-five thousand dollars (\$75,000) per year to each applicant.
- (7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.
- (8) For practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the program shall be limited to seventy-five percent (75%) of the average cost of each practice, with the remainder paid from funding from the Conservation Reserve Enhancement Program, other available federal funds, other State funds, or the assisted farmer, whose contribution may include in-kind support of the practice. This subdivision is subject to subdivision (9) of this subsection.
- (9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer

providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars (\$100,000) per year to each applicant. The following definitions apply in this subdivision:

- a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.
- b. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of this Chapter.
- c. Limited-resource farmer. – A farmer with direct and indirect annual gross farm sales that do not exceed one hundred thousand dollars (\$100,000) and with an adjusted household income in each of the previous two years that is at or below the greater of the county median household income, as determined by the United States Department of Housing and Urban Development, or two times the national poverty level based on the federal poverty guidelines established by the United States Department of Health and Human Services and revised each April 1.
- d. Materially and substantially participate.
 1. In the case of an individual, for the individual, including members of the immediate family of the individual, to provide substantial day-to-day labor and management of the farm, consistent with the practices in the county in which the farm is located.
 2. In the case of an entity, for all members of the entity, to participate in the operation of the farm, with some members providing management and some members providing labor and management necessary for day-to-day activities such that if the members did not provide the management and labor, the operation of the farm would be seriously impaired.

(10) To be eligible for cost share funds under this program, each applicant must establish that the applicant is a bona fide farm as described by G.S. 160D-903(a).

(11) In extraordinary circumstances, the Commission may permit an applicant to establish that he or she is engaged in farming with an alternate form of documentation if the farm has a conservation plan that meets the statutory purposes of the program.

(c) The program shall be reviewed, prior to implementation, by the Committee created by G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program.

(d) State funds for the program shall remain available until expended for the program.

(e) The Soil and Water Conservation Commission shall report on or before January 31 of each year to the Environmental Review Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. This report shall include a list of projects

that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality. This report shall be submitted to the Environmental Review Commission and the Fiscal Research Division with the reports required by G.S. 106-860(e) and G.S. 139-60(d) as a single report. (1985 (Reg. Sess., 1986), c. 1014, s. 149(a); 1987, c. 827, s. 154; c. 830, s. 102; 1995 (Reg. Sess., 1996), c. 626, ss. 9, 10; 1996, 2nd Ex. Sess., c. 18, s. 27.22(a), (b); 1997-496, s. 15; 1998-221, s. 3.1; 2002-165, s. 2.18; 2003-284, s. 11.6; 2004-124, s. 12.6; 2005-390, s. 8; 2007-495, s. 18; 2011-145, ss. 13.22A(a), (t)-(w), 13.23A(a); 2011-391, s. 32; 2012-142, s. 11.2A(a); 2015-263, s. 37(a); 2017-10, s. 4.18(a); 2021-78, s. 13A; 2022-55, s. 7(b); 2022-62, s. 13.)

§ 106-851. Program participation.

Participation in the program shall be voluntary.

All participants in the program shall be required to match State funds at the same rate, and assistance from the Agriculture Extension Service at North Carolina State University shall also be used. (1985 (Reg. Sess., 1986), c. 1014, s. 149(a); 2011-145, s. 13.22A(t).)

§ 106-852. Committee established.

Detailed plans for implementing the program shall be reviewed and suggested changes and reasons therefor shall be given by a committee consisting of the Master of the North Carolina State Grange, President of the North Carolina Farm Bureau Federation, the North Carolina Commissioner of Agriculture, the Dean of the School of Agriculture and Life Sciences at North Carolina State University, the Dean of the School of Agriculture at North Carolina Agricultural and Technical State University, the Chairman of the State Soil and Water Conservation Commission, the President of the North Carolina Association of Soil and Water Conservation Districts, the Executive Director of the Wildlife Resources Commission or a designee, and the Director of the Division of Marine Fisheries or a designee. The committee shall review the program prior to expenditure of any funds for the program. Certification documenting the committee's review of the program shall be made in writing to the Speaker of the House of Representatives, the President of the Senate, the Chairmen of the Appropriations Committees of the Senate and the House of Representatives, the Director of the Fiscal Research Division of the Legislative Services Office, and the Legislative Library. (1985 (Reg. Sess., 1986), c. 1014, s. 149(a); 1989, c. 500, s. 117; 1993, c. 321, s. 261; 2011-145, s. 13.22A(t).)

§ 106-853: Reserved for future codification purposes.

§ 106-854: Reserved for future codification purposes.

§ 106-855: Reserved for future codification purposes.

§ 106-856: Reserved for future codification purposes.

§ 106-857: Reserved for future codification purposes.

§ 106-858: Reserved for future codification purposes.

§ 106-859: Reserved for future codification purposes.

Article 73.

Community Conservation Assistance Program.

§ 106-860. Community Conservation Assistance Program.

(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services.

(b) Purposes. – The purpose of the Program shall be to reduce the input of nonpoint source pollution into the waters of the State. The Program shall be subject to the following requirements and limitations:

- (1) Subject to subdivision (5) of this subsection, priority designations for inclusion in the Program for State funding shall be established by the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall allocate the cost share and technical assistance funds under the Program.
- (2) Areas shall be included in the Program as the funds are appropriated and technical assistance becomes available from the local Soil and Water Conservation District.
- (3) Funding may be provided to assist community conservation practices approved by the Soil and Water Conservation Commission.
- (4) State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted applicant providing twenty-five percent (25%) of the cost, which may include in-kind support of the practice, with a maximum of seventy-five thousand dollars (\$75,000) per year to each applicant.
- (5) Priority designation for inclusion in the Program for State funding shall be given to projects that improve water quality. To be eligible for cost-share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.
- (6) Participation in the Program shall be voluntary.

(c) Availability of Funds. – State funds for the Program shall remain available until expended.

(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

- (1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
- (2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.

- (4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
- (5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
- (6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
- (7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
- (8) The President of the North Carolina Conservation District Employees Association or the President's designee.
- (9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
- (10) Repealed by Session Laws 2013-413, s. 57(e). For effective date, see note.
- (11) The Assistant Commissioner of the North Carolina Forest Service of the Department of Agriculture and Consumer Services or the Assistant Commissioner's designee.
- (12) The Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality or the Director's designee.
- (13) The Director of the Division of Coastal Management of the Department of Environmental Quality or the Director's designee.
- (14) The Director of the Division of Water Resources of the Department of Environmental Quality or the Director's designee.
- (15) The President of the Carolinas Land Improvement Contractors Association or the President's designee.

(e) Report. – The Soil and Water Conservation Commission shall report no later than January 31 of each year to the Environmental Review Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality. This report shall be submitted to the Environmental Review Commission and the Fiscal Research Division as a part of the report required by G.S. 106-850(e). (2006-78, s. 1; 2011-145, ss. 13.22A(x)-(z), (aa), 13.25(vv), (xx); 2012-143, s. 1(f); 2013-155, s. 10; 2013-413, s. 57(e); 2015-241, s. 14.30(u); 2017-10, s. 4.18(b).)

§ 106-861: Reserved for future codification purposes.

§ 106-862: Reserved for future codification purposes.

§ 106-863: Reserved for future codification purposes.

§ 106-864: Reserved for future codification purposes.

§ 106-865: Reserved for future codification purposes.

§ 106-866: Reserved for future codification purposes.

§ 106-867: Reserved for future codification purposes.

§ 106-868: Reserved for future codification purposes.

§ 106-869: Reserved for future codification purposes.

Article 74.

Acquisition and Control of State Forests and State Recreational Forests.

§ 106-870. Policy and plan to be inaugurated by Department of Agriculture and Consumer Services.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services and "Commissioner" means Commissioner of Agriculture.

(b) For purposes of this Chapter, "State recreational forest" means a forest managed primarily for natural resource preservation, scenic enjoyment, and recreational purposes.

(c) The Department shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

- (1) The extension of the forest fire prevention organization to all counties in the State needing such protection.
- (2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.
- (3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting, and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.
- (4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.
- (5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management. (2011-145, s. 13.25(o).)

§ 106-871. Growing of timber on unused State lands authorized.

The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands

title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Commissioner may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Commissioner, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department. (2011-145, s. 13.25(o).)

§ 106-872. Use of lands acquired by counties through tax foreclosures as demonstration forests.

The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Commissioner may be suitable for the purposes named in subdivision (5) of subsection (c) of G.S. 106-870. (2011-145, s. 13.25(o).)

§ 106-873. Procedure for acquisition of delinquent tax lands from counties.

In the carrying out of the provisions of G.S. 106-872, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list, the Commissioner shall have the lands examined and, if any one or more of these properties is in the Commissioner's judgment suitable for the purposes set forth in G.S. 106-872, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request, the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined. (2011-145, s. 13.25(o).)

§ 106-874. Purchase of lands for use as demonstration forests.

Where no suitable tax-delinquent lands are available and, in the judgment of the Department, the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 106-870 to G.S. 106-875 shall allow the Department to acquire land under the right of eminent domain. (2011-145, s. 13.25(o).)

§ 106-875. Forest management appropriation.

Necessary funds for carrying out the provisions of G.S. 106-870 and G.S. 106-872 to G.S. 106-875 shall be set up in the regular budget as an item entitled "forest management." (2011-145, s. 13.25(o).)

§ 106-876. Power to acquire lands as State forests; donations or leases by United States; leases for recreational purposes.

(a) The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, and protection purposes, using for these purposes any special appropriations or funds available. The Department may acquire by condemnation under the provisions of Chapter 40A of the General Statutes areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing State forests and other areas and developments essential to the effective operation of the State forestry activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used for experiment and demonstration in forest management, for public recreation, and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any forest and submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining State forests or enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions, and other proper revenue secured through the administration of State forests, to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law. (2011-145, s. 13.25(o).)

§ 106-877. State timber may be sold by Department; forest nurseries; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

(a) Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Commissioner determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules governing the use by the public of State forests under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the

State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(b) The Department may construct, operate, and maintain within the State forests and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting privileges on State forests and fishing privileges in State forests, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(c) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(d) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law. (2011-145, s. 13.25(o).)

§ 106-878. Applications of proceeds from sale of products.

(a) Application of Proceeds Generally. – Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Commissioner.

(b) Tree Cone and Seed Purchase Fund. – A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year shall be placed in a special, continuing, and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Commissioner. The percentage of the sales placed in the Fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Commissioner shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the Department must purchase. Money in this Fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed and shall be used for no purpose other than the purchase of tree cones and seeds.

(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Agriculture and Consumer Services, North Carolina Forest Service, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 106-877 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.

(d) Bladen Lakes State Forest Fund. – The Bladen Lakes State Forest Fund is created within the Department of Agriculture and Consumer Services, North Carolina Forest Service, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 106-877 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this

Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest. (2011-145, s. 13.25(o); 2011-391, s. 33(b); 2013-155, s. 11.)

§ 106-879. Legislative authority necessary for payment.

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly. (2011-145, s. 13.25(o).)

§ 106-880. Distribution of funds from sale of forestlands.

All funds paid by the National Forest Commission, by authority of an act of Congress, approved May 23, 1908, (35 Stat. 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school administrative unit in which said national forestlands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed. (2011-145, s. 13.25(o).)

§ 106-881. License fees for hunting and fishing on government-owned property unaffected.

No wording in G.S. 113-307.1(a), or any other North Carolina public, local, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State, or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park are exempt from this section. (2011-145, s. 13.25(o).)

§ 106-882. Donations of property for forestry purposes; agreements with federal government or agencies for acquisition.

The Department may accept gifts, donations, or contributions of land suitable for forestry purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the Department are desirable for State forests and State recreational forests. (2011-145, s. 13.25(o).)

§ 106-883. Expenditure of funds for development, etc.; disposition of products from lands; rules.

When lands are acquired or leased under G.S. 106-882, the Department may make expenditures from any funds not otherwise obligated, for the management, development, and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 106-882 to G.S. 106-886. (2011-145, s. 13.25(o).)

§ 106-884. Disposition of revenues received from lands acquired.

All revenues derived from lands now owned or later acquired under the provisions of G.S. 106-882 to G.S. 106-886 shall be set aside for the use of the Department in acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located. (2011-145, s. 13.25(o).)

§ 106-885. State not obligated for debts created hereunder.

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 106-882 to G.S. 106-886 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State. (2011-145, s. 13.25(o).)

§ 106-886. Disposition of lands acquired.

The Department shall have full power and authority to sell, exchange, or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests: Provided, however, said sale, lease, or exchange shall not be contrary to the terms of any contract that it has entered into. (2011-145, s. 13.25(o).)

§ 106-887. Management of DuPont State Recreational Forest.

(a) DuPont State Forest is designated as a State Recreational Forest. The Department shall manage DuPont State Recreational Forest: (i) primarily for natural resource preservation, scenic enjoyment and recreational purposes, including horseback riding, hiking, bicycling, hunting, and fishing; (ii) so as to provide an exemplary model of scientifically sound, ecologically based natural resource management for the social and economic benefit of the forest's diverse community of users; and (iii) consistent with the grant agreement that designates a portion of the forest as a North Carolina Nature Preserve. In addition, the Department may use the forest for the demonstration of different forest management and resource protection techniques for local landowners, natural resource professionals, students, and other forest visitors.

(b) The Department shall adopt a land management plan for DuPont State Recreational Forest, which shall be periodically revised as needed, to (i) provide the ecological context within which management of the forest will be conducted; (ii) describe the desired future condition of natural resources throughout the forest toward which management will be directed; and (iii) outline appropriate management techniques to achieve those desired future conditions.

(c) Notwithstanding subsection (a) of G.S. 106-877, with respect to DuPont State Recreational Forest, the Department may cut and remove timber for forest management purposes only, including for the purposes of fire, pest, and disease prevention and control. The Department may cut, remove, and sell timber for the purpose of revenue generation only upon approval of the Governor and the Council of State.

(d) Notwithstanding G.S. 106-886, with respect to property comprising DuPont State Recreational Forest, the Department may sell, lease, or exchange such property only upon approval of the Governor and the Council of State.

(e) The Department may acquire inholdings or lands adjacent to DuPont State Recreational Forest for recreational purposes, natural resource protection or scenic enjoyment purposes, and

other purposes described in G.S. 106-876 as appropriate for a recreational forest, and such acquisitions shall be made in accordance with the provisions of G.S. 106-876.

(f) In accordance with subsection (b) of G.S. 106-877, the Department may construct, operate, and maintain within DuPont State Recreational Forest suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting and fishing privileges in the forest, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(g) In accordance with subsection (c) of G.S. 106-877, the Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest.

(h) The Department shall adopt rules for operation and management of DuPont State Recreational Forest in consultation with interested parties, including, but not limited to, local governments with jurisdiction over the area, the Friends of DuPont Forest, and other stakeholders with interests in the property for recreation and protection of its wildlife populations, water quality, biodiversity, or historical and cultural value.

(i) The Department shall report no later than October 1 of each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on the Department's management activities at DuPont State Recreational Forest during the preceding fiscal year and plans for management of DuPont State Recreational Forest for the upcoming fiscal year. (2011-145, s. 13.25(o); 2013-155, s. 12; 2013-360, s. 14.3(h); 2020-78, s. 5.1(f).)

§ 106-888: Reserved for future codification purposes.

§ 106-889: Reserved for future codification purposes.

§ 106-890: Reserved for future codification purposes.

§ 106-891: Reserved for future codification purposes.

§ 106-892: Reserved for future codification purposes.

§ 106-893: Reserved for future codification purposes.

§ 106-894: Reserved for future codification purposes.

Article 75.

Protection and Development of Forests; Fire Control.

§ 106-895. **Powers of Department of Agriculture and Consumer Services.**

(a) The Department of Agriculture and Consumer Services may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

(a1) The Department shall adopt Forest Practice Guidelines Related to Water Quality pursuant to G.S. 113A-52.1 of the Sedimentation Pollution Control Act.

(b) In this Article, unless the context requires otherwise:

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

(2) "Department" means the Department of Agriculture and Consumer Services. (1915, c. 243, s. 1; C.S., s. 6133; 1925, c. 122, s. 22; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 60; 1997-443, s. 11A.119(a); 2011-145, ss. 13.25(p), (q); 2017-108, s. 6(d).)

§ 106-896. Forest rangers, deputy rangers, and emergency workers.

The Commissioner or the Commissioner's designee may authorize as many forest rangers, deputy rangers, or emergency workers as the Commissioner deems necessary and available. For purposes of this Article, the following definitions apply:

(1) "Deputy ranger" means a highly trained emergency worker hired on a temporary basis to respond to a given emergency or condition. A deputy ranger shall be sworn or affirmed to the terms of "General Oath" as provided in G.S. 11-11. A deputy ranger shall have the powers and duties as enumerated in G.S. 106-899.

(2) "Emergency worker" means a person who is not an employee of the North Carolina Forest Service but is an individual serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency. Except for a deputy ranger, an emergency worker is not sworn or affirmed to the terms of "General Oath" provided in G.S. 11-11.

(3) "Forest ranger" means an employee of the North Carolina Forest Service who has been sworn or affirmed to the terms of "General Oath" provided in G.S. 11-11. A forest ranger shall have the powers and duties as enumerated in G.S. 106-898 and G.S. 106-899. (1915, c. 243, s. 2; C.S., s. 6134; 1925, c. 106, s. 1; c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; 1951, c. 575; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 61; 2011-145, ss. 13.25(p), (q); 2017-108, s. 12(a).)

§ 106-897. Forest laws defined.

The forest laws consist of all of the following:

(1) G.S. 14-135 to G.S. 14-140.1.

(2) Articles 74 through 84 of this Chapter.

(3) G.S. 77-13 and G.S. 77-14.

(4) Other statutes enacted for the protection of forests and woodlands from fire, insects, or disease and concerning obstruction of streams and ditches in forests and woodlands.

(5) Regulations and ordinances adopted under the authority of the above statutes. (1983, c. 327, s. 1; 2011-145, s. 13.25(p), (q); 2021-78, s. 7(a).)

§ 106-898. Duties of forest rangers; payment of expenses by State and counties.

Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the Commissioner; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the Commissioner; and shall perform such other acts and duties as shall be considered necessary by the Commissioner in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the Commissioner; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the Commissioner shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the Commissioner. Appropriations made by a county for the purposes set out in Articles 75, 76, 78, and 82 of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the Commissioner for the work in said county, but are to serve as a supplement thereto. Funds appropriated to the Department for a fiscal year for the purposes set out in Articles 75, 76, 78, and 82 of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program. (1915, c. 243, s. 4; C.S., s. 6136; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575; 1961, c. 833, s. 17; 1963, c. 312, s. 1; 1973, c. 1262, s. 86; 1975, c. 620, s. 1; 1977, c. 771, s. 4; 1983, c. 327, s. 2; 1989, c. 727, s. 62; 1991 (Reg. Sess., 1992), c. 1039, s. 23; 2011-145, s. 13.25(p), (q).)

§ 106-899. Powers of forest rangers and deputy rangers to prevent and extinguish fires; authority to issue citations and warning tickets.

(a) Forest rangers or deputy rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the Commissioner or his designate may establish a fire patrol in any district. In case of fire in or threatening any forest or woodland, the forest ranger or deputy ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a Class 3 misdemeanor and upon conviction shall only be subject to a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00). No action for trespass shall lie against any forest ranger, deputy ranger, or person summoned by a forest ranger for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy ranger.

(b) Forest rangers are authorized to issue and serve citations under the terms of G.S. 15A-302 and warning tickets under the terms of G.S. 106-901 for offenses under the forest

laws. This subsection may not be interpreted to confer the power of arrest on forest rangers, and does not make them criminal justice officers within the meaning of G.S. 17C-2. (1915, c. 243, s. 6; C.S., s. 6137; 1925, c. 106, ss. 1, 2; c. 240; 1927, c. 150, s. 4; 1951, c. 575; 1963, c. 312, s. 2; 1973, c. 108, s. 65; c. 1262, s. 86; 1975, c. 620, s. 2; 1977, c. 771, s. 4; 1983, c. 327, s. 3; 1989, c. 727, s. 63; 1993, c. 539, s. 832; 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, s. 13.25(p), (q); 2017-108, s. 12(b); 2023-63, s. 12.1.)

§ 106-900. Powers of Department of Agriculture and Consumer Services law-enforcement officers.

The Commissioner is authorized to appoint as many Department of Agriculture and Consumer Services law enforcement officers as he or she deems necessary to investigate and enforce any violation of the laws within the authority of the Department or which occur on Department property. Such officers shall meet the requirements of Article 1 of Chapter 17C of the General Statutes and shall take the oath of office prescribed by Section 7 of Article VI of the North Carolina Constitution. Of these officers, the Commissioner may designate certain officers to also have the powers and the duties of a forest ranger enumerated in G.S. 106-898 and G.S. 106-899 and the power to enforce the forest laws. A Department law enforcement officer may arrest, without warrant, any person or persons committing any crime in the officer's presence or who such officer has probable cause for believing has committed a crime in the officer's presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Department law enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department. (1975, c. 620, s. 3; 1977, c. 771, s. 4; 1983, c. 327, s. 5; 1989, c. 727, s. 64; 2011-145, s. 13.25(p), (q); 2014-103, s. 7.; 2018-5, s.17.1(a).)

§ 106-901. Warning tickets for violations of the forest laws.

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Commissioner may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Commissioner within the requirements of this section. These criteria are exempt from Article 2A of Chapter 150B of the General Statutes.

(b) No warning ticket may be issued unless all of the following conditions are met:

- (1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.
- (2) The offense is not one, or a type of offense, for which the Commissioner has prohibited the issuance of warning tickets.
- (3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the Commissioner.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of

criminal prosecution for the same offense for which the warning ticket was issued. (1983, c. 327, s. 6; 1987, c. 827, s. 6; 2000-189, s. 8; 2011-145, s. 13.25(p), (q).)

§ 106-902. Compensation of forest rangers, deputy rangers, and emergency workers.

Forest rangers, deputy rangers, and emergency workers shall receive compensation from the Department at a reasonable rate to be fixed by said Department for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the Commissioner every month, and approved by him. Forest rangers shall render to the Commissioner a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the Commissioner. If said bill be duly approved by the Commissioner, it shall be paid by direction of the Department out of any funds provided for that purpose. (1915, c. 243, s. 7; C.S., s. 6138; 1924, c. 60; 1925, c. 106, ss. 1, 3; c. 122, s. 22; 1947, c. 56, s. 2; 1951, c. 575; 1963, c. 312, s. 3; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1989, c. 727, s. 65; 2011-145, ss. 13.25(p), (q); 2017-108, s. 12(c).)

§ 106-903. Overtime compensation for forest fire fighting.

The Department shall, within funds appropriated to the Department, provide either monetary overtime compensation or compensatory leave at an hour-for-hour rate, at its discretion, to the employees of the North Carolina Forest Service who are exempt from the Fair Labor Standards Act and involved in fighting forest fires for overtime earned while conducting fire suppression duties as defined in G.S. 106-955. If the Department provides compensatory leave for overtime earned, it shall be provided in a manner consistent with the State's general compensatory time policy for exempt employees established by the Office of State Human Resources. (1983, c. 761, s. 119; 1989, c. 727, s. 66; 2005-386, s. 1.5; 2011-145, s. 13.25(p); 2013-155, s. 13; 2021-78, s. 4(a).)

§ 106-904. Woodland defined.

For the purposes of this Article, woodland is taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated. (1915, c. 243, s. 11; C.S., s. 6139; 2011-145, s. 13.25(p).)

§ 106-905. Misdemeanor to destroy posted forestry notice.

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the Commissioner, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a Class 3 misdemeanor. (1915, c. 243, s. 5; C.S., s. 6140; 1963, c. 312, s. 4; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 67; 1993, c. 539, s. 833; 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, s. 13.25(p), (q).)

§ 106-906. Cooperation between counties and State in forest protection and development.

The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of

the funds under their control such amount as is provided in G.S. 106-898. (1921, c. 26; C.S., s. 6140(a); 1925, c. 122, s. 22; 1945, c. 635; 1963, c. 312, s. 5; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 68; 2011-145, s. 13.25(p), (q).)

§ 106-907. Instructions on forest preservation and development.

(a) It shall be the duty of all forest rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such forest rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

(b) It shall be the duty of the forest rangers herein mentioned under the direction of the Commissioner, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3; 1951, c. 575; 1963, c. 312, s. 6; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 69; 2011-145, ss. 13.25(p), (q); 2017-108, s. 12(d).)

§ 106-908. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

- (1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.
- (2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.
- (3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping. (1953, c. 305; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 70; 2011-145, s. 13.25(p), (q).)

§ 106-909. Publication of proclamation; annulment thereof.

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the Commissioner and the Executive Director of the North

Carolina Wildlife Resources Commission, that the period of the emergency has passed. (1953, c. 305; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 71; 2011-145, s. 13.25(p), (q).)

§ 106-910. Violation of proclamation a misdemeanor.

Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a Class 1 misdemeanor. (1953, c. 305; 1993, c. 539, s. 834; 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, s. 13.25(p).)

§ 106-911. Annual report on wildfires.

No later than October 1 of each year, beginning October 1, 2012, the Commissioner shall submit a written report on wildfires in the State to the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division of the General Assembly. The report shall include the following information for all major or project wildfires during the prior fiscal year:

- (1) The date, location, and impacts (property damage and any casualties) from the wildfire.
- (2) The following data for firefighters and related support personnel involved in fighting the wildfire:
 - a. Total overtime hours worked.
 - b. Total compensation paid for overtime.
 - c. The portion of compensation paid that was reimbursed to the State.
- (3) The fiscal impact of the wildfire, including total costs, reimbursable costs, and costs incurred by the State. (2012-142, s. 11.2; 2020-78, s. 5.1(g).)

§ 106-912: Reserved for future codification purposes.

§ 106-913: Reserved for future codification purposes.

§ 106-914: Reserved for future codification purposes.

§ 106-915. B.R.I.D.G.E. Youthful Offenders Program; annual report.

(a) The Division of Juvenile Justice of the Department of Public Safety shall give priority to the B.R.I.D.G.E. Youthful Offenders Program operated in cooperation with the North Carolina Forest Service when assigning youthful offenders from the Foothills Correctional Institution to work programs.

(b) The North Carolina Forest Service shall submit an annual report on the B.R.I.D.G.E. Youthful Offenders Program no later than October 1 of each year beginning October 1, 2012, to the Fiscal Research Division, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Oversight

Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Justice and Public Safety, the chairs of the House of Representatives Appropriations Committee on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include the following information for the prior fiscal year:

- (1) The number of youthful offenders within the custody of the Division of Adult Correction eligible for B.R.I.D.G.E.
- (2) The number of youthful offenders participating in B.R.I.D.G.E.
- (3) The average daily participation in B.R.I.D.G.E.
- (4) The average duration of participation in B.R.I.D.G.E.
- (5) Summary of activities of B.R.I.D.G.E. participants. (2012-142, s. 11.1; 2020-78, s. 5.1(i); 2021-180, s. 19C.9(y).)

§ 106-916: Reserved for future codification purposes.

§ 106-917: Reserved for future codification purposes.

§ 106-918: Reserved for future codification purposes.

§ 106-919: Reserved for future codification purposes.

Article 76.

Protection of Forest Against Insect Infestation and Disease.

§ 106-920. Purpose and intent.

(a) The purpose of this Article is to place within the Department of Agriculture and Consumer Services the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases.

(b) In this Article, unless the context requires otherwise, the expression "Department" means the Department of Agriculture and Consumer Services, and "Commissioner" means the Commissioner of Agriculture. (1953, c. 910; 1969, c. 342, s. 3; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1989, c. 727, s. 72; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(r), (s).)

§ 106-921. Authority of the Department.

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department. The administration of the provisions of this Article shall be under the general supervision of the Commissioner. (1953, c. 910; 1969, c. 342, s. 3; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1989, c. 727, s. 73; 1997-261, s. 109; 2011-145, s. 13.25(r), (s).)

§ 106-922. Definitions.

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

- (1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.
- (2) "Forestland" means land on which forest trees occur.
- (3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.
- (4) "Infection" means attack by any disease affecting forest trees which is declared by the Commissioner to be dangerously injurious thereto.
- (5) "Infestation" means attack by means of any insect, which is by the Commissioner declared to be dangerously injurious to forest trees. (1953, c. 910; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, ss. 74, 75; 2011-145, s. 13.25(r), (s).)

§ 106-923. Action against insects and diseases.

Whenever the Commissioner, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the Commissioner shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the Commissioner or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls. (1953, c. 910; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 76; 2011-145, s. 13.25(r), (s).)

§ 106-924. Authority of Commissioner and his agents to go upon private land within control zones.

The Commissioner or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the Commissioner or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the Commissioner may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the Commissioner or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area. (1953, c. 910; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 77; 2011-145, s. 13.25(r), (s).)

§ 106-925. Cooperative agreements.

In order to more effectively carry out the purposes of this Article, the Department is authorized to enter into cooperative agreement with the federal government and other public and private

agencies, and with the owners of forestland. (1953, c. 910; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 78; 2011-145, s. 13.25(r), (s).)

§ 106-926. Annulment of control zone.

Whenever the Commissioner determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the Commissioner shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized. (1953, c. 910; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 79; 2011-145, s. 13.25(r), (s).)

§ 106-927. Annual report on hemlock restoration.

No later than October 1 of each year, beginning October 1, 2022, the Commissioner shall submit a report on the State's hemlock restoration initiatives to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division. The report shall include the following with respect to each hemlock restoration initiative funded during the previous fiscal year:

- (1) Identification of goals and outcomes for the initiative.
- (2) A description of the measures used or data collected to evaluate the efficiency and effectiveness of the initiative in reaching its desired goals and outcomes.
- (3) The performance of each initiative with respect to the identified goals and outcomes. (2021-180, s. 10.3.)

§ 106-928: Reserved for future codification purposes.

§ 106-929: Reserved for future codification purposes.

Article 77.

Southeastern Interstate Forest Fire Protection Compact.

§ 106-930. Execution of Compact authorized; terms of Compact.

The legislature on behalf of this State is hereby authorized to execute a Compact, in substantially the following form, with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia, and the legislature hereby signifies in advance its approval and ratification of such Compact:

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT
ARTICLE I.

The purpose of this Compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire-fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

ARTICLE II.

This Compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this Article which is contiguous with any member state may become a party to this Compact, subject to approval by the legislature of each of the member states.

ARTICLE III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this Compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this Compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this Compact shall be liable on account of any act or omission on the part of such forces while so engaged, on account of the maintenance, or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this Compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this Compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this Compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this Article, in accordance with the laws of the member states.

ARTICLE VI.

Ratification of this Compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this Compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this Compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

ARTICLE VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

ARTICLE VIII.

The provisions of Articles IV and V of this Compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this Compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this Compact.

ARTICLE IX.

The Compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the Compact. (1955, c. 803, s. 1; 2011-145, s. 13.25(t).)

§ 106-931. When Compact to become effective; authority of Governor.

When the legislature shall have executed said Compact on behalf of this State and shall have caused a verified copy thereof to be filed with the State Secretary, and when said Compact shall have been ratified by one or more of the states named in G.S. 106-930, then said Compact shall become operative and effective as between this State and such other state or states. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this State and any other state ratifying said Compact. (1955, c. 803, s. 2; 2011-145, s. 13.25(t), (xx).)

§ 106-932. Assent of legislature to mutual aid provisions of other compacts.

The legislature of this State hereby gives its assent to the mutual aid provisions of Articles IV and V of the South Central Interstate Forest Fire Protection Compact, the Middle Atlantic Interstate Fire Protection Compact, and the Great Plains Wildland Fire Protection Compact, in accordance with Article VIII of those Compacts relating to interregional mutual aid. (1955, c. 803, s. 3; 2011-145, s. 13.25(t); 2017-108, s. 7.)

§ 106-933. Compact Administrator; North Carolina members of advisory committee.

The Commissioner of Agriculture is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen. (1955, c. 803, s. 4; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(51); 1997-443, s. 11A.119(a); 2011-145, s. 13.25(t), (u).)

§ 106-934. Agreements with noncompact states.

The Department of Agriculture and Consumer Services is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact. (1971, c. 1171; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(52); 1997-443, s. 11A.119(a); 2011-145, s. 13.25(t), (v).)

§ 106-935: Reserved for future codification purposes.

§ 106-936: Reserved for future codification purposes.

§ 106-937: Reserved for future codification purposes.

§ 106-938: Reserved for future codification purposes.

§ 106-939: Reserved for future codification purposes.

Article 78.

Regulation of Open Fires.

§ 106-940. Purpose and findings.

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land-clearing operations is taking place on these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article. (1981, c. 1100, s. 2; 1981 (Reg. Sess., 1982), c. 1385, s. 1; 2011-145, s. 13.25(w).)

§ 106-941. Definitions.

As used in this Article:

- (1) "Department" means the Department of Agriculture and Consumer Services.
- (2) "Forest ranger" means a forest ranger designated under G.S. 106-896(3).
- (3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.
- (4) "Woodland" means woodland as defined in G.S. 106-904. (1981, c. 1100, s. 2; 1989, c. 727, s. 218(53); 1991 (Reg. Sess., 1992), c. 890, s. 3; 1997-443, s. 11A.119(a); 2011-145, ss. 13.25(w), (x); 2017-108, s. 12(e).)

§ 106-942. High hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with G.S. 106-940.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with G.S. 106-944 or G.S. 106-946.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with G.S. 106-942(b).

- (1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminants from the burning.
- (2) The location of the burning must be at least 500 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.
- (3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.
- (4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.
- (5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.
- (6) Initial burning may be commenced only between the hours of 8:00 A.M. and 4:00 P.M. and no combustible material may be added to the fire between 4:00 P.M. on one day and 8:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions. (1981, c. 1100, s. 2; 1981 (Reg. Sess., 1982), c. 1165; c. 1385, s. 2; 2002-132, s. 1; 2011-145, ss. 13.25(w), (x); 2013-265, s. 15; 2017-108, s. 12(f).)

§ 106-943. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in G.S. 106-942(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under G.S. 106-944 or G.S. 106-946. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-944. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under G.S. 106-942 or G.S. 106-943. The Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-945. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w).)

§ 106-946. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-947. Control of existing fires.

(a) If a fire is set without a permit required by G.S. 106-942, 106-943, or 106-944, and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under G.S. 106-942(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie

evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under G.S. 106-942(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-948. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent (5%) of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 106-947. (1981, c. 1100, s. 2; 1989 (Reg. Sess., 1990), c. 1045, s. 11; 1993, c. 539, s. 835; 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, s. 13.25(w), (x); 2011-394, s. 2(h).)

§ 106-949. Effect on other laws.

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under G.S. 106-942(c). (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-950. Exempt fires; no permit fees.

(a) This Article does not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if the fire is confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(a1) Except in cases where the Commissioner has prohibited all open burning during periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, this Article does not apply to, and no air quality permit shall be required for, the burning of polyethylene agricultural plastic used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, when all of the following conditions apply:

- (1) The burning does not violate any State or federal ambient air quality standards.
- (2) The burning is conducted between an hour after sunrise and an hour before sunset.
- (3) The fire is set back at least 250 feet from any paved public roadway and at least 500 feet from any dwelling, group of dwellings, commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
- (4) The burning is conducted in a manner such that it does not constitute a public nuisance.
- (5) The burning is conducted by any of the following means:
 - a. By professionally manufactured equipment solely for the purpose of plastic mulch burning or incineration and approved by the Commissioner.
 - b. By a fire that is enclosed in a noncombustible container.
 - c. By a fire that is restricted to a pile no greater than eight feet in diameter built upon ground cleared of all combustible material.

(a2) Except in cases where the Commissioner has prohibited all open burning during periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, this Article does not apply to any fires started, or caused to be started, for cooking, warming, or ceremonial events, if the fire is confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w); 2015-286, s. 4.39(a); 2017-102, s. 15.2; 2021-78, s. 3(a).)

§ 106-951: Reserved for future codification purposes.

§ 106-952: Reserved for future codification purposes.

§ 106-953: Reserved for future codification purposes.

§ 106-954: Reserved for future codification purposes.

Article 79.

Firefighters on On-Call Status.

§ 106-955. Definitions.

As used in this Article:

- (1) "Firefighter" means an employee of the North Carolina Forest Service of the Department of Agriculture and Consumer Services who engages in fire suppression duties or engages in emergency response duties pursuant to G.S. 166A-19.77.
- (2) "Fire suppression duties" means involvement in on-site fire suppression, participation in Incident Management Team while it is mobilized, Operations Room duty during on-going fires or when required by high readiness plans, mop-up activities to secure fire sites, scouting and detecting forest fires, performance of standby duty, and any other activity that directly contributes to the detection, response to, and control of fires. (1985, c. 757, s. 160(a); 1989, c. 727, s. 218(54); 1997-443, s. 11A.119(a); 2005-386, s. 1.6; 2011-145, s. 13.25(y), (z); 2013-155, s. 14.)

§ 106-956. On-call.

(a) On-call is time during which a firefighter is required to be available to return to the duty station or respond to an emergency within 30 minutes. The Department of Agriculture and Consumer Services shall provide each firefighter in on-call status with an electronic communication device that makes the wearer accessible to the firefighter's duty station.

(b) Notwithstanding subsection (a) of this section, after 14 consecutive days that a firefighter is on duty, the Department of Agriculture and Consumer Services shall permit the firefighter to be off duty for two days so long as the firefighter gives the Department of Agriculture and Consumer Services a means of contact where the firefighter can be reached. On the days the firefighter is permitted to be off duty, the Department of Agriculture and Consumer Services may contact the firefighter only when there is a bona fide emergency. (1985, c. 757, s. 160(a); 1989, c. 727, s. 218(55); 1997-443, s. 11A.119(a); 2011-145, s. 13.25(y), (z); 2013-155, s. 14.)

§ 106-957: Reserved for future codification purposes.

§ 106-958: Reserved for future codification purposes.

§ 106-959: Reserved for future codification purposes.

§ 106-960: Reserved for future codification purposes.

§ 106-961: Reserved for future codification purposes.

§ 106-962: Reserved for future codification purposes.

§ 106-963: Reserved for future codification purposes.

§ 106-964: Reserved for future codification purposes.

Article 80.

North Carolina Prescribed Burning Act.

§ 106-965. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

- (1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.
- (2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.
- (3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.
- (4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.
- (5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool. (1999-121, s. 1; 2011-145, s. 13.25(aa).)

§ 106-966. Definitions.

As used in this Article:

- (1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the North Carolina Forest Service of the Department of Agriculture and Consumer Services.
- (2) "Prescribed burning" means the planned and controlled application of fire to vegetative fuels under specified weather and environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.
- (3) "Prescription" means a written plan establishing the conditions and methods for conducting a prescribed burn prepared by a certified prescribed burner for

starting, controlling, and extinguishing a prescribed burning. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb); 2013-155, s. 15; 2023-63, s. 9(a).)

§ 106-967. Immunity from liability.

(a) Any prescribed burning conducted in compliance with G.S. 106-968 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with G.S. 106-968 shall not be liable in any civil action for any damage or injury caused by fire, including reignition of a smoldering, previously contained burn, or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from gross negligence.

(d) Notwithstanding subsections (a), (b) and (c), this section shall not apply to claims by public utilities resulting from damage to their equipment or facilities, where a prescribed burn proximately causes such damage.

(e) For purposes of this section, the term "public utility" means an electric power supplier, as defined in G.S. 62-133.8(a)(3), a gas operator, as defined in G.S. 62-50(g), or a business providing telecommunications service taxed under G.S. 105-164.4(a)(4c). (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb); 2023-63, s. 9(b).)

§ 106-968. Certified prescribed burning.

(a) Prior to conducting a prescribed burning, a certified prescribed burner shall prepare and provide to the landowner a prescription for the prescribed burning. The certified prescribed burner shall also file the prescription with the North Carolina Forest Service of the Department of Agriculture and Consumer Services. Both the landowner and the certified prescribed burner on site shall retain a copy of this prescription throughout the duration of the prescribed burning. The prescription shall include:

- (1) The landowner's name and address.
- (2) A description of the area to be burned.
- (3) A map of the area to be burned.
- (4) An estimate of tons of the fuel located on the area.
- (5) The objectives of the prescribed burning.
- (6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.
- (7) The name of the certified prescribed burner responsible for conducting the prescribed burning.
- (8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning, including firebreaks and sufficient personnel and firefighting equipment to contain the fire within the burn area. [The following applies:]
 - a. Fire spreading outside the authorized burn area on the day of the prescribed burn ignition shall not constitute conclusive proof of inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment.

- b. If the prescribed burn is contained within the authorized burn area during the authorized period, there shall be a rebuttable presumption that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present.
 - c. Continued smoldering of a prescribed burn resulting in a subsequent wildfire does not in itself constitute evidence of gross negligence under G.S. 106-967.
- (9) Provision for reasonable notice of the prescribed burning to be provided to homes and businesses located adjacent to the burn site to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning and be in compliance with this Article without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 78 of this Chapter from the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

- (1) The terms and conditions of the open-burning permit under Article 78 of this Chapter.
- (2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.
- (3) Any applicable local ordinances relating to open burning.
- (4) The smoke management guidelines adopted by the North Carolina Forest Service of the Department of Agriculture and Consumer Services.
- (5) Any rules adopted by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, to implement this Article.

(d) The North Carolina Forest Service may accept prescribed burner certification from another State or other entity for the purpose of prescribed burning under this Article. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb), (xx); 2013-155, s. 16; 2015-263, s. 26; 2023-63, s. 9(c).)

§ 106-969. Adoption of rules.

The North Carolina Forest Service of the Department of Agriculture and Consumer Services may adopt rules that govern prescribed burning under this Article. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb); 2013-155, s. 17.)

§ 106-970. Exemption.

This Article does not apply when the Commissioner of Agriculture has cancelled burning permits pursuant to G.S. 106-946 or prohibited all open burning pursuant to G.S. 106-944. (1999-121, s. 1; 2011-145, s. 13.25(aa), (bb).)

§ 106-971: Reserved for future codification purposes.

§ 106-972: Reserved for future codification purposes.

§ 106-973: Reserved for future codification purposes.

§ 106-974: Reserved for future codification purposes.

§ 106-975: Reserved for future codification purposes.

§ 106-976: Reserved for future codification purposes.

§ 106-977: Reserved for future codification purposes.

§ 106-978: Reserved for future codification purposes.

§ 106-979: Reserved for future codification purposes.

Article 81.

Corporations for Protection and Development of Forests.

§ 106-980. Private limited dividend corporations may be formed.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services, and "Commissioner" means the Commissioner of Agriculture.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Commissioner shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. (1933, c. 178, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 80; 1991 (Reg. Sess., 1992), c. 890, s. 4; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(cc), (dd); 2018-113, s. 5(a).)

§ 106-981. Manner of organizing.

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules and supervision of the Commissioner, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules from time to time imposed by the Commissioner. (1933, c. 178, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 81; 2011-145, s. 13.25(cc); 2018-113, s. 5(b).)

§ 106-982. Directors.

There shall not be less than three directors, one of whom shall always be a person designated by the Commissioner, which one need not be a stockholder. (1933, c. 178, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 82; 2011-145, s. 13.25(cc); 2018-113, s. 5(c).)

§ 106-983. Duties of supervision by Commissioner.

Corporations formed under this Article shall be regulated by the Commissioner in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The Commissioner shall:

- (1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.
- (2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules adopted by the Commissioner, or to refrain from doing any acts in violation thereof.
- (3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the Commissioner.
- (4) Require every such corporation to file with the Commissioner annual reports and, if the Commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the Commissioner may require. (1933, c. 178, s. 4; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 94; 1989, c. 727, s. 83; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(cc), (dd).)

§ 106-984. Powers of Commissioner.

The Commissioner may:

- (1) Examine at any time all books, contracts, records, documents and papers of any such corporation.
- (2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The Commissioner shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.
- (3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such

modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 95; 1989, c. 727, s. 84; 2011-145, s. 13.25(cc), (dd).)

§ 106-985. Provision for appeal by corporations to Governor.

If any corporation organized under this Article is dissatisfied with or aggrieved at any rule or order imposed upon it by the Commissioner, or any valuation or appraisal of any of its property made by the Commissioner, or any failure of or refusal by the Commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the Commissioner, who shall abide thereby and take such actions as the same may direct. (1933, c. 178, s. 6; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 85; 2011-145, s. 13.25(cc), (dd).)

§ 106-986. Limitations as to dividends.

The shares of stock of corporations organized under this Article shall have a par value and, except as provided in G.S. 106-988 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7; 2011-145, s. 13.25(cc), (dd).)

§ 106-987. Issuance of securities restricted.

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the Commissioner. (1933, c. 178, s. 8; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 86; 2011-145, s. 13.25(cc), (dd).)

§ 106-988. Limitation on bounties to stockholders.

Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in G.S. 106-986 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9; 2011-145, s. 13.25(cc), (dd).)

§ 106-989. Earnings above dividend requirements payable to State.

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in G.S. 106-986 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the Commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed

assets shall not be considered. (1933, c. 178, s. 10; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 87; 2011-145, s. 13.25(cc), (dd).)

§ 106-990. Dissolution of corporation.

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the Commissioner consenting to such dissolution. (1933, c. 178, s. 11; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 88; 2011-145, s. 13.25(cc), (dd).)

§ 106-991. Cutting and sale of timber.

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the rules, restrictions and limitations imposed by the Commissioner, who shall impose such rules, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 89; 2011-145, s. 13.25(cc), (dd).)

§ 106-992. Corporation may not sell or convey without consent of Commissioner, or pay higher interest rate than 6%.

No such corporation shall do any of the following:

- (1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the Commissioner of the terms of such sale, transfer or assignment, and unless the Commissioner shall consent thereto, and if the Commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the rules and supervision of the Commissioner for such period as the latter may require.
- (2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the Commissioner.
- (3) Mortgage any real property without first having obtained the consent of the Commissioner. (1933, c. 178, s. 13; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 90; 2011-145, s. 13.25(cc), (dd).)

§ 106-993. Power to borrow money limited.

Any such corporation formed under this Article may, subject to the approval of the Commissioner, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the Commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the rules of the Commissioner for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 91; 2011-145, s. 13.25(cc), (dd).)

§ 106-994. Commissioner to approve development of forests.

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the Commissioner, and such approval shall not be given unless:

- (1) The Commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the Commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to
 - a. Fire prevention and protection,
 - b. Protection against insects and tree diseases,
 - c. Protection against damage by livestock and game,
 - d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
 - e. Planting and spacing of trees.
- (2) There shall be submitted to the Commissioner a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the Commissioner as to where such funds are to be secured.
- (3) The Commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the Commissioner shall consider the same impracticable.
- (4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the Commissioner, and that it will at all times comply with such rules concerning the project as the Commissioner shall from time to time impose. (1933, c. 178, s. 15; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 92; 2011-145, s. 13.25(cc), (dd).)

§ 106-995. Application of corporate income.

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the Commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 93; 2011-145, s. 13.25(cc), (dd).)

§ 106-996. Reorganization of corporations.

Reorganization of corporations organized under this Article shall be subject to the supervision of the Commissioner and no such reorganization shall be had without the authorization of the Commissioner. (1933, c. 178, s. 17; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 94; 2011-145, s. 13.25(cc), (dd).)

§ 106-997: Reserved for future codification purposes.

§ 106-998: Reserved for future codification purposes.

§ 106-999: Reserved for future codification purposes.

§ 106-1000: Reserved for future codification purposes.

Article 82.

Forestry Services and Advice for Owners and Operators of Forestland.

§ 106-1001. Authority to render scientific forestry services.

(a) In this Article, unless the context requires otherwise:

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

(2) "Department" means the Department of Agriculture and Consumer Services.

(b) The Department is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the Commissioner's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the Commissioner deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department for the furtherance of these activities. (1947, c. 384, s. 1; 1969, c. 342, s. 3; c. 344; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1989, c. 727, s. 95; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(ee), (ff).)

§ 106-1002. Services under direction of Commissioner; compensation; when services without charge.

(a) The administration of the provisions of this Article shall be under the direction of the Commissioner. The Commissioner, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

(b) For such designating, measuring or estimating services the Commissioner may make a charge, on behalf of the Department, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the Commissioner of a statement of such charges, the landowner or operator or his agent shall make payment to the Commissioner within 30 days.

(c) In those cases where the Commissioner deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles. (1947, c. 384, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 96; 2011-145, s. 13.25(ee), (ff).)

§ 106-1003. Forestry Services and Advice Fund.

(a) The Forestry Services and Advice Fund is established as a special fund within the Department of Agriculture and Consumer Services, North Carolina Forest Service. All moneys paid to the Commissioner for services rendered under the provisions of this Article shall be deposited into the Fund. The Fund may also consist of any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund.

(b) The Department shall use the Fund to develop, improve, repair, maintain, operate, and otherwise invest in providing forestry services and advice to owners and operators of forestland as authorized by this Article. (1947, c. 384, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 97; 2011-145, s. 13.25(ee); 2018-113, s. 5(d); 2023-63, s. 12.)

§ 106-1004. Fees for forest management plans.

The Board of Agriculture shall establish a schedule of fees for the preparation of forest management plans developed pursuant to this Chapter. The fees established by the Board shall not exceed the amount necessary to offset the costs of the Department of Agriculture and Consumer Services to prepare forest management plans. (2014-100, s. 13.13(a); 2014-120, s. 58; 2016-113, s. 7(b).)

§ 106-1005: Reserved for future codification purposes.

§ 106-1006: Reserved for future codification purposes.

§ 106-1007: Reserved for future codification purposes.

§ 106-1008: Reserved for future codification purposes.

§ 106-1009: Reserved for future codification purposes.

Article 83.

Forest Development Act.

§ 106-1010. Title.

This Article shall be known as the "Forest Development Act." (1977, c. 562, s. 1; 2011-145, s. 13.25(gg).)

§ 106-1011. Statement of purpose.

(a) The General Assembly finds that:

- (1) It is in the public interest of the State to encourage the development of the State's forest resources and the protection and improvement of the forest environment.
 - (2) Unfavorable environmental impacts, particularly the rapid loss of forest land to urban development, are occurring as a result of population growth. It is in the State's interest that corrective action be developed now to offset forest land losses in the future.
 - (3) Regeneration of potentially productive forest land is a high-priority problem requiring prompt attention and action. Private forest land will become more important to meet the needs of the State's population.
 - (4) Growing demands on forests and related land resources cannot be met by intensive management of public and industrial forest lands alone.
- (b) The purpose of this Article is to direct the Commissioner of Agriculture to implement a forest development program to:
- (1) Provide financial assistance to eligible landowners to increase the productivity of the privately owned forests of the State through the application of forest renewal practices and other practices that improve tree growth and overall forest health.
 - (2) Insure that forest operations in the State are conducted in a manner designed to protect the soil, air, and water resources, including but not limited to streams, lakes and estuaries through actions of landowners on lands for which assistance is sought under provisions in this Article.
 - (3) Implement a program of voluntary landowner participation through the use of a forest development fund to meet the above goals.
- (c) It is the intent of the General Assembly that in implementing the program under this Article, the Commissioner will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms and individuals furnishing services and materials needed in the application of practices included in the forest development program. (1977, c. 562, s. 2; c. 771, s. 4; 1989, c. 727, s. 218(73); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a); 2005-126, s. 1; 2011-145, s. 13.25(gg), (hh).)

§ 106-1012. Definitions.

As used in this Article:

- (1) "Approved forest management plan" means the forest management plan submitted by the eligible landowner and approved by the Commissioner. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.
- (2) "Approved practices" mean those silvicultural practices approved by the Commissioner for the purpose of commercially growing timber through the establishment of forest stands, of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber, or of insuring maximum growth potential of forest stands to commercial production levels. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, cultivation of established young

growth of desirable trees for silvicultural purposes, and improvement of immature forest stands for silvicultural purposes. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

- (3) "Commissioner" means the Commissioner of Agriculture.
- (4) "Department" means the Department of Agriculture and Consumer Services.
- (5) "Eligible land" means land owned by an eligible landowner.
- (6) "Eligible landowner" means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.
- (7) "Forest development assessment" means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.
- (8) "Forest development cost-sharing payment" means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Commissioner shall determine, subject to the limitations of this Article.
- (9) "Forest development fund" means the Forest Development Fund created by G.S. 106-1018.
- (10) "Maintain" means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan. (1977, c. 562, s. 3; c. 771, s. 4; 1989, c. 727, s. 218(74); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-352, s. 1; 1997-443, s. 11A.119(a); 2005-126, s. 2; 2011-145, s. 13.25(gg), (hh); 2018-113, s. 5(e).)

§ 106-1013. Powers and duties.

(a) The Commissioner shall have the powers and duties to administer the provisions of this Article.

(b) The Department shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Forest Development Fund.

(c) Subject to the limitations set forth in G.S. 106-1018(d), the Commissioner is authorized to employ administrative, clerical and field personnel to support the program created by this Article and to compensate such employees from the Forest Development Fund for services rendered in direct support of the program.

(d) The Commissioner is authorized to purchase equipment for the implementation of this program from the Forest Development Fund subject to the limitations of G.S. 106-1018(e). All equipment purchased with these funds will be assigned to and used only for the forest development program, except for emergency use in forest fire suppression and other activities relating to the protection of life or property. The Forest Development Fund will be reimbursed from other program funds for equipment costs incurred during such emergency use. (1977, c. 562, s. 4; 2011-145, s. 13.25(gg), (hh).)

§ 106-1014. Administration of cost sharing.

The Commissioner shall have authority to administer the cost sharing provisions of this Article, including but not limited to the following:

- (1) Prescribe the manner and requirements of making application for cost sharing funds.
- (2) Identify those approved forestry practices as defined in G.S. 106-1012(2) which shall be approved for cost sharing under the provisions of this Article.
- (3) Review periodically the cost of forest development practices and establish allowable ranges for cost sharing purposes for approved practices under varying conditions throughout the State.
- (4) Determine, prior to approving forest development cost sharing payments to any landowner, that all proposed practices are appropriate and are comparable in cost to the prevailing cost of those practices in the general area in which the land is located. Should the Commissioner determine that the submitted cost of any practice is excessive, he shall approve forest development cost sharing payments based upon an allowable cost established under G.S. 106-1014(3).
- (5) Determine, prior to approving forest development cost sharing payments, that an approved forest management plan as defined in G.S. 106-1012(1) for the eligible land has been filed with the Commissioner and that the landowner has indicated in writing his intent to comply with the terms of such management plan.
- (6) Determine, prior to approving forest development cost sharing payments, that the approved practices for which payment is requested have been completed in a satisfactory manner, conform to the approved forest management plan submitted under G.S. 106-1014(5), and otherwise meet the requirements of this Article.
- (7) Disburse from the Forest Development Fund to eligible landowners cost sharing payments for satisfactory completion of practices provided for by this Article and the Commissioner shall, insofar as is practicable, disburse the funds from the State's appropriation on a matching basis with the funds generated by the Primary Forest Product Assessment. (1977, c. 562, s. 5; 2011-145, s. 13.25(gg), (hh).)

§ 106-1015. Cost-share agreements.

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) In the absence of Vis major or Act of God or other factors beyond the landowner's control, a landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

- (1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or
- (2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee. (1997-352, s. 2; 2011-145, s. 13.25(gg).)

§ 106-1016. Limitation of payments.

(a) An eligible landowner may receive forest development cost sharing payments for satisfactory completion of approved practices as determined by the Commissioner, except that the Commissioner shall approve no assistance in an amount exceeding the lesser of (i) a sum equal to sixty percent (60%) of the landowner's actual per acre cost incurred in implementing the approved practice or (ii) a sum equal to sixty percent (60%) of the prevailing per acre cost as determined by the Commissioner under G.S. 106-1014(3) for implementing that approved practice.

(b) The maximum amount of forest development cost sharing funds allowed to any landowner in one fiscal year will be the amount required to complete all approved practices on 100 acres of land at the prevailing cost sharing rate established under G.S. 106-1016(a).

(c) Eligible landowners may not use State cost sharing funds if funds from any federal cost sharing program are used on the same acreage for forestry practices during the same fiscal year. (1977, c. 562, s. 6; 2011-145, s. 13.25(gg), (hh).)

§ 106-1017. Participation by government political subdivisions.

No governmental agency, federal, State or local, will be eligible for forest development payments under the provision of this Article. (1977, c. 562, s. 7; 2011-145, s. 13.25(gg).)

§ 106-1018. Forest Development Fund.

(a) The Forest Development Fund is created in the Department as a special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

- (1) Assessments on primary forest products collected under Article 84 of this Chapter.
- (2) General Fund appropriations.
- (3) Gifts and grants made to the Fund.

(b), (c) Repealed by Session Laws 1997-352, s. 3.

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Assessment Act may be used for program support under G.S. 106-1013(c).

(e) Funds used for the purchase of equipment under G.S. 106-1013(d) shall be limited to appropriations from the General Fund to the Forest Development Fund designated specifically for equipment purchase. (1977, c. 562, s. 8; c. 771, s. 4; 1981, c. 1127, s. 45; 1989, c. 727, s. 218(75); 1997-352, s. 3; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(gg), (hh); 2019-177, s. 5.2(a).)

§ 106-1019: Reserved for future codification purposes.

§ 106-1020: Reserved for future codification purposes.

§ 106-1021: Reserved for future codification purposes.

§ 106-1022: Reserved for future codification purposes.

§ 106-1023: Reserved for future codification purposes.

§ 106-1024: Reserved for future codification purposes.

Article 84.

Primary Forest Product Assessment Act.

§ 106-1025. Short title.

This Article shall be known as the Primary Forest Product Assessment Act. (1977, c. 573, s. 1; 2011-145, s. 13.25(ii).)

§ 106-1026. Statement of purpose.

(a) The purpose of this Article is to create an assessment on primary forest products processed from North Carolina timber to provide a source of funds to finance the forestry operations provided for in Article 83 of this Chapter.

(b) All assessments levied under the provisions of this Article shall be used only for the purposes specified in G.S. 106-1029(c) and in Article 83 of this Chapter. (1977, c. 573, s. 2; 2011-145, s. 13.25(ii), (jj); 2019-177, s. 5.2(b).)

§ 106-1027. Definitions.

The following words, terms and phrases hereinafter used for the purpose of this Article are defined as follows:

- (1) "Primary forest product" shall include those products of the tree after it is severed from the stump and cut to its first roundwood product for further conversion. These products include but are not limited to whole trees for chipping, whole tree logs, sawlogs, pulpwood, veneer bolts, and posts, poles and piling.
- (2) "Processor" shall mean the individual, group, association, or corporation that procures primary forest products at their initial point of concentration for conversion to secondary products or for shipment to others for such conversion.
- (3) "Forest Development Fund" shall mean the special fund established by G.S. 106-1018.
- (4) For the purpose of this Article, the following are not considered "primary forest products":
 - a. Christmas trees and associated greens;

- b. Material harvested from an individual's own land and used on said land for the construction of fences, buildings or other personal use developments;
- c. Fuel wood harvested for personal use or use in individual homes. (1977, c. 573, s. 3; 2011-145, s. 13.25(ii), (jj).)

§ 106-1028. Operation of assessment system.

(a) The General Assembly hereby levies an assessment on all primary forest products harvested from lands within the State of North Carolina.

(b) This assessment shall be at the rates as established in G.S. 106-1030(b) and the proceeds of such assessment shall be deposited in the Forest Development Fund. (1977, c. 573, s. 4; 2009-451, s. 13.9; 2011-145, s. 13.25(ii), (jj).)

§ 106-1029. Duties.

(a) The Secretary, Department of Revenue, shall:

- (1) Develop the necessary administrative procedures to collect the assessment;
- (2) Collect the assessment from the primary forest product processors;
- (3) Deposit funds collected from the assessment in the Forest Development Fund;
- (4) Audit the records of processors to determine compliance with the provisions of this Article.

(b) The Commissioner of Agriculture shall:

- (1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;
- (2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;
- (3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources.
- (4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.
- (5) By January 15 of each odd-numbered year, report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered, and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year. (1977, c. 573, s. 5; c. 771, s. 4; 1983, c. 761, s. 120; 1985, c. 526; 1989, c. 727, s. 218(76); 1989 (Reg. Sess.,

1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a); 2006-203, s. 29; 2011-145, s. 13.25(ii), (jj); 2020-78, s. 5.1(h).)

§ 106-1030. Assessment rates.

- (a) The assessment rates shall be based on the following standards:
 - (1) For primary forest products customarily measured in board feet, the "International 1/4 Inch Log Rule" or equivalent will be used;
 - (2) For primary forest products customarily measured in cords, the standard cord of 128 cubic feet or equivalent will be used;
 - (3) For any other type of forest product separated from the soil, the Commissioner of Agriculture shall determine a fair unit assessment rate, based on the cubic foot volume of one thousand foot board measure, International 1/4 Inch Log Rule or one standard cord, 128 cubic feet.
- (b) The assessment levied on primary forest products shall be at the following rates:
 - (1) Fifty cents (50¢) per thousand board feet for softwood sawtimber, veneer logs and bolts, and all other softwood products normally measured in board feet;
 - (2) Forty cents (40¢) per thousand board feet for hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products normally measured in board feet;
 - (3) Twenty cents (20¢) per cord for softwood pulpwood and other softwood products normally measured in cords;
 - (4) Twelve cents (12¢) per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords;
 - (5) All material harvested within North Carolina for shipment outside the State for primary processing will be assessed at a percentage of the invoice value. This percentage will be established to yield rates equal to those if the material were processed within the State. (1977, c. 573, s. 6; c. 771, s. 4; 1989, c. 727, s. 218(77); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a); 2011-145, s. 13.25(ii), (jj).)

§ 106-1031. Collection of assessment.

- (a) The assessment shall be levied against the processor of the primary forest product.
- (b) The assessment shall be submitted on a quarterly basis of the State's fiscal year due and payable the last day of the month following the end of each quarter.
- (c) The assessment shall be remitted to the Secretary, Department of Revenue, by check or money order, with such production reports as may be required by said Secretary.
- (d) The processor shall maintain for a period of three fiscal years and make available to the Secretary, Department of Revenue, such production records necessary to verify proper reporting and payment of revenue due the Forest Development Fund.
- (e) The production reports of the various processors shall be used only for assessment purposes. Production information will not be made a part of the public record on an individual processor basis.
- (f) Any official or employee of the State who discloses information obtained from a production report, except as may be necessary for administration and collection of the assessment, or in the performance of official duties, or in administration or judicial proceedings related to the levy or collection of the assessment, shall be guilty of a Class 3 misdemeanor punishable only by a

fine not to exceed fifty dollars (\$50.00). (1977, c. 573, s. 7; 1987, c. 523; 1993, c. 539, s. 876; 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, s. 13.25(ii).)

§ 106-1032. Enforcement of collection.

The Secretary of Revenue shall enforce collection of the primary forest product assessment in accordance with the remedies and procedures contained in Article 9 of Chapter 105 of the General Statutes. (1977, c. 573, s. 8; 2011-145, s. 13.25(ii).)

§ 106-1033: Reserved for future codification purposes.

§ 106-1034: Reserved for future codification purposes.

§ 106-1035: Reserved for future codification purposes.

§ 106-1036: Reserved for future codification purposes.

§ 106-1037: Reserved for future codification purposes.

§ 106-1038: Reserved for future codification purposes.

§ 106-1039: Reserved for future codification purposes.

Article 85.

Agricultural Emergency Response Act.

§ 106-1040. Short title.

This Article shall be known as the "Agricultural Emergency Response Act." (2016-113, s. 2(a).)

§ 106-1041. Statement of purpose and authorization.

The North Carolina Department of Agriculture and Consumer Services is authorized to aid and assist agricultural operations and landowners in the preparedness for, response to, and recovery from agricultural emergencies. This authorization is given separate and apart from the authorities authorized by Chapter 166A of the General Statutes and shall not require declaration of a state of emergency pursuant to G.S. 166A-19.20 for its implementation. In the event of a state of emergency declaration and where this Article is inconsistent with the provisions of Chapter 166A of the General Statutes, the provisions of Chapter 166A of the General Statutes shall control as to the areas covered under the declaration. The Board of Agriculture may adopt rules necessary for the implementation and administration of this Article. (2016-113, s. 2(a); 2018-142, s. 12(c).)

§ 106-1042. Definitions.

For purposes of this Article, the following definitions apply:

- (1) "Agricultural emergency" means an emergency, as defined in G.S. 166A-19.3, that results in exposure of or damage to pre- or post-harvest of plants, livestock, feed, water resources, or infrastructure which adversely affects one or more

members of the agricultural community and the economic viability of the agriculture industry within the State.

- (2) "Agricultural Emergency Response Team" means employees of the North Carolina Department of Agriculture and Consumer Services who have been designated by the Commissioner to respond to agricultural emergencies, as authorized by G.S. 106-1043, and any personnel operating under agreement with the Department as a contracted service, including, but not limited to, private companies and units of local government.
- (3) "Commissioner" means the Commissioner of Agriculture.
- (4) "Department" means the North Carolina Department of Agriculture and Consumer Services. (2016-113, s. 2(a).)

§ 106-1043. Agricultural Emergency Response Teams authorized.

When the Commissioner determines, in consultation with the Governor, that there is an imminent threat of an agricultural emergency or that an agricultural emergency exists within the State that threatens to cause damage to or has caused damage to agricultural lands, facilities, and operations, the Commissioner is authorized to deploy Agricultural Emergency Response Teams to aid in prevention measures and recovery efforts on the premises of agricultural landowners throughout the State, wherever located. (2016-113, s. 2(a).)

§ 106-1044. Immunity and liability.

All functions authorized by this Article and all other activities relating to agricultural emergencies are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any Agricultural Emergency Response Team worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule, or regulation promulgated pursuant to the provisions of this Article, shall be liable for the death of or injury to persons or for damage to property as a result of any such activity. (2016-113, s. 2(a).)

§ 106-1045. No private liability.

Any person, firm, or corporation, together with any successors in interest, if any, owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of activities or functions relating to agricultural emergency response as provided for in this Article or elsewhere in the General Statutes shall not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss, or damage resulted from, through, or because of the use of the said real or personal property for any of the above purposes, provided that the use of said property is subject to the order or control of or pursuant to a request under the authority of this Article. (2016-113, s. 2(a).)

§ 106-1046. Funding for agricultural emergency response.

In order to fully execute the authorities prescribed in this Article, the North Carolina Department of Agriculture may, at the discretion of the Commissioner, use any funds available to the Department which have been allocated by the General Assembly from the General Fund of the State, use of which is not otherwise restricted by law. (2016-113, s. 2(a).)

§ 106-1047. Nondiscrimination in agricultural emergency response.

State and local governmental bodies and other organizations and personnel who carry out functions under the provisions of this Article shall do so in an equitable and impartial manner. Such State and local governmental bodies, organizations, and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age, or economic status in the relief and assistance activities. (2016-113, s. 2(a).)

§ 106-1048: Reserved for future codification purposes.

§ 106-1049: Reserved for future codification purposes.

§ 106-1050: Reserved for future codification purposes.

§ 106-1051: Reserved for future codification purposes.

§ 106-1052: Reserved for future codification purposes.

§ 106-1053: Reserved for future codification purposes.

§ 106-1054: Reserved for future codification purposes.

Article 86.

Farmed Cervid Industry Promotion Act.

§ 106-1055. Title.

This Article shall be known as the Farmed Cervid Industry Promotion Act. (2016-113, s. 11.)

§ 106-1056. Definitions.

As used in this Article:

- (1) "Association" means the North Carolina Deer and Elk Farmers Association.
- (2) "Cervid farmer" means a person who (i) is a North Carolina resident and (ii) holds at least one cervid in captivity subject to a captivity license issued by the Department.
- (3) "Department" means the Department of Agriculture and Consumer Services.
- (4) "Farmed cervid" means any member of the Cervidae family that is held in captivity and produced, bought, or sold for commercial purposes.
- (5) "Farmed cervid feed" means any commercial feed, as defined in G.S. 106-284.33, sold to a cervid farmer for farmed cervid use. (2016-113, s. 11; 2022-55, s. 5.)

§ 106-1057. Referendum.

(a) The Association may conduct a referendum among cervid farmers upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Association shall determine all of the following:

- (1) The amount of the proposed assessment, not to exceed four dollars (\$4.00) per ton of farmed cervid feed.
 - (2) The period for which the assessment shall be levied, not to exceed 10 years.
 - (3) The time and place of the referendum.
 - (4) Procedures for conducting the referendum and counting votes.
 - (5) Any other matters pertaining to the referendum.
- (c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.
- (d) All cervid farmers are eligible to vote in the referendum. The Association shall send press releases about the referendum to at least 10 daily and 10 weekly or biweekly newspapers having general circulation in a county in the State and to any trade journals deemed appropriate by the Association. Notice of the referendum also shall be posted in every place the Association identifies as selling farmed cervid feed. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Association. (2016-113, s. 11.)

§ 106-1058. Majority vote required; collection of assessment.

- (a) The assessment shall not be collected unless a majority of the votes cast in the referendum are in favor of the assessment. If a majority of the votes cast in the referendum are in favor of the assessment, the Department shall notify all farmed cervid feed manufacturers and distributors of the assessment. The assessment shall apply to all farmed cervid feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase farmed cervid feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.
- (b) The Association may bring an action to collect unpaid assessments against any feed manufacturer or distributor who fails to pay the assessment. (2016-113, s. 11.)

§ 106-1059. Use of funds; refunds.

- (a) The Department shall remit all funds collected under this Article to the Association at least quarterly. The Association shall use these funds to promote the interests of the farmed cervid industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.
- (b) Any person who purchases farmed cervid feed upon which the assessment has been paid shall have the right to receive a refund of the assessment by making a demand in writing to the Association within one year of purchase of the feed. This demand shall be accompanied by proof of purchase satisfactory to the Association. (2016-113, s. 11.)

§ 106-1060: Reserved for future codification purposes.

§ 106-1061: Reserved for future codification purposes.

§ 106-1062: Reserved for future codification purposes.

§ 106-1063: Reserved for future codification purposes.

§ 106-1064: Reserved for future codification purposes.

Article 87.

North Carolina Sweetpotato Act.

§ 106-1065. Title.

This Article shall be known and may be cited as the "North Carolina Sweetpotato Act of 2020. (2020-18, s. 6.)

§ 106-1066. Definitions.

As used in this Article:

- (1) "Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.
- (2) "Department" means the Department of Agriculture and Consumer Services.
- (3) "North Carolina Sweetpotato Quality and Branding Advisory Council" means the advisory council established pursuant to G.S. 106-1070.
- (4) "Person" means an individual, partnership, corporation, association, or any other legal entity. (2020-18, s. 6; 2020-80, s. 2.7(a).)

§ 106-1067. North Carolina sweetpotato brand.

Only sweetpotatoes that are grown in the State of North Carolina may be identified, classified, packaged, labeled, or otherwise designated for sale inside or outside the State as North Carolina sweetpotatoes. (2020-18, s. 6.)

§ 106-1068. Powers of Commissioner to regulate and promote North Carolina sweetpotatoes.

(a) The Commissioner of Agriculture may take all actions necessary and appropriate to create, register, license, promote, and protect a trademark for use on or in connection with the sale or promotion of North Carolina sweetpotatoes and products containing North Carolina sweetpotatoes. The Commissioner may impose and collect a reasonable royalty or license fee per hundredweight of sweetpotatoes for the use of such trademark on products containing North Carolina sweetpotatoes or the packaging containing such sweetpotato products. The Commissioner shall determine the fee in consultation with representatives of the sweetpotato industry and the Marketing Division of the Department of Agriculture and Consumer Services. The Commissioner shall remit all royalties and license fees received from this Article, less any costs associated with monitoring the use of the trademark, prohibiting the unlawful or unauthorized use of the trademark, and enforcing rights in the trademark, to the North Carolina SweetPotato Commission for the promotion of North Carolina sweetpotatoes.

(b) The Board of Agriculture may adopt rules that may include, but are not limited to, quality standards, grades, packing, handling, labeling, and marketing practices for the marketing of sweetpotatoes in this State, and such other rules as are necessary to administer this Article. The Board of Agriculture may also adopt rules establishing a registration, inspection, and verification program for the production and marketing of North Carolina sweetpotatoes in this State. All North Carolina sweetpotatoes sold shall conform to the prescribed standards and grades and shall be labeled accordingly.

(c) The Commissioner and the Commissioner's agents and employees may enter any premises or other property where sweetpotatoes are produced, stored, sold, offered for sale,

packaged for sale, transported, or delivered to inspect the sweetpotatoes for the purpose of enforcing the provisions of this Article and the rules adopted under this Article. (2020-18, s. 6.)

§ 106-1069. Standards for grades.

The most recent standards for grades adopted by the United States Department of Agriculture, Agricultural Marketing Service, United States Standards for Grades of Sweet Potatoes are adopted by reference and shall be the standards for grades in this State, except that the Commissioner may establish tolerances or allowable percentages of United States standards each season upon the recommendation of the North Carolina Sweetpotato Quality and Branding Advisory Council. (2020-18, s. 6; 2020-80, s. 2.7(b).)

§ 106-1070. North Carolina Sweetpotato Quality and Branding Advisory Council.

There is established within the Department of Agriculture and Consumer Services the North Carolina Sweetpotato Quality and Branding Advisory Council. The Commissioner of Agriculture shall serve as chair, and the members of the Advisory Council shall be appointed by the North Carolina SweetPotato Commission, to consist of individuals involved in growing, packing, or growing and packing North Carolina sweetpotatoes; at least one sweetpotato processor; at least one sweetpotato retailer; at least one county cooperative extension agent familiar with the production of North Carolina sweetpotatoes; the Executive Director of the North Carolina SweetPotato Commission, and any other person or persons selected by the North Carolina SweetPotato Commission, for the purpose of rendering advice upon the Commissioner's request regarding the exercise of the Commissioner's authority pursuant to G.S. 106-1068. Members shall also provide advice and recommendations to the Commissioner on plant pest regulatory issues affecting sweetpotatoes, over which the Commissioner has regulatory jurisdiction. The North Carolina Sweetpotato Quality and Branding Advisory Council shall meet at least quarterly or as needed upon the request of the Commissioner. Members of the North Carolina Sweetpotato Quality and Branding Advisory Council shall receive no compensation for their service. (2020-18, s. 6; 2020-80, s. 2.7(c).)