

# North Carolina E-Verify Law

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**GENERAL ASSEMBLY OF NORTH CAROLINA, SESSION 2011**

**SESSION LAW 2011-263, HOUSE BILL 36**

**AN ACT TO REQUIRE COUNTIES, CITIES, AND EMPLOYERS TO USE THE FEDERAL E-VERIFY PROGRAM TO VERIFY THE WORK AUTHORIZATION OF NEWLY HIRED EMPLOYEES.**

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 64 of the General Statutes is amended by adding a new Article to read:

“Article 1. Various Provisions Related to Aliens.”

**SECTION 2.** G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of Chapter 64 of the General Statutes, as created by Section 1 of this act.

**SECTION 3.** Chapter 64 of the General Statutes is amended by adding a new Article to read:

“Article 2. Verification of Work Authorization.”

**“S 64-25. Definitions.** The following definitions apply in this Article:

- (1) Commissioner.—The North Carolina Commissioner of Labor.
- (2) Employ.—Hire an employee.
- (3) Employee.—Any individual who provides services or labor for an employer in this State for wages or other remuneration.
- (4) Employer.—Any person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.
- (5) E-Verify.—The federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
- (6) Unauthorized alien.—As defined in 8 U.S.C. § 1324a(h)(3).

**“S 64-26. Verification of employee work authorization.**

- (a) Employers Must Use E-Verify.—Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify.
- (b) Employer Preservation of E-Verify Forms.—Each employer shall retain the record of the verification of work authorization required by this section while the employee is employed and for one year thereafter.
- (c) Exemption.—Subsection (a) of this section shall not apply with respect to a seasonal temporary employee who is employed for 90 or fewer days during a 12-consecutive-month period.

**"§ 64-27. Commissioner of Labor to prepare complaint form.**

- (a) Preparation of Form.—The Commissioner shall prescribe a complaint form for a person to allege a violation of G.S. 64-26. The form shall clearly state that completed forms may be sent to the Commissioner.
- (b) Certain Information Not Required.—The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint notarized.

**"§ 64-28. Reporting of complaints.**

- (a) Filing of Complaint.—Any person with a good faith belief that an employer is violating or has violated G.S. 64-26 may file a complaint with the Commissioner setting forth the basis for that belief. The complaint may be on a form prescribed by the Commissioner pursuant to G.S. 64-27 or may be made in any other form that gives the Commissioner information that is sufficient to proceed with an investigation pursuant to G.S. 64-29. Nothing in this section shall be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form.
- (b) False Statements a Misdemeanor.—A person who knowingly files a false and frivolous complaint under this section is guilty of a Class 2 misdemeanor.

**"§ 64-29. Investigation of complaints.**

- (a) Investigation.—Upon receipt of a complaint pursuant to G.S. 64-28 that an employer is allegedly violating or has allegedly violated G.S. 64-26, the Commissioner shall investigate whether the employer has in fact violated G.S. 64-26.
- (b) Certain Complaints Shall Not Be Investigated.—The Commissioner shall not investigate complaints that are based solely on race, religion, gender, ethnicity, or national origin.
- (c) Assistance by Law Enforcement.—The Commissioner may request that the State Bureau of Investigation assist in investigating a complaint under this section.
- (d) Subpoena for Production of Documents.—The Commissioner may issue a subpoena for production of employment records that relate to the recruitment, hiring, employment, or termination policies, practices, or acts of employment as part of the investigation of a valid complaint under this section.

**"§ 64-30. Actions to be taken; hearing.** If, after an investigation, the Commissioner determines that the complaint is not false and frivolous:

- (1) The Commissioner shall hold a hearing to determine if a violation of G.S. 64-26 has occurred and, if appropriate, impose civil penalties in accordance with the provisions of this Article.
- (2) If, during the course of the hearing required by subdivision (1) of this section, the Commissioner concludes that there is a reasonable likelihood that an employee is an unauthorized alien, the Commissioner shall notify the following entities of the possible presence of an unauthorized alien:
  - a. United States Immigration and Customs Enforcement.
  - b. Local law enforcement agencies.

**"§ 64-31. Consequences of first violation.**

- (a) Affidavit Must Be Filed.—For a first violation of G.S. 64-26, the Commissioner shall order the employer to file a signed sworn affidavit with the Commissioner within three business days after the order issued pursuant to this subsection is issued. The affidavit shall state with specificity that the employer has, after consultation with the employee, requested a verification of work authorization through E-Verify.
- (b) Effect of Failure to File Affidavit.—If an employer fails to timely file an affidavit required by subsection (a) of this section or by G.S. 64-32 or G.S. 64-33, the Commissioner shall order the employer to pay a civil penalty of ten thousand dollars (\$10,000).

**"§ 64-32. Consequences of second violation.** For a violation of G.S. 64-26 that occurs after an order has been issued pursuant to G.S. 64-31, the Commissioner shall order the measures required by G.S. 64-31(a) and shall also order the employer to pay a civil penalty of one thousand dollars (\$1,000), regardless of the number of required employee verifications the employer failed to make.

**"§ 64-33. Consequences of third or subsequent violation.** For a violation of G.S. 64-26 that occurs after an order has been issued pursuant to G.S. 64-32, the Commissioner shall order the measures required by G.S. 64-31(a), and shall also order the employer to pay a civil penalty of two thousand dollars (\$2,000) for each required employee verification the employer failed to make.

**"§ 64-34. Commissioner to maintain copies of orders.** The Commissioner shall maintain copies of orders issued pursuant to G.S. 64-31, 64-32, and 64-33, and shall maintain a database of the employers and business locations that have a violation of G.S. 64-26 and make the orders available on the Commissioner's Web site.

**"§ 64-35. Work authorization shall be verified through the federal government.** When investigating a complaint under this Article, the Commissioner shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C. § 1373(c). The Commissioner shall not attempt to independently make a final determination of whether an alien is authorized to work in the United States.

**"§ 64-36. Appeal of Commissioner's order.** A determination by the Commissioner pursuant to this Article shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the employer charged with the violation takes exception to the determination, in which event final determination shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B of the General Statutes and in a judicial proceeding pursuant to Article 4 of Chapter 150B of the General Statutes.

**"§ 64-37. Rules.** The Commissioner may adopt rules needed to implement this Article.

**"§ 64-38. Article does not require action that is contrary to federal or State law.** This Article shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or State law."

**SECTION 4.** Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

**"§ 153A-99.1. County verification of employee work authorization.**

- (a) Counties Must Use E-Verify.—Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.
- (b) E-Verify Defined.—As used in this section, the term 'E-Verify' means the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
- (c) Nondiscrimination.—This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin."

**SECTION 5.** Article 7 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-169.1. Municipality verification of employee work authorization.**

- (a) Municipalities Must Use E-Verify.—Each municipality shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.
- (b) E-Verify Defined.—As used in this section, the term 'E-Verify' means the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any

successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

(c) Nondiscrimination.—This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin."

**SECTION 6.** Sections 4, 5, and 6 of this act become effective October 1, 2011. The remainder of this act becomes effective in accordance with the following schedule:

- (1) October 1, 2012, for employers that employ 500 or more employees.
- (2) January 1, 2013, for employers that employ 100 or more but less than 500 employees.
- (3) July 1, 2013, for employers that employ 25 or more but less than 100 employees.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

Additionally: N.C.G.S. § 160A-20.1(b) prohibits municipalities from contracting with employers who have not complied with the State's E-Verify law. Under that law, employers are required to use the federal E-Verify program for all new hires if they have 25 or more employees who have terms of employment of nine months or more in a calendar year. As a corollary, employers who do not meet the law's 25 employee threshold are exempt from using E-Verify. Accordingly, for purposes of N.C.G.S. § 160A-20.1(b), these exempt employers are in compliance with the State's E-Verify statutes.

# Landscape Architect Law

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## CHAPTER 89A

### **§ 89A-1. Definitions.**

The following definitions apply in this Chapter:

- (1) **Board.**—The North Carolina Board of Landscape Architects.
- (2) **Landscape architect.**—A person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him or her to practice “landscape architecture” and to use the title “landscape architect” in North Carolina under the authority of this Chapter.
- (3) **Landscape architecture or the practice of landscape architecture.**—The performance of services in connection with the development of land areas where, and to the extent that the dominant purpose of the services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches or environment for structures or other improvements, natural drainage and the consideration and determination of inherent problems of the land relating to the erosion, wear and tear, blight or other hazards. This practice shall include the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements set forth in this subsection used in connection with the land for public and private use and enjoyment, embracing the following, all in accordance with the accepted professional standards of public health, safety and welfare:
  - a. The location and orientation of buildings and other similar site elements.
  - b. The location, routing and design of public and private streets, residential and commercial subdivision roads, or roads in and providing access to private or public developments. This does not include the preparation of construction plans for proposed roads classified as major thoroughfares or a higher classification.
  - c. The location, routing and design of private and public pathways and other travelways.
  - d. The preparation of planting plans.
  - e. The design of surface or incidental subsurface drainage systems, soil conservation and erosion control measures necessary to an overall landscape plan and site design. (1969, c. 672, s. 1; 1997-406, s. 1; 2001-496, s. 12.1(a).)

### **§ 89A-2. Practice of landscape architecture or use of title “landscape architect” without registration prohibited; use of seal.**

- (a) No person shall use the designation “landscape architect,” “landscape architecture,” or “landscape architectural,” or advertise any title or description tending to convey the impression that he or she is a landscape architect or shall engage in the practice of landscape architecture unless the person is registered as a landscape architect in the manner hereinafter provided and thereafter complies

with the provisions of this Chapter. Every holder of a certificate shall display it in a conspicuous place in his or her principal office, place of business or employment.

- (a1) No firm, partnership, or corporation shall engage in the practice of landscape architecture unless the firm, partnership, or corporation registered with the Board and has paid the fee required by G.S. 89A-6. All landscape architecture performed by a firm, partnership, or corporation shall be under the direct supervision of an individual who is registered under this Chapter.
- (b) Nothing in this Chapter shall be construed (i) to authorize a landscape architect to engage in the practice of architecture, engineering, or land surveying, (ii) to restrict from the practice of landscape architecture or otherwise affect the rights of any person licensed to practice architecture under Chapter 83A, or engineering or land surveying under Chapter 89C of the General Statutes if the person does not use the title landscape architect, landscape architecture, or landscape architectural, (iii) to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, (iv) to restrict the planting, maintaining, or marketing of plants or plant materials or the drafting of plans or specifications related to the location of plants on a site, (v) to require a certificate for the preparation, sale, or furnishing of plans, specifications and related data, or for the supervision of construction pursuant thereto, where the project involved is a single family residential site, or a residential, institutional, or commercial site of one acre or less, or the project involved is a site of more than one acre where only planting and mulching is required, or (vi) to prevent any individual from making plans or data for their own building site or for the supervision of construction pursuant thereto.
- (c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, number of certificate and the legend "N.C. Registered Landscape Architect." Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect instead of or as a substitute for the seal of an architect, engineer, or land surveyor. (1969, c. 672, s.2; 1989, c. 673, s. 3; 1997-406, s. 2.)

**§ 89A-3. North Carolina Board of Landscape Architects; appointments.**

- (a) There is created the North Carolina Board of Landscape Architects, consisting of seven members appointed by the Governor for four-year staggered terms. Five members of the Board shall have been engaged in the practice of landscape architecture in North Carolina at least five years at the time of their respective appointments. Two members of the Board shall not be landscape architects and shall represent the interest of the public at large. Each member shall hold office until the appointment and qualification of his or her successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No member shall serve more than two complete consecutive terms.

The Board shall be subject to the provisions of Chapter 93B of the General Statutes.
- (b) The Board shall elect annually from its members a chair and a vice-chair and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.
- (b1) The members of the Board shall not be compensated. However, members shall be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.
- (c),(d) Repealed by Session Laws 1997-406, s. 3. (1969, c. 672, s. 3; 1979, c. 872, s. 1; 1997-406, s. 3.)

**§ 89A-3.1. Board's powers and duties.**

The Board shall have the following powers and duties:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt rules to administer and enforce the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.
- (4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.
- (5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.
- (6) Establish and approve continuing education requirements for persons registered under this Chapter.
- (7) Receive and investigate complaints from members of the public.
- (8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.
- (9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.
- (10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.
- (11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.
- (12) Adopt and publish a code of professional conduct for all registrants.
- (13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board.
- (14) Retain private counsel subject to G.S. 114-2.3. (1997-406, s. 4; 1997-456, s. 27; 2002-168, s. 7.)

**§ 89A-4. Application, examination, certificate.**

- (a) Any person hereafter desiring to be registered and licensed to use the title "landscape architect" and to practice landscape architecture in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his or her qualifications as may be prescribed by rules of the Board. Minimum qualifications under such rules shall require that the applicant:
  - (1) Shall be at least 18 years of age.
  - (2) Shall be of good moral character.
  - (3) Shall be a graduate of a Landscape Architect's Accreditation Board (LAAB) accredited collegiate curriculum in landscape architecture as approved by the Board.
  - (4) Shall have at least four years' experience in landscape architecture.
- (a1) Notwithstanding the requirements of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of 10 years of education and experience in landscape architecture, in any combination deemed suitable by the Board, may make application to the Board for examination.
- (b) If the application is satisfactory to the Board, and is accompanied by the fees required by this Chapter, then the applicant shall be entitled to an examination to determine his or her

qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title "landscape architect" and to practice landscape architecture in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope of the examination. The Board may adopt rules for administering the examination in one or more parts at the same time or at different times.

- (c) The Board, within its discretion, may issue licenses without examination and licenses by reciprocity or comity to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state or country whose registration requirements are deemed to be equal or equivalent to those of this State.
- (d) Repealed by Session Laws 1997-406, s. 5.
- (e) The Board, within its discretion, may grant an honorific title license to persons who have held for a minimum of 20 years a license or certificate in landscape architecture issued by the Board or a legally constituted board of examiners in another state or country whose registration requirements are equal or equivalent to those of this State. The honorific title license shall allow the person to use the title "landscape architect emeritus," but the person shall not practice landscape architecture or provide expert testimony as a landscape architect in this State unless the person complies with the provisions of this Chapter. There shall be no fee charged for an honorific title license. (1969, c. 672, s. 4; 1971, c. 162; 1979, c. 872, ss. 2, 3; 1997-406, s. 5.)

#### **§ 89A-5. Annual renewal of certificate.**

Every registrant under this Chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required fee. Upon failure to renew, the certificate shall be automatically revoked. The certificate may be renewed at any time within one year after its expiration if the applicant pays the required renewal fee and late renewal penalty, and the Board finds that the applicant has not used his or her certificate or title or engaged in the practice of landscape architecture after notice of revocation and is otherwise eligible for registration under the provisions of this Chapter. When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of licensees as a condition of license renewal. (1969, c. 672, s. 5; 1979, c. 872, s. 4; 1997-406, s. 6.)

#### **§ 89A-6. Fees.**

Fees are to be determined by the Board, but shall not exceed the amounts specified herein, however; fees must reflect actual expenses of the Board.

Application.....	\$100.00
License by reciprocity or comity.....	\$250.00
Annual license renewal.....	\$100.00
Late renewal penalty.....	\$50.00
Reissue of certificate.....	\$25.00
Corporate certificate.....	\$250.00

In all instances where the Board uses the services of a testing service for preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services, in addition to its other fees. Fees shall be paid to the Board at the times specified by the Board. (1969, c. 672, s. 6; 1979, c. 872, s. 5; 1989, c. 673, s. 4; 1997-406, s. 7; 1999-315, s. 1.)

**§ 89A-7. Disciplinary actions.**

- (a) The Board may deny or refuse to renew a certificate of registration, suspend, or revoke a certificate of registration if the registrant or applicant:
  - (1) Obtains a certificate of registration by fraudulent misrepresentation.
  - (2) Uses or attempts to use another's certificate of registration to practice landscape architecture.
  - (3) Uses or attempts to use another's name for purposes of obtaining a certificate of registration or practicing landscape architecture.
  - (4) Has demonstrated gross malpractice or gross incompetency as determined by the Board.
  - (5) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice landscape architecture or that indicates the person has deceived or defrauded the public.
  - (6) Has been declared mentally incompetent by a court of competent jurisdiction.
  - (7) Has willfully violated any of the provisions of this Chapter or the Board's rules.
- (b) The Board may require a registrant to take a written or oral examination if the Board finds evidence that the person is not competent to practice landscape architecture as defined in this Chapter.
- (c) The Board may take any of the actions authorized in subsection (a) of this section against any firm, partnership, or corporation registered with the Board.
- (d) In addition to taking any of the actions authorized in subsection (a) of this section, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:
  - (1) The nature, gravity, and persistence of the particular violation.
  - (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
  - (3) Whether the violation was willful.
  - (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(1969, c. 672, s. 7; 1973, c. 1331, s. 3; 1987, c. 827, ss. 1, 71; 1997-406, s. 8.)

**§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**

- (a) It shall be a Class 2 misdemeanor for any person to use, or to hold himself or herself out as entitled to practice under the title of landscape architect or landscape architecture or to practice landscape architecture unless he or she is duly registered under the provisions of this Chapter.
- (b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this Chapter. (1969, c. 672, s. 8; 1973, c. 1331, s. 3; 1987, c. 827, s. 72; 1993, c. 539, s.610; 1994, Ex. Sess., c. 24, s. 14(c); 1997-406, s. 9.)

# Irrigation Contractor Law

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## CHAPTER 89G

### **§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

- (1) **Board.**—The North Carolina Irrigation Contractors' Licensing Board.
- (1a) **Business entity.**—A corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity that is not an individual or a foreign entity.
- (1b) **Foreign corporation.**—Defined in G.S. 55-1-40.
- (1c) **Foreign entity.**—A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (1d) **Foreign limited liability company.**—Defined in G.S. 57C-1-03.
- (1e) **Foreign partnership.**—One of the following that does not have a permanent place of business in this State:
  - a. A foreign limited partnership as defined in G.S. 59-102.
  - b. A general partnership formed under the laws of a jurisdiction other than this State.
- (2) **Irrigation construction or irrigation contracting.**—The act of providing services as an irrigation contractor for compensation or other consideration.
- (3) **Irrigation contractor.**—Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.
- (4) **Irrigation system.**—All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.
- (4a) **Nonresident individual.**—An individual who is not a resident of this State.
- (5) **Person.**—An individual, firm, partnership, association, corporation, or other legal entity. (2008-177, s. 1; 2013-383, s. 1.)

### **§ 89G-2. License required.**

Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or irrigation contracting, use the designation "irrigation contractor," or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor as provided by this Chapter. All irrigation construction or irrigation contracting performed by an individual, partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter. (2008-177, s. 1; 2013-383, s. 8.)

**§ 89G-3. Exemptions.**

The provisions of this Chapter shall not apply to:

- (1) Any federal or State agency or any political subdivision performing irrigation construction or irrigation contracting work on public property and using its own employees.
- (2) Any property owner who performs irrigation construction work on his or her own property.
- (3) A landscape architect registered under Chapter 89A of the General Statutes.
- (4) A professional engineer licensed under Chapter 89C of the General Statutes.
- (5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars (\$2,500).
- (6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.
- (7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.
- (8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.
- (9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.
- (10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- (11) A general contractor licensed under Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor.
- (12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.
- (13) Repealed by Session Laws 2013-383, s. 2, effective October 1, 2013.
- (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.
- (15) Any person performing irrigation construction or irrigation contracting work for a golf course.
- (16) Any full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103.
- (17) Any person who can document 10 years in business as an irrigation contractor as of January 1, 2009, can document competency in the practice of irrigation construction or irrigation contracting, as determined by the North Carolina Irrigation Contractors' Licensing Board, and meets all other requirements and qualifications for licensure may be issued an irrigation contractor's license under Chapter 89G of the General Statutes, without the requirement of examination, provided that the person submits an application for licensure to the Board prior to October 1, 2012.
- (18) Any unlicensed person or entity who enters into a subcontract with a North Carolina licensed irrigation contractor, where the irrigation work is performed entirely by the North Carolina licensed irrigation contractor in accordance with this Chapter. (2008-177, s. 1; 2012-194, s. 65.8(a); 2013-383, s. 2.)

**§ 89G-4. The North Carolina Irrigation Contractors' Licensing Board.**

(a) Composition and Terms.—The North Carolina Irrigation Contractors' Licensing Board is created. The Board shall consist of nine members who shall serve staggered terms. The initial Board shall be selected on or before October 1, 2008, as follows:

- (1) The Commissioner of Agriculture, upon the recommendation of the Carolinas Irrigation Association, shall appoint two irrigation contractors, one to serve a one-year term and one to serve a three-year term.
- (2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives and pursuant to recommendations from the North Carolina Green Industry Council, shall appoint two members, one who is a registered landscape contractor in good standing with the North Carolina Landscape Contractors Registration Board to serve a one-year term and one who is an irrigation contractor to serve a three-year term.
- (3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two irrigation contractors, one to serve a one-year term and one to serve a two-year term.
- (4) The President of The University of North Carolina System shall appoint one member from within the ranks of the land grant university community who is knowledgeable in irrigation methods and practices to serve a three-year term. The position is open to both current employees of The University of North Carolina System and persons who have earned emeritus status with The University of North Carolina System.
- (5) The Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects shall appoint one member who is a registered landscape architect to serve a two-year term.
- (6) The Governor shall appoint one public member to serve a two-year term.

Upon the expiration of the terms of the initial Board members, each member shall be appointed by the appointing authorities designated in subdivisions (1) through (6) of this subsection for a three-year term and shall serve until a successor is appointed and qualified. No member may serve more than two consecutive full terms.

(b) Qualifications.—Members of the Board shall be residents of this State. The irrigation contractor members shall meet the requirements for licensure under this Chapter and remain in good standing with the Board during their terms. The public member of the Board shall not be: (i) trained or experienced in irrigation construction or irrigation contracting; (ii) an agent or employee of a person engaged in the practice of irrigation construction or irrigation contracting; or (iii) the spouse of an individual who may not serve as a public member of the Board.

(c) Vacancies.—Any vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) Removal.—The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in the member's capacity as a licensed irrigation contractor shall be disqualified from participating in the official business of the Board until the charges have been resolved.

- (e) Officers and Meetings.—The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.
- (f) Compensation.—Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.
- (g) Assistance.—The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter. (2008-177, s. 1; 2013-383, s. 8.)

#### **§ 89G-5. Powers and duties.**

The Board shall have the following powers and duties:

- (1) To administer and enforce the provisions of this Chapter.
- (2) To adopt, amend, or repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To reprimand or otherwise discipline licensees under this Chapter.
- (6) To receive and investigate complaints from members of the public.
- (7) To conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.
- (8) To conduct administrative hearings in accordance with Chapter 150B of the General Statutes.
- (9) To seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.
- (10) To collect fees required by G.S. 89G-10 and other monies permitted by law to be paid to the Board.
- (11) To require licensees to file and maintain an adequate surety bond or letter of credit.
- (12) To establish and approve continuing educational requirements for persons licensed under this Chapter.
- (13) To employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.
- (14) To maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board actions.
- (15) To adopt and publish a code of professional conduct and practice for all persons licensed under this Chapter. The code shall establish minimum standards for water conservation in the practice of irrigation construction and contracting.
- (16) To publish a list of irrigation best management practices to be followed by licensed irrigation contractors.
- (17) To adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board. (2008-177, s. 1; 2013-383, s. 3.)

#### **§ 89G-6. Application; qualifications; examination; issuance.**

- (a) Upon application to the Board and the payment of the required fees, an applicant may be licensed under this Chapter as an irrigation contractor if the applicant submits evidence that demonstrates his or her qualifications as prescribed in rules adopted by the Board and meets all of the following qualifications:
  - (1) Is at least 18 years of age.

- (2) Is of good moral character as determined by the Board.
- (3) Has at least three years of experience in irrigation construction or irrigation contracting or the educational equivalent. Two years of educational training in irrigation construction or irrigation contracting shall be the equivalent of one year of experience.
- (4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars (\$10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor's faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed irrigation contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the application is satisfactory to the Board, the applicant shall be required to pass an examination administered by the Board. The Board shall establish the scope and subject matter of the examination, and an examination shall be held at least twice a year at a time and place to be determined by the Board. The examination, at a minimum, shall test the applicant's understanding of the following:

- (1) Efficiency of water use and conservation in the practice of irrigation construction and contracting.
- (2) Proper methods of irrigation construction.
- (3) Proper methods for irrigation installation.
- (4) Basic business skills.

(c) When the Board determines that an applicant has met all the requirements for licensure, the Board shall issue a license to the applicant. (2008-177, s. 1; 2013-383, s. 8.)

**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

(a) The Board may issue a license in the name of a business entity if the business entity pays the license fee required by G.S. 89G-10 and one of the following applies:

- (1) For a corporation, one or more officers or full-time employees empowered to act for the corporation are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.
- (2) For a limited liability company, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees empowered to act for the company are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.
- (3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.
- (4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2), and (3) of subsection (a) of this section.

- (c) The Board may issue a license in the name of a foreign entity if the following apply:
  - (1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (1) of subsection (a) of this section.
  - (2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes and complies with the requirements of subdivision (2) of subsection (a) of this section.
  - (3) For a foreign partnership, the partnership complies with the requirements of subdivision (3) of subsection (a) of this section.
- (d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section. The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.
- (e) A business entity or foreign entity licensed under this section shall provide written notice to the Board if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity. The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under this subsection. The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section. (2013-383, s. 4.)

#### **§ 89G-7. Use of seal; posting license.**

- (a) Upon licensure by the Board, each irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend "N.C. Licensed Irrigation Contractor." An irrigation contractor may use the seal only while the license is valid.
- (b) Every irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business. (2008-177, s. 1.)

#### **§ 89G-8. Reciprocity.**

The Board may issue a license, without examination, to any person who is an irrigation contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State. (2008-177, s. 1.)

#### **§ 89G-9. License renewal and continuing education.**

- (a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice irrigation contracting or irrigation construction shall apply for license renewal and shall submit the required fees. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of irrigation construction or irrigation contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require a licensee to demonstrate continued competence as a condition of license renewal.

- (b) As a condition of license renewal, an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year.
- (c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 89G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, to request a reinstatement of the license, or to pay the reinstatement fee within the time provided shall result in the revocation of the license. Upon revocation, an individual shall be required to submit a new application and retake the examination as provided in this Chapter. (2008-177, s. 1; 2013-383, ss. 5, 8.)

#### **§ 89G-10. Expenses and fees**

- (a) The Board may impose the following fees not to exceed the amounts listed below:
  - (1) Application fee \$100.00
  - (2) Examination fee \$200.00
  - (3) License renewal \$100.00
  - (3a) Business entity or foreign entity license fee and business entity or foreign entity license renewal fee \$100.00
  - (4) Late renewal fee \$50.00
  - (5) License by reciprocity \$250.00
  - (6) Corporate license \$100.00
  - (7) Duplicate license \$25.00
- (b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services.
- (c) The Board must annually review the fees set out in this section to determine whether these fees reflect the actual cost of administering this act and seek legislative changes to the fees if necessary. (2008-177, ss. 1, 5; 2013-383, s. 6.)

#### **§ 89G-11. Disciplinary action.**

- (a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:
  - (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
  - (2) Practices or attempts to practice irrigation construction or irrigation contracting by fraudulent misrepresentation.
  - (3) Commits an act of gross malpractice or incompetence as determined by the Board.
  - (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.
  - (5) Has been declared incompetent by a court of competent jurisdiction.

- (6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
- (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
- (8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter. (2008-177, s. 1; 2013-383, ss. 7, 8.)

**§ 89G-12. Civil penalties.**

- (a) In addition to taking any of the actions permitted under G.S. 89G-11, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- (b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:
  - (1) The nature, gravity, and persistence of the particular violation.
  - (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
  - (3) Whether the violation was willful and malicious.
  - (4) Any other factors that would tend to mitigate or aggravate the violation found to exist.
- (c) Schedule of Civil Penalties.—The Board shall establish a schedule of civil penalties for violations of this Chapter and rules adopted by the Board. (2008-177, s. 1.)

**§ 89G-13. Injunction to prevent violation; notification of complaints.**

- (a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of irrigation construction or irrigation contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules adopted by the Board.
- (b) A licensed irrigation contractor shall notify the Board by registered mail of any complaints filed against the contractor within 30 days from the date the complaint was filed. (2008-177, s. 1; 2013-383, s. 8.)

# **Irrigation Contractor Exemptions**

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The \$2500 exemption under NC General Statute 89G-3 (5) refers to all components that must be installed to make an irrigation system operable for the life of the system. It is for a single site, and includes all costs for the life of the irrigation system. This includes maintenance, repair and service. The Board realizes that the irrigation installer may not install all components, but total system cost includes everything required to make the system operational.

The total cost of a landscape irrigation system includes:

- a) all costs to make the irrigation system operational;
- b) all expenses for the life of the system (repairs, maintenance and service).
- c) the water meter where water is supplied by a municipality or community water supplier;
- d) a backflow assembly, with any electrical, sleeving and irrigation system components and installation costs, where required by local laws.
- e) if the water is supplied by a well that is constructed for irrigation, the total system cost including:
  - the well cost;
  - the backflow assembly, if required;
  - pump, electrical, sleeving and irrigation system components and installation.
- f) for a surface water supply, i.e. stream or pond constructed for irrigation, the total system cost includes:
  - pond construction costs;
  - pump(s);
  - electrical;
  - sleeving;
  - irrigation system components; and
  - installation;
- g) for roof runoff or storm water supplied irrigation, the total system cost includes:
  - the water collection and storage facility;
  - pump;
  - filter;
  - electrical components;
  - sleeving;
  - irrigation system components; and
  - installation.

And if the irrigation system was installed after January 1, 2009, even if you were not the installer, the cost of the irrigation system would be included in the \$2,500 limit.

# Payments to Subcontractors

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## CHAPTER 22C

### § 22C1. Definitions.

Unless the context otherwise requires in this Chapter:

- (1) "Contractor" means a person who contracts with an owner to improve real property.
- (2) "Improve" means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapters 83A, 89C or 89A of the General Statutes.
- (3) "Improvement" means all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.
- (4) An "owner" is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.
- (5) "Real property" means the real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.
- (6) "Subcontractor" means any person who has contracted to furnish labor or materials to, or has performed labor for, a contractor or another subcontractor in connection with a contract to improve real property. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

### § 22C2. Performance by subcontractor.

Performance by a subcontractor in accordance with the provisions of its contract shall entitle it to payment from the party with whom it contracts. Payment by the owner to a contractor is not a condition precedent for payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent for payment to any other subcontractor, and an agreement to the contrary is unenforceable. (1987 (Reg. Sess., 1988), c. 946; 1991, c. 620.)

### § 22C3. Time of payment to subcontractors after contractor or other subcontractor has been paid.

When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within seven days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or service provided under the subcontract. (1987 (Reg. Sess., 1988), c. 946.)

**§ 22C4. Conditions of payment.**

Nothing in this Chapter shall prevent the contractor, at the time of application and certification to the owner, from withholding such application and certification to the owner for payment to the subcontractor for: unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner. (1987 (Reg. Sess., 1988), c. 946.)

**§ 22C5. Late payments to bear interest.**

Should any periodic or final payment to a subcontractor be delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay his subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or a fraction thereof on such unpaid balance as may be due. (1987 (Reg. Sess., 1988), c. 946.)

**§ 22C6. Applicability of this Chapter.**

The provisions of this Chapter shall not be applicable to residential contractors as defined in G.S. 87 10(1a), or to improvements to real property intended for residential purposes which are exempted from the application of Chapter 83A of the General Statutes pursuant to G.S. 83A13(c)(1), or to improvements to real property intended for residential purposes which consist of 12 or fewer residential units. (1987 (Reg. Sess., 1988), c. 946.)

# Statutory Liens on Real Property

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## CHAPTER 44A, ARTICLE 2

Part 1. Liens of Mechanics, Laborers, and Materialmen Dealing with Owner.

### § 44A7. Definitions.

Unless the context otherwise requires in this Article:

- (1) "Improve" means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.
- (2) "Improvement" means all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.
- (3) An "owner" is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.
- (4) "Real property" means the real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon. (1969, c. 1112, s. 1; 1975, c. 715, s. 1; 1985, c. 689, s. 13; 1995 (Reg. Sess., 1996), c. 607, s. 1.)

### § 44A8. Mechanics', laborers', and materialmen's lien; persons entitled to claim of lien on real property.

Any person who performs or furnishes labor or professional design or surveying services or furnishes materials or furnishes rental equipment pursuant to a contract, either express or implied, with the owner of real property for the making of an improvement thereon shall, upon complying with the provisions of this Article, have a right to file a claim of lien on real property on the real property to secure payment of all debts owing for labor done or professional design or surveying services or material furnished or equipment rented pursuant to the contract. (1969, c. 1112, s. 1; 1975, c. 715, s. 2; 1995 (Reg. Sess., 1996), c. 607, s. 2; 2005229, s. 1.)

### § 44A9. Extent of claim of lien on real property.

A claim of lien on real property authorized under this Article shall extend to the improvement and to the lot or tract on which the improvement is situated, to the extent of the interest of the owner. When the lot or tract on which a building is erected is not surrounded at the time of making the contract with the owner by an enclosure separating it from adjoining land of the same owner, the lot or tract to which any claim of lien on real property extends shall be the area that is reasonably necessary for the convenient use and occupation of the building, but in no case shall the area include a building, structure, or improvement not normally used or occupied or intended to be used or occupied with the building with respect to which the claim of lien on real property is claimed. (1969, c. 1112, s. 1; 2005229, s. 1.)

**§ 44A10. Effective date of claim of lien on real property.**

A claim of lien on real property granted by this Article shall relate to and take effect from the time of the first furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. (1969, c. 1112, s. 1; 2005229, s. 1.)

**§ 44A11. Perfecting claim of lien on real property.**

A claim of lien on real property granted by this Article shall be perfected as of the time provided in G.S. 44A10 upon the filing of the claim of lien on real property under G.S. 44A12 and may be enforced pursuant to G.S. 44A13. (1969, c. 1112, s. 1; 2005229, s. 1.)

**§ 44A12. Filing claim of lien on real property.**

- (a) Place of Filing.—All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.
- (b) Time of Filing.—Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.
- (c) Contents of Claim of Lien on Real Property to Be Filed.—All claims of lien on real property must be filed using a form substantially as follows:

**CLAIM OF LIEN ON REAL PROPERTY**

- (1) Name and address of the person claiming the claim of lien on real property:
- (2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is filed:
- (3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
- (4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:
- (5) Date upon which labor or materials were first furnished upon said property by the claimant:
- (5a) Date upon which labor or materials were last furnished upon said property by the claimant:
- (6) General description of the labor performed or materials furnished and the amount claimed therefor:

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Lien Claimant

Filed this \_\_\_\_ day of \_\_\_\_,

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Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.

- (d) No Amendment of Claim of Lien on Real Property.—A claim of lien on real property may not be amended. A claim of lien on real property may be cancelled by a claimant or the claimant's authorized agent or attorney and a new claim of lien on real property substituted therefor within the time herein provided for original filing.
- (e) Notice of Assignment of Claim of Lien on Real Property.—When a claim of lien on real property has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note the assignment in the margin of the judgment docket containing the claim of lien on real property. Thereafter the assignee becomes the lien claimant of record.
- (f) Waiver of Right to File, Serve, or Claim Liens as Consideration for Contract Against Public Policy.—An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any contract, either expressed or implied, for the making of an improvement upon real property under this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article. (1969, c. 1112, s. 1; 1977, c. 369; 1983, c. 888; 1999456, s. 59; 2005229, s. 1.)

#### **§ 44A12.1. No docketing of lien unless authorized by statute.**

- (a) The clerk of superior court shall not index, docket, or record a claim of lien on real property or other document purporting to claim or assert a lien on real property in such a way as to affect the title to any real property unless the document:
  - (1) Is offered for filing under this Article or another statute that provides for indexing and docketing of claims of lien on real property; and
  - (2) Appears on its face to contain all of the information required by the statute under which it is offered for filing.
- (b) The clerk may accept, for filing only, any document that does not meet the criteria established for indexing, docketing, or recording under subsection (a) of this section. If the clerk does accept this document, the clerk shall inform the person offering the document that it will not be indexed, docketed, or recorded in any way as to affect the title to any real property.
- (c) Any person who causes or attempts to cause a claim of lien on real property or other document to be filed, knowing that the filing is not authorized by statute, or with the intent that the filing is made for an improper purpose such as to hinder, harass, or otherwise wrongfully interfere with any person, shall be guilty of a Class 1 misdemeanor.
- (d) A claim of lien on real property, a claim of lien on real property with a notice of claim of lien upon funds attached thereto, or other document purporting to claim or assert a lien on real property that is filed by an attorney licensed in the State of North Carolina and that otherwise complies with subsection (a) of this section shall not be rejected by the clerk of superior court for indexing, docketing, recording, or filing. (2001495, s. 1; 2005229, s. 1.)

#### **§ 44A13. Action to enforce claim of lien on real property.**

- (a) Where and When Action Commenced.—An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of the bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said real property. The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of

lien on real property is located within the time required by this section satisfies the requirement for the commencement of a civil action.

- (b) Judgment.—A judgment enforcing a lien under this Article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real property subject to the lien thereby enforced.
- (c) Notice of Action.—In order for the sale under G.S. 44A14(a) to pass all title and interest of the owner to the purchaser good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property, a notice of lis pendens shall be filed in each county in which the real property subject to the claim of lien on real property is located except the county in which the action is commenced. The notice of lis pendens shall be filed within the time provided in subsection (a) of this section for the commencement of the action by the lien claimant. If neither an action nor a notice of lis pendens is filed in accordance with this section, the judgment entered in the action enforcing the claim of lien on real property shall not direct a sale of the real property subject to the claim of lien on real property enforced thereby nor be entitled to any priority under the provisions of G.S. 44A14(a), but shall be entitled only to those priorities accorded by law to money judgments. (1969, c. 1112, s. 1; 1977, c. 883; 2005229, s. 1.)

**§ 44A14. Sale of property in satisfaction of judgment enforcing claim of lien on real property or upon order prior to judgment; distribution of proceeds.**

- (a) Execution Sale; Effect of Sale.—Except as provided in subsection (b) of this section, sales under this Article and distribution of proceeds thereof shall be made in accordance with the execution sale provisions set out in G.S. 1339.41 through 1339.76. The sale of real property to satisfy a claim of lien on real property granted by this Article shall pass all title and interest of the owner to the purchaser, good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming a lien.
- (b) Sale of Property upon Order Prior to Judgment.—A resident judge of superior court in the district in which the action to enforce the claim of lien on real property is pending, a judge regularly holding the superior courts of the said district, any judge holding a session of superior court, either civil or criminal, in the said district, a special judge of superior court residing in the said district, or the chief judge of the district court in which the action to enforce the claim of lien on real property is pending, may, upon notice to all interested parties and after a hearing thereupon and upon a finding that a sale prior to judgment is necessary to prevent substantial waste, destruction, depreciation or other damage to said real property prior to the final determination of said action, order any real property against which a claim of lien on real property under this Article is asserted, sold in any manner determined by said judge to be commercially reasonable. The rights of all parties shall be transferred to the proceeds of the sale. Application for such order and further proceedings thereon may be heard in or out of session. (1969, c. 1112, s. 1; 2005229, s. 1.)

**§ 44A15. Attachment available to lien claimant.**

In addition to other grounds for attachment, in all cases where the owner removes or attempts or threatens to remove an improvement from real property subject to a claim of lien on real property under this Article, without the written permission of the lien claimant or with the intent to deprive the lien claimant of his or her claim of lien on real property, the remedy of attachment of the property subject to the claim of lien on real property shall be available to the lien claimant or any other person. (1969, c. 1112, s. 1; 2005229, s. 1.)

**§ 44A16. Discharge of record claim of lien on real property.**

- (a) Any claim of lien on real property filed under this Article may be discharged by any of the following methods:

- (1) The lien claimant of record, the claimant's agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the claim of lien on real property indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such claim of lien on real property an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's agent or attorney, and witnessed by the clerk of superior court.
- (2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record which instrument states that the claim of lien on real property indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on real property by entry of satisfaction on the record of such claim of lien on real property.
- (3) By failure to enforce the claim of lien on real property within the time prescribed in this Article.
- (4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on real property has been dismissed or finally determined adversely to the claimant.
- (5) Whenever a sum equal to the amount of the claim or claims of lien on real property claimed is deposited with the clerk of court, to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property or claims of lien on real property of record.
- (6) Whenever a corporate surety bond, in a sum equal to one and onefourth times the amount of the claim or claims of lien on real property claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said claim or claims of lien on real property, is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property of record.

(b) The clerk may release funds held or a corporate surety bond upon receipt of one of the following:

- (1) Written agreement of the parties.
- (2) A final judgment of a court of competent jurisdiction.
- (3) A consent order. (1969, c. 1112, s. 1; 1971, c. 766; 2005229, s. 1; 2011411, s. 3.)

## Part 2. Liens of Mechanics, Laborers, and Materialmen Dealing with One Other Than Owner.

### **§ 44A17. Definitions.**

Unless the context otherwise requires in this Article:

- (1) "Contractor" means a person who contracts with an owner to improve real property.
- (2) "First tier subcontractor" means a person who contracts with a contractor to improve real property.
- (3) "Obligor" means an owner, contractor or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.
- (4) "Second tier subcontractor" means a person who contracts with a first tier subcontractor to improve real property.
- (5) "Third tier subcontractor" means a person who contracts with a second tier subcontractor to improve real property. (1971, c. 880, s. 1.)

**§ 44A18. Grant of lien upon funds; subrogation; perfection.**

Upon compliance with this Article:

- (1) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials.
- (2) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds that are owed to the first tier subcontractor with whom the second tier subcontractor dealt and that arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of the second tier subcontractor's lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the first tier subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this section and shall be entitled to perfect it by notice of claim of lien upon funds to the extent of the claim.
- (3) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds that are owed to the second tier subcontractor with whom the third tier subcontractor dealt and that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this subdivision, shall also be entitled to be subrogated to the lien upon funds of the second tier subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is entitled to be subrogated thereto, and in either case shall be entitled to perfect the same by notice of claim of lien upon funds to the extent of the claim.
- (4) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds that are owed to the person with whom they dealt and that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.
- (5) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of having furnished labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 245, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A20.
- (6) A lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in G.S. 44A19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A23. (1971, c. 880, s. 1; 1985, c. 702, s. 3; 1995 (Reg. Sess., 1996), c. 607, s. 3; 2005229, s. 1.)

**§ 44A19. Notice of claim of lien upon funds.**

- (a) Notice of a claim of lien upon funds shall set forth all of the following information:
  - (1) The name and address of the person claiming the lien upon funds.
  - (2) A general description of the real property improved.

- (3) The name and address of the person with whom the lien claimant contracted to improve real property.
- (4) The name and address of each person against or through whom subrogation rights are claimed.
- (5) A general description of the contract and the person against whose interest the lien upon funds is claimed.
- (6) The amount of the lien upon funds claimed by the lien claimant under the contract.

(b) All notices of claims of liens upon funds by first, second, or third tier subcontractors must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER SUBCONTRACTOR

To:

1. \_\_\_\_\_, owner of property involved.  
(Name and address)
2. \_\_\_\_\_, general contractor.  
(Name and address)
3. \_\_\_\_\_, first tier subcontractor against or through whom subrogation is claimed, if any.  
(Name and address)
4. \_\_\_\_\_, second tier subcontractor against or through whom subrogation is claimed, if any.  
(Name and address)

General description of real property where labor performed or material furnished:

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General description of undersigned lien claimant's contract including the names of the parties thereto:

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The amount of lien upon funds claimed pursuant to the above described contract:

\$ \_\_\_\_\_

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated \_\_\_\_\_

\_\_\_\_\_, Lien Claimant  
\_\_\_\_\_  
(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

## Statutory Liens on Real Property

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### NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:

\_\_\_\_\_, person holding funds against which lien upon funds is claimed.

(Name and Address)

General description of real property where labor performed or material furnished:

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General description of undersigned lien claimant's contract including the names of the parties thereto:

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The amount of lien upon funds claimed pursuant to the above described contract: \$ \_\_\_\_\_

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: \_\_\_\_\_

\_\_\_\_\_, Lien Claimant

\_\_\_\_\_  
(Address)

- (d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to G.S. 44A20(d) or G.S. 44A23.
- (e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:
  - (1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to G.S. 44A20(d) or G.S. 44A23.
  - (2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A20(e).
- (f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A12.1. (1971, c. 880, s. 1; 1985, c. 702, s. 1; 2005229, s. 1.)

#### **§ 44A20. Duties and liability of obligor.**

- (a) Upon receipt of the notice of claim of lien upon funds provided for in this Article, the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds under this Article up to the total amount of such liens upon funds as to which notices of claims of lien upon funds have been received.
- (b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons

entitled to liens upon funds up to the amount of such wrongful payments, not exceeding the total claims with respect to which the notice of claim of lien upon funds was received prior to payment.

- (c) If an obligor makes a payment after receipt of notice of claim of lien on funds and incurs personal liability under subsection (b) of this section, the obligor shall be entitled to reimbursement and indemnification from the party receiving such payment.
- (d) If the obligor is an owner of the property being improved, the lien claimant shall be entitled to a claim of lien upon real property upon the interest of the obligor in the real property to the extent of the owner's personal liability under subsection (b) of this section, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A7 through G.S. 44A16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A10 upon the filing of the claim of lien on real property pursuant to G.S. 44A12. The claim of lien on real property shall be in the form set out in G.S. 44A12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to G.S. 44A19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the obligor is personally liable for the debt under subsection (b) of this section.
- (e) A notice of claim of lien upon funds under G.S. 44A19 may be filed by the obligor with the clerk of superior court in each county where the real property upon which the filed notice of claim of lien upon funds is located for the purpose of discharging the notice of claim of lien upon funds by any of the methods described in G.S. 44A16.
- (f) A bond deposited under this section to discharge a filed notice of claim of lien upon funds shall be effective to discharge any claim of lien on real property filed by the same lien claimant pursuant to subsection (d) of this section or G.S. 44A23 and shall further be effective to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of this section or G.S. 44A23 claiming through or against the contractor or higher tier subcontractors up to the amount of the bond. (1971, c. 880, s. 1; 1985, c. 702, s. 2; 2005229, s. 1.)

#### **§ 44A21. Pro rata payments.**

- (a) Where the obligor is a contractor or subcontractor and the funds in the hands of the obligor and the obligor's personal liability, if any, under G.S. 44A20 are less than the amount of valid liens upon funds that have been received by the obligor under this Article, the parties entitled to liens upon funds shall share the funds on a pro rata basis.
- (b) Where the obligor is an owner and the funds in the hands of the obligor and the obligor's personal liability, if any, under G.S. 44A20 are less than the sum of the amount of valid claims of liens upon funds that have been received by the obligor under this Article and the amount of the valid claims of liens on real property upon the owner's property filed by the subcontractors with the clerk of superior court under G.S. 44A23, the parties entitled to liens upon funds and the parties entitled to subrogation claims of liens on real property upon the owner's property shall share the funds on a pro rata basis. (1971, c. 880, s. 1; 1998217, s. 4(d); 2005229, s. 1.)

#### **§ 44A22. Priority of liens upon funds.**

Liens upon funds perfected under this Article have priority over all other interests or claims theretofore or thereafter created or suffered in the funds by the person against whose interest the lien upon funds is asserted, including, but not limited to, liens arising from garnishment, attachment, levy, judgment, assignments, security interests, and any other type of transfer, whether voluntary or involuntary. Any person who receives payment from an obligor in bad faith with knowledge of a lien upon funds shall take such payment subject to the lien upon funds. (1971, c. 880, s. 1; 2005229, s. 1.)

**§ 44A23. Contractor's claim of lien on real property; perfection of subrogation rights of subcontractor.**

(a) First tier subcontractor.—A first tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of this claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A7 through 44A16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A10 upon filing of the claim of lien on real property pursuant to G.S. 44A12. Upon the filing of the claim of lien on real property, with the notice of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

(b) Second or third subcontractor.—

(1) A second or third tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

- a. The contractor, within 30 days following the date the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form by the same means of service as described in G.S. 44A19(d); or
- b. After the posting and filing of a signed notice of contract and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the clerk of superior court shall be the same as charged for filing a claim of lien on real property:

**NOTICE OF CONTRACT**

- (1) Name and address of the Contractor:
- (2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:
- (3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):
- (4) Name and address of the person, firm or corporation filing this Notice of Contract:

Dated: \_\_\_\_\_

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\_\_\_\_\_  
Contractor

Filed this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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\_\_\_\_\_  
Clerk of Superior Court

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

NOTICE OF SUBCONTRACT

(1) Name and address of the subcontractor:

(2) General description of the real property where the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

(3)

(i) General description of the subcontractor's contract, including the names of the parties thereto:

(ii) General description of the labor and material performed and furnished thereunder:

(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

Dated: \_\_\_\_\_

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\_\_\_\_\_  
Subcontractor

(4) The manner of such enforcement shall be as provided by G.S. 44A7 through G.S. 44A16. The lien is perfected as of the time set forth in G.S. 44A10 upon the filing of a claim of lien on real property pursuant to G.S. 44A12. Upon the filing of the claim of lien on real property, with the notice of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent. (1971, c. 880, s. 1; 1985, c. 702, s. 4; 1991 (Reg. Sess., 1992), c. 1010, s. 1; 1993, c. 553, s. 13; 1997456, s. 27; 1999456, s. 59; 2005229, s. 1.)

Part 3. Criminal Sanctions for Furnishing a False Statement in Connection with Improvement to Real Property.

**§ 44A24. False statement a misdemeanor.**

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 misdemeanor. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or purchaser, and in any prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby. (1971, c. 880, s. 11; 1973, c. 991; 1993, c. 539, s. 406; 1994, Ex. Sess., c. 24, s. 14(c).)

# Pesticide Application Law

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## Article 52. Pesticide Board.

### Part 1. Pesticide Control Program: Organization and Functions.

**§ 143-434. Short title.** This Article may be cited as the North Carolina Pesticide Law of 1971. (1971, c. 832, s. 1.)

**§ 143-435. Preamble.**

(a) The Legislative Research Commission was directed by House Resolution 1392 of the 1969 General Assembly "to study agricultural and other pesticides," and to report its findings and recommendations to the 1971 General Assembly. Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning pesticides. In this report the Legislative Research Commission made the following findings concerning the use and effects of pesticides and the need for legislation concerning control of pesticide use, of which the General Assembly hereby takes cognizance:

- (1) The use of chemical pesticides has developed since the 1940's into a major, new billion-dollar industry. Pesticides have bettered the lot of mankind in many ways and especially have assisted the farmer by their contribution to a stable and inexpensive supply of high quality food, fiber and forest products. The control of insects, fungi and other pests is essential to the public health and welfare and specifically to the prevention of disease, to the production and preservation of food, fiber, and forests and to the protection of other aspects of modern civilization.
- (2) The use of pesticides for these important purposes is currently a matter of serious public concern and their use in some instances presents risks to man and the environment which must be weighed against the benefits of those uses in the overall public interest. Evidence is accumulating that extensive use of persistent pesticides poses hazards to health and the environment. Environmental problems resulting from the use, overuse and misapplication of some chemicals, and the disposal of unused chemicals and containers, have grown to the point where contamination of the environment is approaching significant proportions. There is concern among scientists and public health personnel about the long-term chronic effects of pesticide pollution on human health. Contamination by DDT has been shown to be global in extent. Moreover, recent experience in North Carolina and elsewhere has shown that the more toxic but less persistent pesticides cannot safely be substituted for the persistent "hard" pesticides without stringent safeguards.
- (3) More extensive observation, study and monitoring of the effectiveness and the use of pesticides and of undesirable side effects on man and on the environment and of their relative importance for the overall public health and welfare are desirable in the public interest.
- (4) Continued and strengthened control of the quality of pesticides and the control of labeling claims, direction for use and warnings are necessary for the protection of the purchasing public, including the household consumer, the farmer and other users.
- (5) No existing legislation in North Carolina effectively limits or controls the use of pesticides. Misuse and misapplication of pesticides, while effectively controlled by law with respect to structural pest control operators, is not adequately controlled with respect to some other major groups of pesticide applicators. Careless disposal of unused pesticides and contaminated containers

is not controlled by law, and no North Carolina legislation requires that pesticide dealers, who are the principal source of advice for many pesticide users, be qualified to give advice or be held responsible for their advice. These gaps in legal control of pesticides are important and should be remedied.

(b) The purpose of this Article is to regulate in the public interest the use, application, sale, disposal and registration of insecticides, fungicides, herbicides, defoliants, desiccants, plant growth regulators, nematicides, rodenticides, and any other pesticides designated by the North Carolina Pesticide Board. New pesticides are continually being discovered or synthesized which are valuable for the control of insects, fungi, weeds, nematodes, rodents, and for use as defoliants, desiccants, plant regulators and related purposes. However, such pesticides may be ineffective or may seriously injure health, property, or wildlife if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of poisons in the tissues. Crops or other plants may also be injured by their improper use. The drifting or washing of pesticides into streams or lakes can cause appreciable danger to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. In furtherance of the findings and recommendations of the Legislative Research Commission, it is hereby declared to be the policy of the State of North Carolina that for the protection of the health, safety, and welfare of the people of this State, and for the promotion of a more secure, healthy and safe environment for all the people of the State, the future sale, use and application of pesticides shall be regulated, supervised and controlled by the State in the manner herein provided. (1971, c. 832, s. 1.)

#### **§ 143-436. North Carolina Pesticide Board; creation and organization.**

(a) There is hereby established the North Carolina Pesticide Board which, together with the Commissioner of Agriculture, shall be responsible for carrying out the provisions of this Article.

(b) The Pesticide Board shall consist of seven members, to be appointed by the Governor, as follows:

- (1) One member each representing the North Carolina Department of Agriculture and Consumer Services, the State Health Director or his designee, and one member from an environmental protection agency in the Department of Environment and Natural Resources. The persons so selected may be either members of a policy board or departmental officials or employees.
- (2) A representative of the agricultural chemical industry.
- (3) A person directly engaged in agricultural production.
- (4) Two at-large members, from fields of endeavor other than those enumerated in subdivisions (2) and (3) of this subsection, one of whom shall be a nongovernmental conservationist.

(c) The members of the Pesticide Board shall serve staggered four-year terms. Of the persons originally appointed, the members representing State agencies shall serve two-year terms, and the four at-large members shall serve four-year terms. 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 by appointment by the Governor for the remainder of the unexpired term. The Governor may at any time remove any member from the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the same credentials as his predecessor.

(d) The Board shall select its chair from its own membership, to serve for a term of two years. The chair shall have a full vote. Any vacancy occurring in the chair's position shall be filled by the Board for the remainder of the term. The Board may select such other officers as it deems necessary.

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

(f) The members of the Board who are not officers or employees of the State shall receive for their services the per diem and compensation prescribed in G.S. 1385. (1971, c. 832, s. 1; 1973, c. 476, s. 128; 1989, c. 727, s. 170; 1997-261, s. 90; 1997-443, s. 11A.97.)

**§ 143-437. Pesticide Board; functions.**

The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

- (1) To adopt rules and regulations and make policies for the programs set forth in this Article.
- (2) To carry out a program of planning, environmental and biological monitoring, and of investigation into long-range needs and problems concerning pesticides. In order to encourage the cooperation of private property owners needed to implement the provisions of this subdivision, the Board may enter into agreements with private property owners to conduct sampling, testing, monitoring, and related activities on their property. Information obtained pursuant to these agreements shall not be disclosed in a manner that would permit the identification of an individual property owner unless the property owner has given permission to disclose the information.
- (3) To collect, analyze and disseminate information necessary for the effective operation of the programs set forth in this Article.
- (4) To provide professional advice to public and private agencies and citizens of the State on matters relating to pesticides, in cooperation with other State agencies, with professional groups, and with North Carolina State University and other educational institutions.
- (5) To accept gifts and devises, and with the approval of the Governor to apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association or individual, and may comply with the terms, conditions and limitations of the grant, in order to accomplish any of the purposes of the Board, such grant funds to be expended pursuant to the Executive Budget Act.
- (6) To inform and advise the Governor on matters involving pesticides, and to prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the management and control of pesticides in North Carolina.
- (7) To make annual reports to the Governor and to make such other investigations and reports as may be requested by the Governor or the General Assembly.
- (8) To exempt any federal or State agency from any provision of this Article if it is determined by the Board that emergency conditions exist which require exemption. (1971, c. 832, s. 1; 1977, c. 199; 1979, c. 448, s. 14; 1995, c. 445, s. 1; 2011-284, s. 94.)

**§ 143-438. 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 attend all meetings of the Pesticide Board, but without power to vote (unless he be designated as the ex officio member of the Board from the Department of Agriculture and Consumer Services).
- (3) To keep an accurate and complete record of all Board meetings and hearings, and to have legal custody of all books, papers, documents and other records of the Board.
- (4) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more of the divisions and other units within the Department of Agriculture and Consumer Services.
- (5) To direct the work of the personnel employed by the Board and of the personnel of the Department of Agriculture and Consumer Services who have responsibilities concerning the programs set forth in this Article.

- (6) To delegate to any division head or 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 the rules, regulations and procedures established pursuant to this Article.
- (7) To perform such other duties as the Board may from time to time direct. (1971, c. 832, s. 1; 1997-261, s. 91.)

**§ 143-439. Pesticide Advisory Committee; creation and functions.**

- (a) There is hereby authorized the establishment of the Pesticide Advisory Committee, which shall assist the Board and the Commissioner in an advisory capacity on matters which may be submitted to it by the Board or the Commissioner, including technical questions and the development of rules and regulations.
- (b) The Pesticide Advisory Committee shall consist of: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife or biology; one member representing the North Carolina Department of Agriculture and Consumer Services; one member representing the Department of Environment and Natural Resources; the State Health Director or his designee; one representative of a public utility or railroad company which uses pesticides; one representative of the Board of Transportation; one member of the North Carolina Agricultural Aviation Association; one member of the general public (at large); one member actively engaged in forest pest management; and one member representing the Division of Waste Management of the Department of Environment and Natural Resources. Each State agency represented [representative] on the Committee shall be appointed by the head of the agency. Other members of the Committee shall be appointed by the Board.
- (c) Members of the Pesticide Advisory Committee shall serve at the pleasure of the Board. The members who are not officers or employees of the State shall receive regular State subsistence and travel expenses. (1971, c. 832, s. 1; 1973, c. 476, s. 128; c. 507, s. 5; 1975, c. 824; 1987, c. 559, s. 1; 1989, c. 727, s. 171; 1989 (Reg. Sess., 1990), c. 1004, s. 14; 1995 (Reg. Sess., 1996), c. 743, s. 19; 1997-261, s. 109; 1997-443, s. 11A.119(a).)

Part 2. Regulation of the Use of Pesticides.

**§ 143-440. Restricted use pesticides regulated.**

- (a) The Board may, by regulation after a public hearing, adopt and from time to time revise a list of restricted use pesticides for the State or for designated areas within the State. The Board may designate any pesticide or device as a "restricted use pesticide" upon the grounds that, in the judgment of the Board (either because of its persistence, its toxicity, or otherwise) it is so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate that additional restriction on its sale, purpose, use or possession are required.
- (b) The Board may include in any such restricted use regulation the time and conditions of sale, distribution, or use of such restricted use pesticides, may prohibit the use of any restricted use pesticide for designated purposes or at designated times; may require the purchaser or user to certify that restricted use pesticides will be used only as labeled or as further restricted by regulation; may require the certification and recertification of private applicators, and charge a fee of up to ten dollars (\$10.00), with the fee set at a level to make the certification/recertification program self-supporting, and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; may adopt rules to classify private applicators; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The

Board may require all persons issued such permits to maintain records as to the use of the restricted use pesticides. The Board may authorize the use of restricted use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. A nonrefundable fee of ten dollars (\$10.00) shall be charged for each examination required by this section. This examination fee is in addition to the certification or recertification fee, and any other fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) A fee of fifty dollars (\$50.00) shall be charged for examination of individuals seeking to be designated as Worker Protection Designated Trainers, in accordance with provisions of the Federal Worker Protection Standard set forth in 40 C.F.R. Part 170, and subsequent amendments to those regulations. (1971, c. 832, s. 1; 1979, c. 448, s. 1; 1981, c. 592, s. 1; 1987, c. 559, s. 2; c. 846; 2010-31, s. 11.1(a); 2014-100, s. 13.10(a); 2014-103, s. 16.)

**§ 143-441. Handling, storage and disposal of pesticides.**

(a) The Board may adopt regulations:

- (1) Concerning the handling, transport, storage (which may include security precautions), display or distribution of pesticides, and concerning the disposal of pesticides and pesticide containers.
- (2) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, or misuse.

(b) No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticides, or in any manner contrary to the regulations of the Board.

(c) No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board. (1971, c. 832, s. 1.)

**§ 143-442. Registration.**

(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations. The applicant for registration shall file with the Board a statement that includes all of the following:

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.
- (2) The name of the pesticide.
- (3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use.
- (4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are based.
- (5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last registered.
- (6) Repealed by Session Laws 2011-239, s. 1, effective June 23, 2011, and applicable to applications for registration or renewals of registration filed on or after that date.
- (7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant.

- (b) The applicant shall pay an annual registration fee of one hundred fifty dollars (\$150.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars (\$50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars (\$5,000.00) and twenty-five dollars (\$25.00) if gross sales were less than five thousand dollars (\$5,000.00). An additional two hundred dollars (\$200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multiyear registration, the annual fee and additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency.
- (c) The Board, when it deems necessary in the administration of this Article, may require the submission of the complete formula of any pesticide.
- (d) If the pesticide is properly registered with the United States Environmental Protection Agency and is in compliance with the requirements of G.S. 143-443, the Board shall register the pesticide. Provided, however, that if it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Part, it shall not register the article and in turn shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fail to comply. The Board may suspend or cancel the registration of a pesticide when the pesticide or its labeling does not comply with this Part.
- (e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder. The Board may require the manufacturer or distributor of any pesticide, for which registration has been refused, cancelled, suspended or voluntarily discontinued or which has been found adulterated or deficient in its active ingredient, to remove such pesticide from the marketplace.
- (f) Notwithstanding any other provisions of this Part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State operated by the same person.
- (g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale. Provided, however, this subsection shall not apply to any brand or grade of pesticide which the Board determines does not remain in channels of distribution due to method of sale by registrant directly to users thereof.
- (h) A pesticide may be registered by the Board for experimental use, including use to control wild animal or bird populations, even though the Wildlife Resources Commission may not have concurred in the declaration of the animal or bird populations as pests under the terms of Article 22A of Chapter 113 of the General Statutes.
- (i) The Board shall be empowered to set forth criteria for determining when a given product constitutes a different or separate brand or grade of pesticide.
- (j) Each manufacturer, distributor or registrant of a pesticide shall supervise the activities of any employee or agent to prevent the making of deceptive or misleading statements about the pesticide. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2; 1979, c. 448, ss. 2, 3; c. 830, s. 10; 1981, c. 592, s. 2; 1987, c. 559,

ss. 37; c. 827, s. 39; 1989, c. 544, s. 13; 1993, c. 481, ss. 1.1, 2; 1995, c. 445, s. 2; 2003-284, s. 35.4(e); 2009-451, s. 11.2; 2011-239, s. 1.)

**§ 143-443. Miscellaneous prohibited acts.**

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

- (1) Any pesticide which has not been registered pursuant to the provisions of G.S. 143-442, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: Except that, in the discretion of the Board, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.
- (2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:
  - a. The name and address of the manufacturer, registrant, or person for whom manufactured;
  - b. The name, brand, or trademark under which said article is sold; and
  - c. The net weight or measure of the content subject, however, to such reasonable variations as the Board may permit.
- (3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in G.S. 143-444, unless the label shall bear, in addition to any other matter required by this Part:
  - a. The skull and crossbones;
  - b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and
  - c. A statement of an antidote for the pesticide.
- (4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Part, or any other white or lightly colored pesticide which the Board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored, provided, that the Board may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the Board determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.
- (5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).
- (6) Any pesticide in containers violating regulations adopted pursuant to G.S. 143-441. Pesticides found in containers which are unsafe due to damage or defective construction may be seized and impounded.

(b) It shall be unlawful:

- (1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

- (2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.
- (2a) Repealed by Session Laws 1981, c. 592, s. 3.
- (3) For any person to use any pesticide in a manner inconsistent with its labeling.
- (4) For any person who contracts for the aerial application of a pesticide to permit the application of any pesticide that is designated on its labeling as toxic to bees without first notifying, based on available listings, the owner or operator of any apiary registered under the North Carolina Bee and Honey Act of 1977 that is within a distance designated by the Pesticide Board as necessary and appropriate to prevent damage or injury.
- (5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License.
- (6) For any person to assault, resist, impede, intimidate, or interfere with any State employee while that employee is engaged in the performance of his or her duties under this Article.
- (7) For any person to apply, for compensation, a pesticide that has not been registered pursuant to G.S. 143-442. (1971, c. 832, s. 1; 1975, c. 425, s. 3; 1979, c. 448, ss. 4, 5; 1981, c. 547; c. 592, ss. 3, 4; 1987, c. 559, s. 8; 1995, c. 445, s. 3.)

#### **§ 143-444. Determinations.**

The Board is authorized:

- (1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;
- (2) To determine whether pesticides are highly toxic to man; and
- (3) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of G.S. 143-443(a)(4). (1971, c. 832, s. 1.)

#### **§ 143-445. Exemptions.**

- (a) The penalties provided for violations of G.S. 143-443(a) shall not apply to:
  - (1) Any carrier while lawfully engaged in transporting pesticides within this State, if such carrier shall, upon request, permit the Board or its designated agent to copy all records showing the transactions in and movement of the articles;
  - (2) Public officials of this State or local subdivisions thereof and the federal government engaged in the performance of their official duties;
  - (3) The manufacturer or shipper of a pesticide for experimental use only,
    - a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of pesticides, or
    - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address; (except that if a written permit has been obtained from the Board, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit).
- (b) No article shall be deemed in violation of this Part when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this Part shall apply. (1971, c. 832, s. 1.)

**§ 143-446. Samples; submissions.**

- (a) The Board, or its agent, is authorized and directed to sample, test, inspect and make analyses of pesticides sold or offered for sale or distributed within this State, at time and place and to such an extent as it may deem necessary to determine whether such pesticides are in compliance with the provisions of this Article. The Board is authorized to adopt regulations concerning the collection and examination of samples (or devices), and to adopt regulations establishing tolerances providing for reasonable deviations from the guaranteed analysis.
- (b) The official analysis shall be made from the official sample. Official samples shall be collected from material that has been packaged, labeled and released for shipment. A sealed and identified sample, herein called "official check sample" shall be kept until the analysis is completed on the official sample, except that the registrant may obtain upon request a portion of said official sample. If the official analysis conforms with the provisions of this Part, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this Part, then the official check sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample.
- (c) The Board, of its own motion or upon complaint, may cause an examination to be made for the purpose of determining whether any pesticide complies with the requirements of this Part. If it shall appear from such examination that a pesticide fails to comply with the provisions of this Part, the Board may cause notice to be given to the offending person in the manner provided in G.S. 143-464, and the proceedings thereupon shall be as provided in such section; provided that pesticides may be seized and confiscated as provided in G.S. 143-447.
- (d) The Board shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this Article. (1971, c. 832, s. 1; 1987, c. 559, s. 9.)

**§ 143-447. Emergency suspensions; seizures.**

- (a) The Board may order the summary suspension of the registration of a pesticide if it finds the suspension necessary to prevent an imminent hazard to the public, a nontarget organism, or a segment of the environment. In no event shall registration of a pesticide be construed as a defense to any charge of an offense prohibited under this Article.
- (b) It shall be the duty of the Board to issue and enforce a written or printed "stop sale, stop use, or removal" order to the owner or custodian of any lot of pesticide and for the owner or custodian to hold said lot at a designated place when the Board finds said pesticide 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 pesticide is released in writing by the Board or said violation has been otherwise legally disposed of by written authority. The Board shall release the pesticide 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.

The Board may issue a "stop sale, use or removal order" to prevent or stop the use of a pesticide in a manner inconsistent with its labeling or to prevent or stop the disposal of a pesticide or a pesticide container in violation of this Article or the rules of the Board adopted thereunder.
- (c) Any pesticide (or device) that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce between points within this State through any point outside this State shall be liable to be proceeded against in superior court in any county of the State where it may be found and seized for confiscation by process or libel for condemnation:
  - (1) In the case of a pesticide,
    - a. If it is adulterated or misbranded,
    - b. If it has not been registered under the provisions of G.S. 143-442, or has had its registration suspended or revoked or is the subject of a stop sale, stop use, or removal order,

- c. If it fails to bear on its label the information required by this Part,
- d. If it is a white or lightly colored pesticide and is not colored as required under this Part.

(2) In the case of a device, if it is misbranded.

(d) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasurer; provided that the article shall not be sold contrary to the provisions of this Part; and provided further that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing or disposal, as the case may be.

(e) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (1971, c. 832, s. 1; 1979, c. 448, s. 6; 1981, c. 592, s. 5; 1987, c. 559, s. 10, c. 827, s. 41.)

### Part 3. Pesticide Dealers.

#### **§ 143-448. Licensing of pesticide dealers; fees.**

- (a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.
- (b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a nonrefundable fee of seventy-five dollars (\$75.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.
- (c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of seventy-five dollars (\$75.00) for each license, on or before the first day of January of the calendar year for which the license is issued.
- (d) Repealed by Session Laws 1981, c. 592, s. 6.
- (e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.
- (f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. (1971, c. 832, s. 1; 1981, c. 592, s. 6; 1987, c. 559, ss. 2, 11; 1989, c. 544, s. 11; 1995, c. 445, s. 4; 2003-284, ss. 35.4(b), 35.4(c); 2010-31, s. 11.1(b); 2011-145, s. 31.8(c).)

#### **§ 143-449. Qualifications for pesticide dealer license; examinations.**

- (a) An applicant for a license must present evidence satisfactory to the Board concerning his qualifications for such license.
- (b) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide dealer. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide dealer; and his knowledge of the laws and regulations governing the use and sale of pesticides. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for each examination required by this section. This examination fee is in addition to any fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

- (c) The Board shall by regulation:
  - (1) Designate what persons or class of persons shall be required to pass the examination in the case of a pesticide dealer operating more than one location, and in the case of an applicant that is a corporation, governmental unit or agency, or other organized group;
  - (2) Provide for renewal license examinations at intervals not more frequent than four years. (1971, c. 832, s. 1; 1975, c. 425, s. 4; 2010-31, s. 11.1(c).)

**§ 143-450. Employees of pesticide dealers; dealer's responsibility.**

- (a) Every licensed pesticide dealer shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all persons employed by him who sell or recommend "restricted use pesticides."
- (b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides. (1971, c. 832, s. 1; 1979, c. 448, s. 7; 1987, c. 559, s. 2.)

**§ 143-451. Denial, suspension and revocation of license.**

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;
  - (2) Made a pesticide recommendation not in accordance with the label registered pursuant to this Article;
  - (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
  - (4) Failed to pay the original or renewal license fee when due, and continued to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license;
  - (5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;
  - (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;
  - (7) Made false or fraudulent records, invoices, or reports;
  - (8) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license, or in selling or offering to sell restricted use pesticides;
  - (9) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
  - (10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
  - (11) Impersonated any state, county, or city inspector or official;
  - (12) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations.
  - (13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 7; 1987, c. 559, ss. 2, 13, c. 827, s. 40.)

Part 4. Pesticide Applicators and Consultants.

**§ 143-452. Licensing of pesticide applicators; fees.**

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a nonrefundable fee of seventy-five dollars (\$75.00) for each pesticide applicator's license. In addition, an annual inspection fee of twenty-five dollars (\$25.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional twenty-five-dollar (\$25.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made.

(c) Repealed by Session Laws 1981, c. 592, s. 6.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications or subclassifications shall be specified for (i) ground and aerial methods of application, and (ii) State and local government units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate, including provisions for licensing of apprentice pesticide applicators. For aerial applicators, a license shall be required for both the contractor and the pilot. Each classification and subclassification may be subject to separate testing procedures and requirements.

(e) Every licensed pesticide applicator who changes his address shall immediately notify the Board.

(f) If the Board finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under G.S. 143-467, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency to operate the equipment described in the application, the Board shall issue a pesticide applicator's license limited to the classifications for which he is qualified. Every such license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the Board for cause, or unless such financial security required under G.S. 143-467 is dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security. The license may restrict the applicant to the use of a certain type or types of equipment or pesticides or to certain areas if the Board finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Board shall inform the applicant in writing of the reasons therefor.

(g) A pesticide applicator's license shall not be transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, must

have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business.

(h) Repealed by Session Laws 1987, c. 559, s. 15. (1971, c. 832, s. 1; 1973, c. 389, ss. 2, 5; 1977, c. 100; 1981, c. 592, ss. 6, 7; 1987, c. 559, ss. 14, 15; 1989, c. 544, s. 10; 2003-284, s. 35.4(a); 2010-31, s. 11.1(d).)

**§ 143-453. Qualifications for pesticide applicator's license; examinations.**

(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed.

Those qualifications, in the case of a pilot, shall include at least 125 hours and one year's flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 125 hours and one year's experience as a pilot in the field of aerial pesticide application shall be licensed as an apprentice aerial pesticide applicator pilot. All aerial applications of pesticides by a licensed apprentice shall be conducted under the direct supervision of a licensed pesticide applicator pilot. The supervising pilot, while directly supervising an apprentice, shall operate out of the same airstrip as the apprentice and shall be available periodically throughout each day to provide advice and assistance to the apprentice. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the examination required by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (b) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the core examination, and an additional twenty dollars (\$20.00) shall be charged for each additional specific classification licensure. Such examination fees shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) The Board shall by regulation:

- (1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;
- (2) Provide for license renewal examinations at intervals not more frequent than four years, or more frequently if found by the Board to be required to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125; 1985, c. 163; 2010-31, s. 11.1(e).)

**§ 143-454. Solicitors, salesmen and operators; applicator's responsibility.**

(a) Every licensed pesticide applicator shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all solicitors, salesmen, and operators employed by him.

(b) Each licensed pesticide applicator shall be responsible for solicitors, salesmen, and operators in his employment to assure that pesticides are used in a manner consistent with the intent of this Article. (1971, c. 832, s. 1; 1979, c. 448, s. 8.)

**§ 143-455. Pest control consultant license.**

(a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information

prescribed by the Board. The application for a license shall be accompanied by a nonrefundable annual fee of seventy-five dollars (\$75.00).

- (b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The Board may classify consultant licenses into one or more classifications or subclassifications based upon types of consulting services performed or to be performed. Such classifications and subclassifications may reflect the crops involved in the consulting service, the discipline or training of consultant, the discretion or lack of discretion involved in the consulting service, and the site or location of the service. Each classification and subclassification may be subject to separate testing procedures and requirements, and may be subject to its own minimum standards of training in specialized subject matter from a recognized college or university, or equivalent specialized consulting experience or training. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the consultant examination, and an additional twenty dollars (\$20.00) shall be charged for each additional specific classification licensure permitted by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes. Qualifications for licensing may be less stringent if the licensee is restricted to making recommendations contained in publications recognized by the Board as appropriate for a specific consulting classification or subclassification.
- (c) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide consultant. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide consultant; and his knowledge of the laws and regulations governing the use and sale of pesticides.
- (d) Pest control consultants shall be subject to the same provisions as pesticide applicators concerning penalties for late applications for license, changes of address, transferability of licenses, periodic reexamination, and examinations for corporate applicants. (1971, c. 832, s. 1; 1975, c. 425, s. 10; 1987, c. 559, s. 16; 1989, c. 544, s. 12; 2003-284, s. 35.4(d); 2010-31, s. 11.1(f).)

#### **§ 143-456. Denial, suspension and revocation of license.**

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
  - (3) Operated faulty or unsafe equipment;
  - (4) Operated in a faulty, careless, or negligent manner;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
  - (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;
  - (7) Made false or fraudulent records, invoices, or reports;
  - (8) Operated unlicensed equipment;
  - (9) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license;

- (10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
- (11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
- (12) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
- (13) Impersonated any state, county, or city inspector or official;
- (14) Stored or disposed of containers or pesticides by means other than those prescribed on the labeling or by rule;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.
- (16) Failed to pay a civil penalty assessed under this Article within 30 days after the date it is assessed.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 8; 1987, c. 559, s. 17; c. 827, s. 42; 1995, c. 445, s. 5.)

**§ 143-457:** Repealed by Session Laws 1981, c. 592, s. 8.

**§ 143-458. Rules and regulations concerning methods of application.**

- (a) The Board may adopt rules prescribing the method to be used in the application of pesticides and the times and places pesticides may be applied. The Board may adopt rules restricting or prohibiting the sale and use of pesticides in designated areas during specified time periods. In adopting rules under this subsection, the Board shall consider factors required to prevent damage or injury to the following by the drift or misapplication of pesticides:
  - (1) Plants, including forage plants, on adjacent or nearby land;
  - (2) Wildlife in the adjoining or nearby areas;
  - (3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated;  
or
  - (4) Other animals, persons or beneficial insects.In issuing such regulations, the Board shall give consideration to pertinent research findings and recommendations of other agencies of this State or of the federal government.
- (b) The Board may by regulation require that notice of a proposed application of a pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity thereof, if it finds that such notice is necessary to carry out the purpose of this Article.
- (c) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not apply any substance that:
  - (1) Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, and
  - (2) Is not registered as a pesticide pursuant to G.S. 143-442.
- (d) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not combine any substance whose application is prohibited under subsection (c) of this section 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.

(e) Any person who violates subsection (c) or (d) of this section shall be guilty of a Class 2 misdemeanor, which shall include a fine of up to one thousand dollars (\$1,000) per violation. (1971, c. 832, s. 1; 1987, c. 827, s. 43; 1995, c. 478, s. 1.)

### **§ 143-459. Reporting of shipments and volumes of pesticides.**

Every person selling pesticides directly to the consumer shall file with the Board, in such manner and with such frequency as the Board may prescribe, reports of purchases, sales and shipments of restricted use pesticides and other pesticides designated by the Board. Failure to file any report when due shall be cause for suspension or revocation of any license or registration issued under this Article, or for denial of the issuance or renewal of any such license or registration, and shall be a misdemeanor, punishable as provided by G.S. 143-469. The time for reporting may be extended for an additional 15 days for cause, upon written request to the Board. All reports provided under this Part are provided solely for the purposes of the Board. (1971, c. 832, s. 1; 1987, c. 559, s. 2.)

## Part 5. General Provisions.

### **§ 143-460. Definitions.**

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

(1) The term "active ingredient" means

- a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;
- b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
- c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;
- d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of a plant tissue.

(2) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(2a) "Antimicrobial pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any microorganism pest.

(3) Reserved.

(4) "Board" means the North Carolina Pesticide Board.

(5) "Commissioner" means the North Carolina Commissioner of Agriculture.

(6) "Committee" means the Pesticide Advisory Committee.

(7) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the Board, but not including equipment used for the application of pesticides when sold separately therefrom.

- (10) Repealed by Session Laws 1995, c. 445, s. 6.
- (11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- (12) The term "fungus" means any nonchlorophyll-bearing thallophyte (that is any nonchlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.
- (13) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.
- (14) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.
- (15) The term "inert ingredient" means an ingredient which is not an active ingredient.
- (16) The term "ingredient statement" means
  - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and
  - b. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.
- (17) The term "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, wasps, 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 wood lice.
- (18) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.
- (19) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device) or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).
- (20) 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 law to conduct research in the field of pesticides.
- (21) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
- (22) "Manufacturer" includes any person engaged in the business of importing, producing, preparing, formulating, mixing, or processing pesticides.

(22a) "Material Safety Data Sheet" or "MSDS" means a chemical information sheet which would satisfy the requirements of the Hazardous Chemicals Right-to-Know Act, Article 18, Chapter 95 of the General Statutes, or any law enacted in substitution therefor.

(23) The term "misbranded" shall apply:

- a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- b. To any pesticide:
  1. If it is an imitation of or is offered for sale under the name of another pesticide;
  2. If its labeling bears any reference to registration under this Article;
  3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
  4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
  5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase except that the Board may permit the statement to appear prominently on some other part of the container, if the size or form of the container make it impractical to comply with the requirements of this subparagraph;
  6. If any word, statement, or other information required by or under the authority of this Article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter 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; or
  7. If in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticides or
  8. In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides, except that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(24) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(25) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(25a) The phrase "packaged, labeled and released for shipment" means the point in the production and marketing process of a pesticide where the pesticide has been produced, and it is the intent of the producer that such product be introduced into commerce for direct retail sale.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint-stock association, public or private institution, municipality or county or local government

unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

(26a) The term "pest" means any insect, rodent, nematode, fungus, weed or any other noxious or undesirable microorganism or macroorganism, except viruses, bacteria, or other microorganisms on or in living persons or other living animals.

(27) "Pest control consultant" means any person, who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insects, plant diseases, weeds, and other pests, but does not include any person regulated by the North Carolina Structural Pest Control Act (G.S. Chapter 106, Article 4C).

(28) The term "pesticide" means:

- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and
- b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(29) "Pesticide applicator" means any person who owns or operates a pesticide application business or who provides, for compensation, a service that includes the application of pesticides upon the lands or properties of another; any public operator; any golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who applies pesticides for compensation and is not exempt from this definition. It does not include:

- a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.
- b. Any person who applies pesticides for structural pest control, as defined in the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).
- c. Any person certified by the Water Treatment Facility Operators Board of Certification under Article 2 of Chapter 90A of the General Statutes or by the Wastewater Treatment Operators Plant Certification Commission under Article 3 of Chapter 90A of the General Statutes who applies pesticides labeled for the treatment of water or wastewater.
- d. Any person who applies antimicrobial pesticides that are not classified for restricted use and are not being used for agricultural, horticultural, or forestry purposes.
- e. Any person who applies a general use pesticide to the property of another as a volunteer, without compensation.
- f. Any person who is employed by a licensed pesticide applicator.

(30) The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted use pesticides for distribution directly to users. The term pesticide dealer does not include:

- a. Persons whose sales of pesticides are limited to pesticides in consumersized packages (as defined by the Board) which are labeled and intended for home and garden use only and are not restricted use pesticides, or
- b. Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

(31) Repealed by Session Laws 1973, c. 389, s. 3.

- (32) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
- (33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.
- (34) The term "registrant" means the person registering any pesticide pursuant to the provisions of this Article.
- (35) The term "restricted use pesticide" or "pesticide classified for restricted use" means any pesticide or use classified as restricted by the Administrator of the United States Environmental Protection Agency or other pesticide or use which the Board has designated as such pursuant to G.S. 143-440.
- (36) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating rodents or any other vertebrate animal which the Board shall declare to be a pest.
- (36a) The phrase "to use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling; provided that the phrase shall not include:
  - a. Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling,
  - b. Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling,
  - c. Employing any method of application not prohibited by the labeling, or
  - d. Mixing pesticides or mixing a pesticide with a fertilizer when such mixture is not prohibited by the labeling.
- (37) The term "weed" means any plant or part thereof which grows where not wanted.
- (38) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Article, pests; including but not limited to mammals, birds, and aquatic life. (1971, c. 832, s. 1; 1973, c. 389, s. 3; 1975, c. 425, s. 11; 1979, c. 448, ss. 9, 10; 1981, c. 592, ss. 911; 1987, c. 559, ss. 2, 1820; 1991, c. 87, ss. 1, 2; 1995, c. 445, ss. 6, 7.)

#### **§ 143-461. General powers of Board.**

In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power, at any time and from time to time:

- (1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article. Unless the Board deems there are overriding policy considerations involved, any regulation of the Board, which will in the judgment of the Board result in severe curtailment of the usefulness or value of inventories or equipment in the hands of persons licensed under this Article, should be given a future effective date so as to minimize undue potential economic loss to licensees;
- (2) To authorize the Commissioner by proclamation (i) to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions, or (ii) to suspend the application of any provision of this Part to any federal or State agency if it is determined by the Commissioner that emergency conditions require such action.

- (3) To conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article;
- (4) To conduct public hearings in accordance with the procedures prescribed by this Article;
- (5) To delegate such of the powers of the Board as the Board deems necessary (other than its powers to adopt rules and regulations of any kind) to one or more of its members, to the Commissioner, or to any qualified employee of the Board or of the Commissioner; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Board. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision;
- (6) To call upon the Attorney General for such legal advice and assistance as is necessary to the functioning of the Board;
- (7) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official actions of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board. Upon violation of any of the provisions of this Article, or of any regulation of the Board adopted under the authority of this Article the Board may, either before or after the institution of any other proceedings (civil or criminal), institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any other penalty or remedy prescribed by this Article for any violation of same;
- (8) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings. (1971, c. 832, s. 1; 1973, c. 389, s. 6; 1987, c. 827, s. 44.)

**§ 143-462. Procedures for revocations and related actions affecting licenses.**

In all proceedings, the effect of which would be to revoke, suspend, deny, or withhold renewal of a license issued under Part 3 or Part 4 of this Article, or to deny permission to take an examination for such a license, the provisions of Chapter 150B of the General Statutes shall be applicable. (1971, c. 832, s. 1; 1987, c. 827, s. 1.)

**§ 143-463. Adoption and publication of rules.**

Chapter 150B of the General Statutes governs the adoption of rules under this Article and the publication of those rules. (1971, c. 832, s. 1; 1975, 2nd Sess., c. 983, s. 84; 1979, c. 448, s. 11; 1987, c. 827, s. 45.)

**§ 143-464. Procedures concerning registration of pesticides.**

A denial, suspension, or cancellation of a registration of a pesticide shall be made in accordance with the procedures in Chapter 150B of the General Statutes for denying, suspending, or canceling a license. (1971, c. 832, s. 1; 1979, c. 448, s. 12; 1987, c. 827, s. 46.)

**§ 143-465. Reciprocity; intergovernmental cooperation.**

- (a) The Board may issue any license required by this Article on a reciprocal basis with other states without examination to a nonresident who is licensed in another state substantially in accordance with any of the provisions of the Article, provided that financial security as provided for in G.S. 143-467 is met.
- (b) The Board 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.
- (c) In order to avoid confusion resulting from diverse requirements and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the Board is

authorized, after public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this Article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government.

(d) No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of pesticides in any area subject to regulation by the Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. (1971, c. 832, s. 1; 1995, c. 445, s. 8.)

#### **§ 143-466. Records; information; inspection; enforcement.**

- (a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.
- (b) The Board may publish information regarding injury which may result from improper application or use of pesticides and the methods and precautions designed to prevent such injury.
- (c) The Board may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by the Board by regulation.
- (d) The Board may provide for inspection of any place of business where pesticides are stored or sold and may require changes in methods of handling, displaying and storing of all pesticides. A list of requirements that places of business must meet may be adopted by regulation of the Board.
- (e) For the purpose of carrying out the provisions of this Article, inspectors designated by the Board may enter upon any public or private premises at reasonable times, in order:
  - (1) To have access for the purpose of inspecting the premises and any equipment subject to this Article and such premises on which such equipment is kept or stored;
  - (2) To inspect lands actually or reported to be exposed to pesticides;
  - (3) To inspect storage or disposal areas;
  - (4) To inspect or investigate complaints of injury to humans, land or plants; or
  - (5) To sample pesticides being applied, or to be applied.

No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. Should the Board or its designated agent be denied access to any land where such access was sought for the purposes set forth in this Article, the Board may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested. (1971, c. 832, s. 1; 1995, c. 445, s. 9.)

#### **§ 143-467. Financial responsibility.**

(a) The Board may require from a licensee or an applicant for a license under this Article evidence of his financial ability to properly indemnify persons suffering damage from the use or application of pesticides, in the form of a surety bond, liability insurance or cash deposit. The amount of this bond, insurance or deposit shall be determined by the Board, in light of the risk of damage. The indemnification requirements may extend to damage to persons and property from equipment used (including aircraft).

- (b) The Board may also require a reasonable performance bond with satisfactory surety to secure the performance of contractual obligations of the licensee, with respect to application of pesticides. Any person injured by the breach of any such obligation or any person damaged by pesticides or by equipment used in their application 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.
- (c) Any regulations adopted by the Board pursuant to G.S. 143-461 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Board deems necessary, including but not limited to notice of reduction or cancellation of coverage, deductible provisions, and acceptability of surety. Such regulations may classify financial responsibility requirements according to the separate license classifications and sub classifications prescribed by the Board pursuant to G.S. 143-452 and the dealer category (Part 3 of this Article). (1971, c. 832, s. 1.)

**§ 143-468. Disposition of fees and charges.**

- (a) Except as provided in G.S. 143-469 and in subsection (b), all fees and charges received by the Board under this Article shall be credited to the Department of Agriculture and Consumer Services for the purpose of administration and enforcement of this Article.
- (b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:
  - (1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.
  - (2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.
  - (3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.
  - (4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services for the costs of administering its pesticide disposal program, including the salaries and support of staff for the pesticide disposal program, and for its environmental programs, as directed by the Board, including establishing a pesticide container management program to enhance its pesticide disposal program and its water quality initiatives. (1971, c. 832, s. 1; 1993, c. 481, s. 1; 1997-261, s. 92; 1998-215, s. 26(b); 2005-276, s. 11.1.)

**§ 143-469. Penalties.**

- (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 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.
- (b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.
- (c) Proceedings for the assessment of civil penalties under this section shall be governed by Chapter 150B of the North Carolina General Statutes. If the person assessed a civil penalty fails to pay the penalty to

the North Carolina Department of Agriculture and Consumer Services, the Board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of said penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law.

- (d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.
- (e) 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. (1971, c. 832, s. 1; 1981, c. 592, s. 12; 1987, c. 559, s. 21; c. 827, s. 1; 1993, c. 539, s. 1035; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 445, s. 10; 1997-261, s. 109; 1998-215, s. 26(a).)

**§ 143-470:** Repealed by Session Laws 1981, c. 592, s. 13, effective July 1, 1981.

**§ 143-470.1. Report of minor violations in discretion of Board or Commissioner.**

Nothing in this Article shall be construed to require the Board or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Board or Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1979, c. 448, s. 13.)

# **Underground Utility Safety and Damage Prevention**

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## **Article 8A. Underground Utility Safety and Damage Prevention Act.**

### **§ 87-115. (Effective October 1, 2014) Short title.**

This Article may be cited as the "Underground Utility Safety and Damage Prevention Act." (2013-407, s. 2.)

### **§ 87-116. (Effective October 1, 2014) Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that it is necessary to protect the citizens and workforce of this State from the dangers inherent in excavating or demolishing in areas where underground lines, systems, or infrastructure are buried beneath the surface of the ground, and it is necessary to protect from costly damage underground facilities used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing for a systematic, orderly, and uniform process to identify existing facilities in advance of any excavation or demolition in this State and to implement safe digging practices. (2013-407, s. 2.)

### **§ 87-117. (Effective October 1, 2014) Definitions.**

The following definitions apply in this Article:

- (1) APWA.—The American Public Works Association or its successors.
- (2) Business continuation plan.—A plan that includes actions to be taken in an effort to provide uninterrupted service during catastrophic events.
- (3) Contract locator.—A person hired by an operator to identify and mark facilities.
- (4) Damage.—The substantial weakening of structural or lateral support of a facility; penetration or destruction of protective coating, housing, or other protective device of a facility; or the partial or complete severance of a facility.
- (5) Demolish or demolition.—Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by any means, including the use of any tools, equipment, or discharge of explosives.
- (6) Design notice.—A communication to the Notification Center in which a request for identifying existing facilities for advance planning purposes is made. A design notice may not be used for excavation purposes.
- (7) Designer.—Any architect, engineer, or other person who prepares or issues a drawing or blueprint for a construction or other project that requires excavation or demolition work.
- (8) Emergency.—An event involving a clear and imminent danger to life, health, or property, the interruption of essential utility services, or the blockage of transportation facilities, including highways, railways, waterways, or airways that require immediate action.
- (9) Excavate or excavation.—An operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of manual or mechanized equipment or by discharge of explosives, including, but not limited to, auguring, backfilling, boring, digging, ditching, drilling, directional drilling,

driving, grading, horizontal directional drilling, well drilling, plowing-in, pounding, pulling-in, ripping, scraping, trenching, and tunneling.

(10) Excavator.—A person engaged in excavation or demolition.

(11) Extraordinary circumstances.—Circumstances that make it impossible for the operator to comply with the provisions of this Article, including hurricanes, tornadoes, floods, ice, snow, and acts of God.

(12) Facility.—Any underground line, underground system, or underground infrastructure used for producing, storing, conveying, transmitting, identifying, locating, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. Provided there is no encroachment on any operator's right-of-way, easement, or permitted use, for the purposes of this Article, the following shall not be considered an underground facility: (i) swimming pools and irrigation systems; (ii) petroleum storage systems under Part 2A of Article 21A of Chapter 143 of the General Statutes; (iii) septic tanks under Article 11 of Chapter 130A of the General Statutes; and (iv) liquefied petroleum gas systems under Article 5 of Chapter 119 of the General Statutes, unless the system is subject to Title 49 C.F.R. § 192 or § 195.

(13) Locator.—An individual who identifies and marks facilities for operators who has been trained and whose training has been documented.

(14) Mechanized equipment.—Equipment operated by means of mechanical power, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, horizontal directional drills, cable and pipe plows, and other equipment used for plowing-in or pulling-in cable or pipe.

(15) Nonmechanized equipment.—Hand tools.

(16) Notice.—Oral, written, or electronic communication to the Notification Center from any person planning to excavate or demolish in the State that informs an operator of the person's intent to excavate or demolish.

(17) Notification Center.—A North Carolina member-owned not-for-profit corporation sponsored by operators that will provide a system through which a person can notify operators of proposed excavations and demolitions and submit reports of alleged violations of this Article.

(18) Operator.—Any person, public utility, communications or cable service provider, municipality, electrical utility, or electric or telephone cooperative that owns or operates a facility in this State.

(19) Person.—Any individual, owner, corporation, partnership, association, or any other entity organized under the laws of any state, any political subdivision of a state, or any other instrumentality of a state, or any authorized representative thereof.

(20) Positive response.—An automated information system that allows excavators, locators, operators, and other interested parties to determine the status of a locate request.

(21) Subaqueous.—A facility that is under a body of water, including rivers, streams, lakes, waterways, swamps, and bogs.

(22) Tolerance zone.—If the diameter of the facility is known, the distance of one-half of the known diameter plus 24 inches on either side of the designated center line or, if the diameter of the facility is not marked, 24 inches on either side of the outside edge of the mark indicating a facility or, for subaqueous facilities, a clearance of 15 feet on either side of the indicated facility.

(23) Working day.—Every day, except Saturday, Sunday, or State legal holidays. (2013-407, s. 2.)

**§ 87-118. (Effective October 1, 2014) Reserve to the State the power to regulate.**

The provisions in this Article supersede and preempt any ordinance adopted by a city or county that purports to do any of the following:

- (1) Require operators to obtain permits from a city or county in order to identify facilities.
- (2) Require premarking or marking of facilities.
- (3) Specify the types of paint or other marking devices that are used to identify facilities.
- (4) Require removal of unexpired marks. The removal of expired marks shall be the responsibility of the city or county. (2013-407, s. 2.)

**§ 87-119. (Effective October 1, 2014) Costs associated with compliance; effect of permit.**

Any costs or expenses associated with an excavator's compliance with the requirements of this Article shall not be charged to any operator. Any costs or expenses associated with an operator's compliance with the requirements of this Article shall not be charged to any excavator. The Notification Center may not impose any charge on any person giving notice to the Notification Center. This section shall not affect costs related to the operation of the Notification Center apportioned to an operator pursuant to G.S. 87-120(b). This section shall not excuse an operator or excavator from liability for any damage or injury for which the operator or excavator would be responsible under applicable law. (2013-407, s. 2.)

**§ 87-120. (Effective October 1, 2014) Notification Center; responsibilities.**

- (a) The operators in the State shall maintain a Notification Center for the sole purpose of providing the services required by this Article. The Notification Center shall maintain information concerning receipt of notification of proposed excavation and demolition activities as provided in this Article and shall maintain information received from operators concerning the location of the operators' facilities and the operators' positive responses to marking of the facilities. The Notification Center shall also receive, maintain, and provide general administration of reports of alleged violations of this Article and responses. The Notification Center is not responsible in any way for identifying or marking facilities for operators. The Notification Center is not responsible in any way for resolving reports of alleged violations of this Article. All operators in the State shall join the Notification Center as provided in subsection (b) of this section, and they shall use the services of the Notification Center to perform the acts required by the provisions of this Article. There shall be only one Notification Center for the State of North Carolina. The Notification Center is not an agency of the State or any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or Chapter 133 of the General Statutes.
- (b) Operators who are members of the Notification Center by whatever name that is in existence on October 1, 2013, must remain members. Operators with more than 50,000 customers or 1,000 miles of facilities who are not members on October 1, 2013, must join no later than October 1, 2014. Operators with more than 25,000 customers or 500 miles of facilities who are not members on October 1, 2013, must join no later than October 1, 2015. All operators that do not meet one of the criteria provided in this subsection must join no later than October 1, 2016. Each engineering division of the Department of Transportation established pursuant to G.S. 136-14.1 must join no later than October 1, 2016. The board of directors of the Notification Center shall develop a reasonable method of apportioning the costs of operating the Notification Center among the member operators. Prior to adopting a method of determining such cost allocation, the board of directors shall publish the proposed method of cost allocation to the member operators, and the proposed method of cost allocation shall be approved by the member operators.
- (c) The Notification Center shall have the following duties and responsibilities:
  - (1) Maintain a record of the notices received under subsection (d) of this section for at least four years.
  - (2) Maintain a record of reports of alleged violations of this Article received under subsection (e) of this section for at least four years, including responses to such reports.

- (3) Receive and transmit notices as provided in subsection (d) of this section.
- (4) Develop and update, as needed, a business continuation plan.
- (5) Notify those persons against whom reports of alleged violations of this Article have been made and receive and maintain information submitted from such persons in defense against the allegations.
- (6) Provide a positive response system.
- (7) Establish and operate a damage prevention training program for members of the Notification Center. No person may recover damages in any manner or form from the Notification Center arising out of or related to the manner in which the Notification Center conducts a damage prevention training program or receives, transmits, or otherwise administers a report of an alleged violation of this Article.

(d) The Notification Center shall receive notice from any person intending to excavate or demolish in the State and shall, at a minimum, transmit the following information to the appropriate operator:

- (1) The name, address, and telephone number of the person providing the notice and, if different, the person responsible for the proposed excavation or demolition.
- (2) The starting date of the proposed excavation or demolition.
- (3) The anticipated duration of the proposed excavation or demolition.
- (4) The type of proposed excavation or demolition operation to be conducted.
- (5) The location of the proposed excavation or demolition.
- (6) Whether or not explosives are to be used in the proposed excavation or demolition.

(e) The Notification Center shall receive reports of alleged violations of this Article. The Notification Center shall contact persons against whom reports have been filed to inform them of the alleged violation within 10 days of the filing of the report. The Notification Center shall maintain the following information regarding reports of alleged violations:

- (1) The name, address, and telephone number of the person making the report;
- (2) The nature of the report, including the statute that is alleged to have been violated;
- (3) Information provided by the person making the report, including correspondence, both written and electronic, pictures, and videos; and
- (4) Information provided by the person against whom the report has been filed, including correspondence, both written and electronic, pictures, and videos. (2013-407, s. 2.)

**§ 87-121. (Effective October 1, 2014) Facility operator responsibilities.**

(a) An operator shall provide to the excavator the following:

- (1) The horizontal location and description of all of the operator's facilities in the area where the proposed excavation or demolition is to occur. The location shall be marked by stakes, soluble paint, flags, or any combination thereof, as appropriate, depending upon the conditions in the area of the proposed excavation or demolition. The operator shall, when marking as provided under this subdivision, use the APWA Uniform Color Code. If the diameter or width of the facility is greater than four inches, the dimension of the facility shall be indicated at least every 25 feet in the area of the proposed excavation or demolition. An operator who operates multiple facilities in the area of the proposed excavation or demolition shall locate each facility.
- (2) Any other information that would assist the excavator in identifying and thereby avoiding damage to the marked facilities.

- (b) Unless otherwise provided in a written agreement between the operator and the excavator, the operator shall provide to the excavator the information required by subsection (a) of this section within the times provided below:
  - (1) For a facility, within three full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.
  - (2) For a subaqueous facility, within 10 full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.
  - (3) If the operator declares an extraordinary circumstance, the times provided in this subsection shall not apply.
- (c) The operator shall provide a positive response to the Notification Center before the expiration of the time provided in subsection (b) of this section. The response shall indicate whether and to what extent the operator is able to provide the information required by subsection (a) of this section to respond to the notice from the excavator.
- (d) If the operator determines that provisions for marking subaqueous facilities are required, the operator will provide a positive response to the Notification Center not more than three full working days after notice has been provided by the excavator.
- (e) If extraordinary circumstances prevent the operator from marking the location of the facilities within the time specified in subsection (b) of this section, the operator shall either notify the excavator directly or notify the excavator through the Notification Center. When providing the notification under this subsection, the operator shall state the date and time when the location will be marked.
- (f) An operator shall prepare or cause to be prepared installation records of all facilities installed on or after the date this Article becomes effective in a public street, alley, or right-of-way dedicated to public use, excluding service drops and services lines. The operator shall maintain these records in the operator's possession while the facility is in service.
- (g) All facilities installed by or on behalf of operators on or after the date this Article becomes effective shall be electronically locatable using a locating method that is generally accepted by operators in the particular industry or trade in which the operator is engaged.
- (h) A locator shall notify the operator if the locator becomes aware of an error or omission in the records or documentation showing the location of the operator's facilities. The operator must update its records to correct any error or omission.
- (i) An operator may reject an excavation or demolition notice due to homeland security considerations based upon federal statutes or federal regulations until the operator can confirm the legitimacy of the notice. The operator shall notify the person making the notice of the denial and may request additional information through the positive response system.
- (j) Gravity fed sanitary sewers installed prior to the date this Article becomes effective and all storm water facilities shall be exempt from the location requirements provided in subsection (a) of this section. Neither the excavator nor the person financially responsible for the excavation will be liable for any damage to an unmarked gravity fed sanitary sewer line or unmarked storm water facility if the person doing the excavation exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area.
- (k) An operator who does not become a member of the Notification Center as required by G.S. 87-120(b) may not recover for damages to a facility caused by an excavator who has complied with the provisions of this Article and has exercised reasonable care in the performance of the excavation or demolition. (2013-407, s. 2.)

**§ 87-122. (Effective October 1, 2014) Excavator responsibilities.**

(a) Before commencing any excavation or demolition operation, the person responsible for the excavation or demolition shall provide or cause to be provided notice to the Notification Center of his or her intent to excavate or demolish. Notice for any excavation or demolition that does not involve a subaqueous facility must be given within three to 12 full working days before the proposed commencement date of the excavation or demolition. Notice for any excavation or demolition in the vicinity of a subaqueous facility must be given within 10 to 20 full working days before the proposed commencement date of the excavation or demolition. Notice given pursuant to this subsection shall expire 15 full working days after the date notice was given. No excavation or demolition may continue after this 15-day period unless the person responsible for the excavation or demolition provides a subsequent notice which shall be provided in the same manner as the original notice required by this subsection. When demolition of a building is proposed, the operator shall be given a reasonable time in which to remove or protect the operator's facilities before the demolition commences.

(b) The notice required by subsection (a) of this section shall, at a minimum, contain all of the following:

- (1) The name, address, and telephone number of the person providing the notice.
- (2) The anticipated starting date of the proposed excavation or demolition.
- (3) The anticipated duration of the proposed excavation or demolition.
- (4) The type of proposed excavation or demolition operation to be conducted.
- (5) The location of the proposed excavation or demolition, not to exceed one-quarter mile in geographical length, or five adjoining addresses, not to exceed one-quarter mile in geographical length.
- (6) Whether or not explosives are to be used in the proposed excavation or demolition.

(c) An excavator shall comply with the following:

- (1) When the excavation area cannot be clearly and adequately identified within the area described in the notice, the excavator shall designate the route, specific area to be excavated, or both by premarking the area before the operator performs a locate. Premarking shall be made with soluble white paint, white flags, or white stakes.
- (2) Confirm through the Notification Center's positive response system prior to excavation or demolition that all operators have responded and that all facilities that may be affected by the proposed excavation or demolition have been marked.
- (3) Plan the excavation or demolition to avoid damage to or minimize interference with facilities in or near the construction area.
- (4) Begin excavation or demolition prior to the specified waiting period only if the excavator has confirmed that all operators have responded with an appropriate positive response.
- (5) If the operator declares extraordinary circumstances, the excavator shall not excavate or demolish until after the time and date that the operator has provided in the operator's response.
- (6) If an operator fails to respond to the positive response system, the excavator may proceed if there are no visible indications of a facility at the proposed excavation or demolition area, such as a pole, marker, pedestal, meter, or valve. However, if the excavator is aware of or observes indications of an unmarked facility at the proposed excavation or demolition area, the excavator shall not begin excavation or demolition until an additional call is made to the Notification Center detailing the facility and an arrangement is made for the facility to be marked by the operator within three hours from the time the additional call is received by the Notification Center.

- (7) Beginning on the date provided in the excavator's notice to the Notification Center, the excavator shall preserve the staking, marking, or other designation until they are no longer required. When a mark is no longer visible or is destroyed, but the excavation or demolition continues in the vicinity of the facility, the excavator shall request a remark from the Notification Center to ensure the protection of the facility.
- (8) When demolition of a building is proposed, the excavator shall give the operator a reasonable time in which to remove or protect the operator's facilities before demolition commences.
- (9) An excavator shall not perform any excavation or demolition within the tolerance zone unless the excavator complies with all of the following conditions:
  - a. The excavator shall not use mechanized equipment, except noninvasive equipment specifically designed or intended to protect the integrity of the facility, within the marked tolerance zone of an existing facility until:
    - 1. The excavator has visually identified the precise location of the facility or has visually confirmed that no facility is present up to the depth of excavation;
    - 2. The excavator has taken reasonable precautions to avoid any substantial weakening of the facility's structural or lateral support, or both, or penetration or destruction of the facilities or their protective coatings; and
    - 3. The excavator may use mechanical means, as necessary, for the initial penetration and removal of pavement or other materials requiring use of mechanical means of excavation but only to the depth of the pavement or other materials. For parallel type excavations within the tolerance zone, the existing facility shall be visually identified at intervals not to exceed 50 feet along the line of excavation to avoid damages. The excavator shall exercise due care at all times to protect the facilities when exposing these facilities.
  - b. The excavator shall maintain clearance between a facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of the cutting edge or point, as may be reasonably necessary to avoid damage to the facility.
  - c. The excavator shall provide support for facilities in and near the excavation or demolition area, including backfill operations, as may be reasonably required by the operator for the protection of the facilities.
- (10) The excavator shall not use mechanized equipment within 24 inches of a facility that is a gas, oil, petroleum, or electric transmission line unless the facility operator has consented to the use in writing and the operator's representative is on site during the use of the mechanized equipment. For purposes of this subdivision, the term "gas, oil, petroleum transmission line" has the same meaning as the term "transmission line" in Title 49 C.F.R. § 192.3, and the term "electric transmission line" has the same meaning as the term "transmission line" in G.S. 62-100(7). (2013-407, s. 2.)

**§ 87-123. (Effective October 1, 2014) Training.**

- (a) Every person who is an excavator, locator, or operator under this Article by virtue of engaging in these activities in the course of a business or trade has a duty to provide education and training to employees and to document such education and training. The training shall include sufficient information, guidance, and supervision such that employees can competently and safely operate the equipment used in the course of the business or trade and complete assigned tasks in a competent and safe manner while minimizing the potential for damage.
- (b) When an excavator, locator, or operator under this Article retains an independent contractor to perform activities regulated by this Article, the duty set forth in subsection (a) of this section shall not apply to

the excavator, locator, or operator. Independent contractors shall provide training to their employees in accordance with this section.

- (c) Excavation shall be conducted in accordance with OSHA Standard 1926 and under the direction of a competent person, as defined therein.
- (d) Locators shall be properly trained. Locator training shall be documented. (2013-407, s. 2.)

#### **§ 87-124. (Effective October 1, 2014) Exemptions.**

The notice requirements in G.S. 87-122(a) and G.S. 87-122(b) do not apply to the following:

- (1) An excavation or demolition performed by the owner of a single-family residential property on his or her own land that does not encroach on any operator's right-of-way, easement, or permitted use.
- (2) An excavation or demolition performed by the owner of a single-family residential property on his or her own land that encroaches on any operator's right-of-way, easement, or permitted use that is performed with nonmechanized equipment.
- (3) An excavation or demolition that involves the tilling of soil for agricultural or gardening purposes.
- (4) An excavation or demolition for agricultural purposes, as defined in G.S. 106-581.1, performed on property that does not encroach on any operator's right-of-way, easement, or permitted use.
- (5) An excavation by an operator or surveyor with nonmechanized equipment for the following purposes:
  - a. Locating for a valid notification request or for the minor repair, connection, or routine maintenance of an existing facility or survey pin.
  - b. Probing underground to determine the extent of gas or water migration.
- (6) An excavation or demolition performed when the Department of Transportation, a local government, special purpose district, or public service district is conducting maintenance activities within its designated right-of-way. Maintenance activities shall include resurfacing, milling, emergency replacement of signs critical for maintaining safety, or the reshaping of shoulders and ditches to the original road profile. Maintenance activities do not include the initial installation of traffic signs, traffic control equipment, or guardrails.
- (7) An excavation or demolition performed by a railroad entirely on land which the railroad owns or operates or, in the event of an emergency, on adjacent land. No provision in this Article shall apply to any railroad which owns, operates, or permits facilities under land which the railroad owns or operates.
- (8) An excavation of a grave space, as defined in G.S. 65-48(10), the installation of a monument or memorial at a grave space, or an excavation related to the placement of a temporary structure or tent by a cemetery regulated under Chapter 65 of the General Statutes that does not encroach on any operator's right-of-way, easement, or permitted use. (2013-407, s. 2.)

#### **§ 87-125. (Effective October 1, 2014) Notice in case of emergency excavation or demolition.**

- (a) An excavator performing an emergency excavation or demolition is not required to give notice to the Notification Center as provided in G.S. 87-122. However, the excavator shall, as soon as practicable, give oral notice to the Notification Center which shall include a description of the circumstances justifying the emergency. The excavator may request emergency assistance from each affected operator in locating and providing immediate protection to the facilities in the affected area.
- (b) The declaration of an emergency excavation or demolition shall not relieve any party of liability for causing damage to an operator's facilities even if those facilities are unmarked.
- (c) Any person who falsely claims that an emergency exists requiring an excavation or demolition shall be guilty of a Class 3 misdemeanor. (2013-407, s. 2.)

**§ 87-126. (Effective October 1, 2014) Notification required when damage is done.**

- (a) The excavator performing an excavation or demolition that results in any damage to a facility shall immediately upon discovery of the damage notify the Notification Center and the facility operator, if known, of the location and nature of the damage. The excavator shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility. The excavator shall delay any backfilling in the immediate area of the damaged facility until authorized by the operator. The operator or qualified personnel authorized by the operator shall repair any damage to the facility.
- (b) An excavator who is responsible for an excavation or demolition where any damage to a facility results in the discharge of electricity or escape of any flammable, toxic, or corrosive gas or liquid, or that endangers life, health, or property shall immediately notify emergency responders, including 911 services, the Notification Center, and the facility operator. The excavator shall take reasonable measures to protect himself or herself, other persons in immediate danger, members of the general public, property, and the environment until the operator or emergency responders arrive and complete an assessment of the situation. (2013-407, s. 2.)

**§ 87-127. (Effective October 1, 2014) Design notices.**

- (a) A designer may submit a design notice to the Notification Center. The design notice shall describe the tract or parcel of land for which the design notice has been submitted with sufficient particularity, as defined by policies and procedures adopted by the Notification Center, to allow the operator to ascertain the precise tract or parcel of land involved.
- (b) Within 10 working days, not including the day the notice was given, after a design notice for a proposed project has been submitted to the Notification Center, the operator shall respond in one of the following manners:
  - (1) By designating the location of all facilities owned by the operator within the area of the proposed excavation as provided in G.S. 87-121(a).
  - (2) By providing to the person submitting the design notice the best available description of all facilities in the area designated by the design notice, which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the operator.
  - (3) Allowing the person submitting the design notice or any other authorized person to inspect the drawings or other records for all facilities within the proposed area of excavation at a location that is acceptable to the operator.
- (c) An operator may reject a design notice based upon homeland security considerations pending the operator obtaining additional information confirming the legitimacy of the notice. The operator shall notify the person making the request through a design notice of the denial and may request additional information through the positive response system. (2013-407, s. 2.)

**§ 87-128. (Effective October 1, 2014) Absence of facility location.**

If an operator who has been given notice as provided in G.S. 87-120(d) by the Notification Center fails to respond to that notice as provided in G.S. 87-121 or fails to properly locate the facility, the person excavating is free to proceed with the excavation. Neither the excavator nor the person financially responsible for the excavation will be liable to the nonresponding or improperly responding operator for damages to the operator's facilities if the person doing the excavating exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area. (2013-407, s. 2.)

**§ 87-129. (Effective October 1, 2014) Underground Damage Prevention Review Board; enforcement; civil penalties.**

(a) The Notification Center shall establish an Underground Damage Prevention Review Board to review reports of alleged violations of this Article. The members of the Board shall be appointed by the Governor. The Board shall consist of the following members:

- (1) A representative from the North Carolina Department of Transportation;
- (2) A representative from a facility contract locator;
- (3) A representative from the Notification Center;
- (4) A representative from an electric public utility;
- (5) A representative from the telecommunications industry;
- (6) A representative from a natural gas utility;
- (7) A representative from a hazardous liquid transmission pipeline company;
- (8) A representative recommended by the League of Municipalities;
- (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or operate facilities;
- (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not own or operate facilities;
- (11) A surveyor licensed under Chapter 89C of the General Statutes;
- (12) A representative from a rural water system;
- (13) A representative from an investor-owned water system;
- (14) A representative from an electric membership corporation; and
- (15) A representative from a cable company.

(b) The Notification Center shall transmit all reports of alleged violations of this Article to the Board, including any information received by the Notification Center regarding the report. The Board shall meet at least quarterly to review all reports filed pursuant to G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after reviewing the report and any accompanying information, the Board determines that a violation of this Article has occurred, the Board shall notify the violating party in writing of its determination and the recommended penalty. The violating party may request a hearing before the Board, after which the Board may reverse or uphold its original finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of the recommended penalty, and the Utilities Commission shall issue an order imposing the penalty.

(c) A party determined by the Board under subsection (b) of this section to have violated this Article may initiate an arbitration proceeding before the Utilities Commission. If the violating party elects to initiate an arbitration proceeding, the violating party shall pay a filing fee of two hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities Commission shall open a docket regarding the report. The Utilities Commission shall direct the parties enter into an arbitration process. The parties shall be responsible for selecting and contracting with the arbitrator. Upon completion of the arbitration process, the Utilities Commission shall issue an order encompassing the outcome of the binding arbitration process, including a determination of fault, a penalty, and assessing the costs of arbitration to the nonprevailing party. Any party may appeal an order issued by the Utilities Commission pursuant to this section to the superior court division of the General Court of Justice in the county where the alleged violation of this Article occurred or in Wake County, for trial de novo. The authority granted to the Utilities Commission within this section is limited to this section and does not grant the Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the General Statutes.

(d) Any person who violates any provision of this Article shall be subject to a penalty as set forth in this subsection. The provisions of this Article do not affect any civil remedies for personal injury or property damage otherwise available to any person, except as otherwise specifically provided for in this Article. The penalty provisions of this Article are cumulative to and not in conflict with provisions of law with respect to civil remedies for personal injury or property damage. The clear proceeds of any civil penalty assessed under this section shall be used as provided in Section 7(a) of Article IX of the North Carolina Constitution. The penalties for a violation of this Article shall be as follows:

- (1) If the violation was the result of negligence, the penalty shall be a requirement of training, a requirement of education, or both.
- (2) If the violation was the result of gross negligence, the penalty shall be a civil penalty of one thousand dollars (\$1,000), a requirement of training, a requirement of education, or a combination of the three.
- (3) If the violation was the result of willful or wanton negligence or intentional conduct, the penalty shall be a civil penalty of two thousand five hundred dollars (\$2,500), a requirement of training, and a requirement of education. (2013-407, s. 2.)

**§ 87-130. (Effective October 1, 2014) Severability.**

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (2013-407, s. 2.)