GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1024
SENATE BILL 1337

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AND TO THE SESSION LAWS AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Section 5, subsection (a) of Chapter 426 of the 1989 Session Laws, reads as rewritten:

"(a) The Environmental Management Commission shall adopt water supply watershed classifications and applicable management requirements as required by ~~G.S. 143-214.4(b)~~ G.S. 143-214.5(b) no later than 1 January 1991."

Sec. 2. Section 22(n) of Chapter 752 of the 1989 Session Laws is amended by deleting the phrase "G.S. 40.8(b)" and inserting in lieu thereof "G.S. 135-40.8(b)".

Sec. 3. Effective July 1, 1990, G.S. 7A-249, G.S. 53-67, G.S. 54-142, G.S. 54B-7, and Chapter 55B of the General Statutes are amended by deleting the phrase "Business Corporation Act" wherever it appears and substituting in lieu thereof the phrase "North Carolina Business Corporation Act". Effective July 1, 1990, G.S. 53-135 is amended by deleting the word "'Corporations,'" and inserting in lieu thereof the words "'North Carolina Business Corporation Act,'".

Sec. 4. (a) G.S. 17C-2(b) reads as rewritten:

"(b) 'Criminal justice agencies' means the State and local law-enforcement agencies, the State correctional agencies, other correctional agencies maintained by local governments, and the juvenile justice agencies, but shall not include deputy sheriffs, special deputy sheriffs, sheriffs' jailers, or other sheriffs' department personnel governed by the provisions of Chapter 17E of these General Statutes;".

(b) G.S. 17C-6(13) reads as rewritten:

"(13) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of radio microwave and other speed-measuring instruments and establish the procedures for operation of each approved instrument and standards for calibration and testing for accuracy of each approved ~~instrument.~~ instrument;".

Sec. 5. G.S. 18B-101(13a)(3)(a) reads as rewritten:

"(a) Contains more than ~~a~~ 1000 acres and is made up of privately-owned land and land owned by an association or club having more than 200 members and created for municipal and recreational purposes;".

Sec. 6. G.S. 20-28.2(a)(1) is amended by deleting the phrase "20-16.4,".

Sec. 7. G.S. 20-64.1 reads as rewritten:

"**§ 20-64.1. Revocation of license plates by Utilities Commission.**

The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for willful violation of any provision of either the North Carolina Truck Act of 1947 or the Bus Act of 1949, or for the willful violation of any lawful rule or regulation made and promulgated by the North Carolina Utilities Commission under said acts. To that end said Commission shall have power upon complaint or upon its own motion, after notice and hearing under the rules of evidence prescribed in ~~G.S. 62-18,~~ G.S. 62-65, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding 30 days, and it shall be the duty of the Division of Motor Vehicles to execute such orders made by the North Carolina Utilities Commission upon receipt of a certified copy of the same.

This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State."

Sec. 8. (a) G.S. 25-1-201(5) reads as rewritten:

"(5) 'Bearer' means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank."

(b) G.S. 25-1-201(14) reads as rewritten:

"(14) 'Delivery' with respect to instruments, documents of title, chattel ~~paper~~ paper, or certificated securities means voluntary transfer of possession."

(c) G.S. 25-1-201(20) reads as rewritten:

"(20) 'Holder' means a person who is in possession of a document of title or an instrument or ~~an~~ a certificated investment security drawn, ~~issued~~ issued, or indorsed to him or to his order or to bearer or in blank."

(d) G.S. 25-5-114(2) is amended by inserting the word "certificated" before the word "security" wherever the word "security" appears in the subsection.

(e) G.S. 25-9-103(3)(a) is amended by adding the phrase "(other than uncertificated securities)" after the words "general intangibles".

(f) G.S. 25-9-103 is amended by adding a new subsection to read:

"(6) Uncertificated Securities.–The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities."

(g) G.S. 25-9-105(l)(i) is amended by inserting the word "certificated" before the word "security" in the phrase "security (defined in G.S. 25-8-102)".

(h) G.S. 25-9-203 is amended by inserting the phrase ", G.S. 25-8-321 on security interests in securities" after the words "collecting bank" in the introductory language of the section.

(i) G.S. 25-9-302(l)(f) is amended by inserting the phrase "or in securities (G.S. 25-8-321)" after "(G.S. 25-4-208)".

(j) G.S. 25-9-304(l) is amended in the second sentence by inserting the words "certificated securities or" before the word "instruments" in the phrase "(other than instruments which constitute part of chattel paper)".

(k) G.S. 25-9-304(4) and G.S. 25-9-305 are amended by inserting the phrase "(other than certificated securities)" after the word "instruments".

(l) G.S. 25-9-304(5) is amended by inserting the phrase "(other than a certificated security)" after the word "instrument" in the introductory language of the subsection.

(m) The catch line of G.S. 25-9-309 reads as rewritten:

"**§ 25-9-309. Protection of purchasers of ~~instruments and~~ instruments, ~~documents.~~ documents and securities.**"

(n) G.S. 25-9-309 is amended by deleting the phrase "G.S. 25-8-301" and substituting in lieu thereof "G.S. 25-8-302".

(o) G.S. 25-9-312(7) reads as rewritten:

"(7) If future advances are made while a security interest is perfected by ~~filing or~~ filing, the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

(p) The Revisor of Statutes shall cause to be printed along with the amendments set forth in this section all relevant portions of the Official Comments to the 1977 amendments to Articles 1, 5, and 9 of the Uniform Commercial Code as prepared by the Commissioners on Uniform State Laws and such other explanatory comments as the Revisor may deem appropriate.

Sec. 9. (a) G.S. 25-8-102, as amended by Chapter 588 of the 1989 Session Laws, is amended in subdivision (1)(b) by deleting the word "and" at the end of clause (ii) and by deleting the period at the end of clause (iii) and inserting in lieu thereof a comma followed by the word "and".

(b) G.S. 25-8-201(1)(a1), as enacted by Chapter 588 of the 1989 Session Laws, is amended by deleting the word "Create" and substituting in lieu thereof the word "Creates".

(c) G.S. 25-8-308(7)(b), as enacted by Chapter 588 of the 1989 Session Laws, is amended by deleting the word "registering" and substituting in lieu thereof the word "registered".

(d) G.S. 25-8-403(6), as enacted by Chapter 588 of the 1989 Session Laws, is amended by deleting "G.S. 25-8-4" and substituting in lieu thereof "G.S. 25-8-408".

Sec. 10. (a) G.S. 25-9-203(4) reads as rewritten:

"(4) A transaction, although subject to this article, is also subject to the North Carolina Consumer Finance Act (being G.S. 53-164 through 53-191), G.S. 24-1 and 24-2, ~~and G.S. 91-1 through 91-8,~~ the Pawnbrokers Modernization Act of 1989 (being Chapter 91A of the General Statutes), the Retail Installment Sales Act (being Chapter 25A of the North Carolina General Statutes), and in the case of conflict

between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

(b) G.S. 66-164(1) reads as rewritten:

"(1) 'Dealer' means a person who engages in the business of purchasing precious metals from the public in the form of jewelry, flatware, silver services or other forms and holds himself out to the public by signs, advertising or other methods as engaging in such purchases including any independent contractor purchasing precious metals under any arrangement in any department store; provided, however, that permanently located retail merchants shall be exempted insofar as they make purchases directly from manufacturers or wholesalers of precious metals for their inventories. Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiquities and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-166 if his total purchases or acquisitions of precious metals from the public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all such secondhand items or articles in the 12-month period next preceding the date of application for an exemption under G.S. 66-166. Provided further that pawnbrokers as defined in ~~G.S. 91-1~~ G.S. 91A-3 shall be exempted insofar as they accept pawns or pledges of items made of precious metals under the provisions of Chapter ~~91~~ 91A of the General Statutes."

Sec. 11. G.S. 31B-7 reads as rewritten:

"**§ 31B-7. Short title.**

This Chapter may be cited as the Renunciation of ~~Transfers by Will, Intestacy, Appointment or Insurance Contract~~ Property and Renunciation of Fiduciary Powers Act."

Sec. 11.1. G.S. 45-21.44 reads as rewritten:

"**§ 45-21.44. Validation of foreclosure sales when provisions of G.S. 45-21.17(c)(2) or G.S. 45-21.17(2) not complied with.**

In all cases prior to ~~March 1, 1974,~~ May 1, 1990, where mortgages or deeds of trust on real estate with power of sale have been foreclosed pursuant to said power by proper advertisement except that the date of the last publication was from seven to 20 days preceding the date of sale, all such sales are fully validated, ratified, and confirmed and shall be as effective to pass title to the real estate described therein as fully and to the same extent as if the provisions of G.S. 45-21.17(c)(2) or G.S. 45-21.17(2) had been fully complied with."

Sec. 12.1. (a) G.S. 55-1-20(i) reads as rewritten:

"(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in G.S. 55-5-03 and G.S. 55-15-09), and all fees ~~and taxes~~ required by this Chapter."

(b) G.S. 55-15-03(c) reads as rewritten:

"(c) If the Secretary of State finds that the application conforms to law he shall, when all ~~taxes and~~ fees have been tendered as prescribed in this Chapter:

(1) Endorse on the application and an exact or conformed copy thereof the word 'filed' and the hour, day, month, and year of the filing thereof;

(2) File in his office the application and the certificate of existence (or document of similar import as described in subsection (b) of this section);

(3) Issue a certificate of authority to transact business in this State to which he shall affix the exact or conformed copy of the application; and

(4) Send to the foreign corporation or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto."

Sec. 12.2. G.S. 55-1-25(b) reads as rewritten:

"(b) The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with his name and official title and the date and time of filing, on both the original and the document copy. After filing a document, except as provided in G.S. 55-5-03 and ~~G.S. 55-15-10,~~ G.S. 55-15-09, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative."

Sec. 12.3. G.S. 55-1-26(a) reads as rewritten:

"(a) If the Secretary of State refuses to file a document delivered to his office for filing, the ~~domestic or foreign corporation~~ person tendering the document for filing may, within 30 days after such refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for his refusal to file. The appeal to the superior court is not governed by the Administrative Procedure Act and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances."

Sec. 12.4. G.S. 55-1-40(10) reads as rewritten:

"(10) 'Foreign corporation' means a corporation for profit ~~or a corporation having capital stock~~ incorporated under a law other than the law of this State."

Sec. 12.5. G.S. 55-4-01(c) reads as rewritten:

"(c) A ~~corporation~~ person may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the ~~applying corporation;~~ applicant; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

Sec. 12.6. G.S. 55-5-03(a) reads as rewritten:

"(a) A registered agent may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also discontinued. The statement must include or be accompanied by a certification from the registered agent that he has mailed or delivered to the corporation at its last known address written notice of this resignation. Such certification shall include the name and title of the officer notified, if any, and the address to which the notice was mailed or delivered."

Sec. 12.7. G.S. 55-6-21(e) reads as rewritten:

"(e) The corporation may place in escrow shares issued for a contract for future services or benefits or ~~to~~ for a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefit received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part."

Sec. 12.8. G.S. 55-6-23(b)(3) reads as rewritten:

"(3) A majority of the votes entitled to be cast by the class or series to be issued approve the issuance of not more than a stated number of shares within a period of not more than one year after such ~~authorization.~~ approval."

Sec. 12.9. G.S. 55-6-40(f) reads as rewritten:

"(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent ~~subordinated~~ otherwise provided by agreement."

Sec. 12.10. G.S. 55-7-21.1 reads as rewritten:

"**§ 55-7-21.1. Rights of holders of debt securities.**

In addition to any rights otherwise lawfully conferred, the articles of incorporation of the corporation may confer upon the holders of any bonds, debentures or other debt obligations issued or to be issued by the corporation any one or more of the following powers and rights upon such terms and conditions as may be prescribed in the articles of incorporation:

(1) The power to vote on any matter either in conjunction with or to the full or partial exclusion of its ~~shareholders; —~~ shareholders, notwithstanding G.S. 55-6-01(c)(1);

(2) The right to inspect the corporate books and records;

(3) Any other rights concerning the corporation which its shareholders have or may have. ~~Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the articles of incorporation approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles of incorporation.~~

Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the articles of incorporation approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles of incorporation."

Sec. 12.11. G.S. 55-7-28(e) reads as rewritten:

"(e) Shareholders of a corporation incorporated in this State shall have the right to cumulate their votes for directors if ~~(i)~~

(1) The corporation was in existence prior to July 1, 1957, under a charter which does not grant the right of cumulative voting and at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that there is at least one stockholder who owns or controls more than one-fourth of the voting stock of such corporation. (Shares represented at a meeting by revocable proxy relating to that meeting or adjourned meetings thereof shall not be deemed shares 'controlled' within the meaning of this subsection), or if ~~(ii)~~

(2) The corporation was incorporated on or after July 1, 1957, and before July 1, 1990,

unless, when the stock transfer books are closed or at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders, shares of any class or series are listed on a national securities exchange or are held of record by more than 2,000 shareholders. This right to vote cumulatively may be denied or limited by amendment to the articles of incorporation, but no such amendment shall be made when the number of shares voting against the amendment would be sufficient to elect a director by cumulative voting if such shares are entitled to be voted cumulatively for the election of directors."

Sec. 12.12. G.S. 55-8-10(c) reads as rewritten:

"(c) A vacancy that will occur ~~at~~ upon a specific later date or subsequent event (by reason of a resignation effective ~~at~~ upon a later date or subsequent event under G.S. 55-8-07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs."

Sec. 12.13. G.S. 55-8-40(e) reads as rewritten:

"(e) Whenever a specific office is referred to in this Chapter, it shall be deemed to include any ~~person~~ individual who, ~~individually~~ alone or collectively with one or more other ~~persons,~~ individuals, holds or occupies such office."

Sec. 12.14. G.S. 55-8-57(b) is amended by deleting the words "on or" as they appear in the phrase "on or prior to July 1, 1990".

Sec. 12.15. G.S. 55-9-05 is amended in clause (iv) by inserting the word "a" between "of" and "corporation".

Sec. 12.16. G.S. 55-9A-01(b)(3)f reads as rewritten:

"f. Pursuant to the sale of such shares by the covered corporation or its parent or subsidiary ~~corporation, provided that in such case a written agreement relating to such sale to which the covered corporation is a party may permit the purchasers of such shares as a group also to purchase in any other manner within 90 days before or after such sale up to the same aggregate number of shares as were sold by the covered corporation or its parent or subsidiary corporation without any such purchases being a 'control share acquisition'.~~ corporation."

Sec. 12.17. G.S. 55-11-03(f)(2) reads as rewritten:

"(2) On a plan of share exchange by each class or series of shares ~~included~~ to be acquired in the exchange, with each class or series constituting a separate voting group."

Sec. 12.18. G.S. 55-13-02(a)(1) reads as rewritten:

"(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;".

Sec. 12.19. G.S. 55-14-01 reads as rewritten:

"**§ 55-14-01. Dissolution by incorporators or ~~initial~~ directors.**

(a) The board of directors or, if the corporation has no directors, a majority of the incorporators of a corporation that has not issued shares may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(1a) The names and addresses of its officers, if any;

(1b) The names and addresses of its directors, if any, or if none, the names and addresses of its incorporators;

(2) The date of its incorporation;

(3) That none of the corporation's shares has been issued;

(4) That no debt of the corporation remains unpaid;

(5) Reserved for future codification purposes; and

(6) That a majority of the incorporators or ~~initial~~ the board of directors authorized the dissolution.

(b) A corporation is dissolved upon the effective date of its articles of dissolution."

Sec. 12.20. G.S. 55-15-01(a) reads as rewritten:

"(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of ~~State.~~ State under this Chapter or under Chapter 55A of the General Statutes."

Sec. 12.21. G.S. 55-15-03(a)(5) reads as rewritten:

"(5) The street address, and the mailing address if different from the street address, of its registered office in this ~~State~~ State, the county in which the registered office is located, and the name of its registered agent at that office; and".

Sec. 12.22. G.S. 55-15-04(b) reads as rewritten:

"(b) A foreign corporation may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth:

(1) The name of the foreign corporation and the name in which the corporation is authorized to transact business in North Carolina if different;

(2) The name of the state or country under whose law it is incorporated;

(3) The date it was originally authorized to transact business in this State;

(4) A statement of the change or changes being made.

Except for the content of the application, the ~~The~~ requirements of G.S. 55-15-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

Sec. 12.23. G.S. 55-15-20(b1) reads as rewritten:

"(bl) If the Secretary of State finds that such application conforms to law, he shall:

(1) Endorse on the application and an exact or conformed copy thereof the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File the application in his office; ~~and~~

(3) Issue a certificate of withdrawal to which he shall affix the exact or conformed copy of the ~~application.~~ application; and

(4) Send to the foreign corporation or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto."

Sec. 12.24. G.S. 55-15-31(b) reads as rewritten:

"(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist ~~with~~ within 60 days after notice is mailed, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign corporation."

Sec. 12.25. G.S. 55-15-32(a) reads as rewritten:

"(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the superior court of Wake County within 30 days after ~~service~~

~~of~~ the certificate of revocation is ~~mailed.~~ mailed to the foreign corporation by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. The petition shall have attached to it copies of the corporation's certificate of authority and the Secretary of State's certificate of revocation. The appeal to the superior court shall be determined upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign corporation shall have the burden of establishing that it is entitled to have the revocation set aside."

Sec. 12.26. G.S. 55-16-02(b)(1) reads as rewritten:

"(1) Records of any final action taken with or without a meeting by the board of directors, or by a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the ~~shareholders,~~ shareholders and records of action taken by the shareholders ~~or board of directors~~ without a meeting, to the extent not subject to inspection under G.S. 55-16-02 (a);".

Sec. 13. G.S. 62-15(h) reads as rewritten:

"(h) The executive director is authorized to employ, subject to approval by the State Budget Officer, expert witnesses and such other professional expertise as the executive director may deem necessary from time to time to assist the public staff in its participation in Commission proceedings, and the compensation and expenses therefor shall be paid by the utility or utilities participating in said proceedings. Such compensation and expenses shall be treated by the Commission, for rate-making purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the Commission. An accounting of such compensation and expenses shall be reported annually to the Joint Legislative Utility Review Committee and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate."

Sec. 14. G.S. 62-110.2(e) reads as rewritten:

"(e) The furnishing of electric service in any area which becomes a part of any municipality after April 20, 1965, either by annexation or incorporation, (whether or not such area, or any portion thereof, shall have been assigned pursuant to subsection (c) of this section) shall be subject to the provisions of ~~Article 41 of Subchapter X of Chapter 160~~ Part 2, Article 16 of Chapter 160A of the General Statutes, and any provisions of this section inconsistent with said Article shall not be applicable within such area after the effective date of such annexation or incorporation."

Sec. 15. G.S. 62-118(a) and G.S. 62-262.2(e) are amended by deleting "G.S. 62-262(h)" and substituting in lieu thereof "G.S. 62-262(k)".

Sec. 16. G.S. 74-64(a)(3) reads as rewritten:

"(3) If payment of any civil penalty assessed pursuant to this section is not received by the Department or equitable settlement reached within 30 days following notice to the operator of the assessment of the civil penalty, or within 30 days following the denial of any appeal by the operator pursuant to ~~G.S. 74-61 and 74-62,~~ G.S. 74-61, the Department

shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty."

Sec. 17. G.S. 90-95(d)(2), as amended by Section 1, Chapter 641 of the 1989 Session Laws, is amended by deleting "phenclyclidine" and substituting in lieu thereof the correct spelling, "phencyclidine".

Sec. 18. G.S. 90A-30(c)(2) reads as rewritten:

"(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in ~~G.S. 150-36.~~ G.S. 150B-36. "

Sec. 19. (a) G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation required by the provisions of this Subchapter to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this State, or as a foreign corporation domesticated in or doing business in this State, or owning and using a part or all of its capital or plant in this State, fails or neglects to make any such report or return or to pay any such tax or fee for 90 days after the time prescribed in this Subchapter for making such report or return, or for paying such tax or fee, the Secretary of Revenue shall certify such fact to the Secretary of State. The Secretary of State shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this State by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this State by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify by mail every such domestic or foreign corporation of the action taken by ~~him, and also shall immediately certify such suspension to the register of deeds of the county in which the principal office or registered office of such corporation is located in this State with instructions to the register of deeds, and it shall be the register's duty to record and index the suspension in the Record of Incorporations. After the recordations, the register may destroy the certificate.~~ him."

(b) G.S. 105-232 reads as rewritten:

"**§ 105-232. Corporate rights restored; receivership and liquidation.**

Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, as provided in G.S. 105-230, which complies within five years after such suspension, with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to said suspension, in the same manner as if such suspension had not taken place), and upon payment to the Secretary of Revenue of a fee of twenty-five dollars ($25.00) to cover the cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of

such compliance and the Secretary of State shall reinstate the corporation by appropriate entry upon the records of his office. The Secretary of State shall immediately notify the corporation of the ~~reinstatement and certify such reinstatement to the register of deeds of the county in which the suspension was recorded. It shall thereupon be the register's duty, upon receipt of the fee specified in G.S. 161-10 from the corporation, to record and index the reinstatement in the Records of Corporations. The Register of Deeds shall note the fact of recordation on the certificate and forward it to the corporation or its representative.~~ reinstatement.

When the certificate or articles of incorporation in this State have been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and there remains property held in the name of the corporation, or undisposed of at the time of such suspension, or there remain possibilities of reverters, reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor or other interested party may apply to the superior court for the appointment of a receiver. Application for such receiver may be made in a civil action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are unknown and unknown stockholders and unknown heirs and next of kin of deceased stockholders may be served by publication, as well as creditors, dealers and other interested persons, and a guardian **ad litem** may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into such bond with such sureties as may be set by the court and shall give such notice to creditors by publication or otherwise as the court may prescribe. Any creditor who shall fail to file his claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. Such receiver shall have authority to sell such property or possibilities of reverters, reversionary interests, rights of reentry, or other future interests, upon such terms and in such manner as shall be ordered by the court, apply the proceeds to the payment of any debts of such corporation, and distribute the remainder among the stockholders or their representatives in proportion to their interests therein. Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, by him to be disbursed according to law, in the event the stock books of the corporation shall be lost or shall not reflect the latest stock transfers, the court shall determine the respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with such finding. Such proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation."

(c) This section shall become effective July 1, 1990.

Sec. 20. G.S. 106-140.1(a) reads as rewritten:

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

Sec. 21. G.S. 110-92 reads as rewritten:

"**§ 110-92. Duties of State and local agencies.**

When requested by an operator of a day-care facility or by the Secretary of Human Resources, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards adopted as rules by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department of Human Resources on forms approved and provided by the Department of Environment, Health, and Natural Resources.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary of Human Resources on forms provided by the Department so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article."

Sec. 22. G.S. 113-202.1(c), as enacted by Chapter 423 of the 1989 Session Laws, is amended by deleting "G.S. 113A-202(d)" and inserting in lieu thereof "G.S. 113-202(d)".

Sec. 23. (a) G.S. 120-123(20) is repealed.

(b) G.S. 120-123(34a) is repealed.

(c) G.S. 120-123(44) is amended by deleting "G.S. 143B-168.1" and inserting in lieu thereof "G.S. 143B-168.3".

(d) G.S. 120-123(52) is amended by deleting "G.S. 115C-489.3" and substituting in lieu thereof "G.S. 115C-489.4".

Sec. 24. G.S. 120-70.71(11), as enacted by Section 10.1 of Chapter 802 of the 1989 Session Laws, is amended by deleting the word "and" following the semicolon.

Sec. 25. G.S. 120-166(b)(4) is amended by deleting "G.S. 160-31" and substituting in lieu thereof "G.S. 160A-31".

Sec. 26. (a) G.S. 122C-3(15) reads as rewritten:

"(15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters ~~7A, 33, or 35A~~ 7A or 35A or former Chapters 33 or 35 of the General Statutes."

(b) G.S. 122C-203 is amended by deleting the phrase "Chapters 33 or 35A" and substituting in lieu thereof "Chapter 35A or former Chapters 33 or 35".

(c) G.S. 122C-242(b) is amended by deleting the phrase "Chapters 33 or 35" and substituting in lieu thereof "Chapter 35A".

(d) G.S. 122C-53 and G.S. 122C-241 are amended by deleting the phrase "Chapters 33 or 35" wherever it occurs and inserting in lieu thereof the phrase "Chapter 35A or former Chapters 33 or 35".

Sec. 27. G.S. 122C-55(a1) is amended by deleting "North Carolina Memorial Hospital" and inserting in lieu thereof "the University of North Carolina Hospitals at Chapel Hill" throughout the subsection.

Sec. 27.1. Section 1 of Chapter 823, Session Laws of 1989 is amended by deleting "G.S. 122C-161(a)", and substituting "G.S. 122C-261(a)".

Sec. 28. G.S. 128-26(r)(5) reads as rewritten:

"(5) The member makes a lump sum payment into the Annuity Saving Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the ~~advise~~ advice of the actuary, plus an administrative fee to be determined by the Board of Trustees."

Sec. 29. G.S. 130A-33.30 reads as rewritten:

"**§ 130A-33.30. Commission of Anatomy – creation; powers and duties.**

There is hereby created the Commission of Anatomy of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission is authorized to receive dead bodies pursuant to ~~G.S. 90-216.6~~ G.S. 130A-415 and to be a donee of a body or parts thereof pursuant to ~~Article 15A of Chapter 90~~ Part 3, Article 16 of Chapter 130A of the General Statutes known as the Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules adopted by the Commission."

Sec. 30. (a) G.S. 130A-310.5(c), as amended by Section 4 of Chapter 286 of the 1989 Session Laws, is amended by deleting the phrase "Emergency Hazardous Waste Site Remedial Fund" and substituting in lieu thereof "Emergency Response Fund".

(b) G.S. 130A-310.7(a), as amended by Section 6 of Chapter 286 of the 1989 Session Laws, is amended by deleting the semicolon following the word "substance" and substituting a comma in lieu thereof.

(c) G.S. 130A-310.22, as enacted by Section 10 of Chapter 286 of the 1989 Session Laws, is amended by deleting the phrase "42 U.S.C. § 9604(b)(9)" and inserting in lieu thereof "42 U.S.C. § 9604(c)(9)".

Sec. 31. G.S. 130B-15(e), as enacted by Chapter 168 of the 1989 Session Laws, reads as rewritten:

"(e) The Commission shall provide through its own personnel, private contractors, cooperative agreement with other governmental agencies, or any combination thereof, any active maintenance or remedial actions that may be required. Payment for the cost thereof shall be made from the Long-Term Care Fund established pursuant to ~~G.S. 130B-16.~~ G.S. 130B-17."

Sec. 32. G.S. 143-166.2(d) is amended by deleting "Article 26 of Chapter 130" and substituting in lieu thereof "Article 7 of Chapter 131E".

Sec. 33. G.S. 143-215.1(b1)(4), as enacted by Section 2 of Chapter 453 of the 1989 Session Laws, reads as rewritten:

"(4) Requirements of subsection (a) of this section that the Department review and ~~approval~~ approve of each individual facility."

Sec. 34. G.S. 143-350 is amended by deleting "G.S. 143-214" and substituting in lieu thereof "G.S. 143B-282".

Sec. 35. (a) G.S. 143B-138(b)(9) is amended by deleting "Mental Retardation" in the phrase "Division of Mental Health, Mental Retardation, and Substance Abuse Services" and substituting in lieu thereof "Developmental Disabilities".

(b) G.S. 143B-138(b)(10) is amended by deleting "Mental Retardation" in the phrase "Commission for Mental Health, Mental Retardation, and Substance Abuse Services" and substituting in lieu thereof "Developmental Disabilities".

Sec. 36. G.S. 143B-426.40 is amended by deleting "G.S. 147-58" and substituting in lieu thereof "G.S. 147-64.6, G.S. 147-64.7,".

Sec. 37. G.S. 143B-426.39(14), as enacted by Section 4 of Chapter 239 of the 1989 Session Laws, is amended by deleting the word "to" following the word "thereof" in the first sentence of the subdivision.

Sec. 38. (a) G.S. 159I-15(d) is amended in the second sentence by deleting the phrase "place or place" and substituting in lieu thereof the phrase "place or places".

(b) G.S. 159I-15(e) is amended in the third paragraph by deleting the word "at" as it appears in the phrase "such price or prices at the Local Government Commission shall determine" and substituting in lieu thereof the word "as".

(c) G.S. 159I-16(c) is amended in the second sentence by deleting the word "noticed" as it appears in the phrase "irrespective of whether such parties have noticed thereof" and substituting in lieu thereof the word "notice".

(d) G.S. 159I-16(d) is amended by inserting a comma after the word "Agency" as it appears in the phrase "costs of operation of the Agency".

(e) G.S. 159I-30(h) is amended:

(1) In the first sentence by deleting the word "form" as it appears in the phrase "40 years form their date" and substituting in lieu thereof the word "from"; and

(2) In the second sentence by deleting the phrase "place or place" and substituting in lieu thereof the phrase "place or places".

Sec. 39. G.S. 160A-372, as amended by Chapter 747 of the 1987 Session Laws, is amended by deleting "G.S. 136-10 or G.S. 136-11" and inserting in lieu thereof "G.S. 136-66.10 or G.S. 136-66.11".

Sec. 40. G.S. 160A-400.2, as enacted by Chapter 706 of the 1989 Session Laws, is amended by deleting "160A-400.15" and inserting in lieu thereof "160A-400.14".

Sec. 41. G.S. 160A-617, as enacted by Chapter 740 of the 1989 Session Laws, is amended by deleting the word "of" in the phrase "In addition of the powers granted by this Article" and inserting in lieu thereof the word "to".

Sec. 42. G.S. 163-125(f), as enacted by Chapter 325 of the 1989 Session Laws, is amended by deleting "G.S. 163-124(c)" as it occurs in the phrase "in the case of a write-in candidate, the last day for filing petitions under G.S. 163-124(c)", and substituting in lieu thereof "G.S. 163-123(c)".

Sec. 43. G.S. 163-132.2(c) reads as rewritten:

"(c) If the Executive Secretary-Director of the State Board does not find that the filed precinct boundaries are coterminous with the current township boundaries, current municipal boundaries, census block boundaries, or a combination of those boundaries, he shall not approve those precinct boundaries but shall alter the precinct boundaries to be coterminous with the census block boundaries, municipal boundaries or township boundaries nearest to those existing precinct boundaries and these altered precincts shall then be the official precincts. If the Executive Secretary-Director of the State Board finds that a precinct does not consist solely of contiguous territory, he shall alter the precinct boundary so that it consists solely of contiguous territory, except where the non-contiguity is caused by the operation of ~~G.S. 160A-132.5A.~~ G.S. 163-132.5A."

Sec. 44. Section 42 of Chapter 770, Session Laws of 1989, is amended by deleting "Chapter 187, Session Laws of 1987", and substituting "Chapter 187, Session Laws of 1989".

Sec. 45. Section 5 of Chapter 758, Session Laws of 1989, reads as rewritten:

"Sec. 5. Nothing in this ~~Article~~ act shall be construed to affect the authority of the Department of Human Resources otherwise provided by law to license or regulate any health service facility ~~of~~ or domiciliary service facility."

Sec. 46. (a) G.S. 136-176(a)(2), as enacted by Section 1.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(2) Motor vehicle use tax deposited in the fund under ~~G.S. 105-171~~ G.S. 105-173."

(b) Section 68.2 of Chapter 770, Session Laws of 1989, is repealed.

Sec. 47. The provisions of Sections 7, 8, and 9 of Chapter 751, Session Laws of 1989, do not apply to references to the United States Department of Commerce.

Sec. 48. G.S. 159I-3(a)(6) as enacted by Chapter 756 of the 1989 Session Laws reads as rewritten:

"(6) 'Division' means the ~~Division of Health Services~~ Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources and any successor of said Division."

Sec. 49. G.S. 159I-7(b) as enacted by Chapter 756 of the 1989 Session Laws reads as rewritten:

"(b) Moneys in the Solid Waste Management Loan Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State treasury. Interest earnings derived from such investments shall be credited to the Fund, credited to such other use as may be provided in a trust agreement or resolution securing any bonds or notes issued under the provisions of this Chapter, or credited to such other use, including the payment of administrative expenses of the Agency, the costs of research for solid waste management programs and the making of grants for such research, as may be directed by the Board.

(b1) In connection with solid waste research to be contracted for by the ~~Solid Waste Branch,~~ Division, the Secretary of ~~the Department to which that Branch is assigned, statutorially,~~ Environment, Health, and Natural Resources shall negotiate, with the Board of the Agency, a memorandum of agreement which shall contain necessary rules and provisions for certifying that proper competitive bid procedures, and when appropriate, proper sole source bid procedures, for contracts have been executed in connection with a Request for Proposals (RFP); and, which shall state that a previously determined one-to-one match requirement from private sector sources has been met in accordance with rules and provisions set out in the memorandum of agreement, and that the Secretary is ready to award a contract for a specified amount. The Treasurer, at the direction of the board, shall certify that funds are available and that the purpose of the contract is consistent with provisions for the use of solid waste loan program proceeds."

Sec. 50. This act is effective upon ratification, except as otherwise provided herein, but Sections 12.1 through 12.26 of this act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.