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 Environmental Quality. 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. 138-5. (1971, c. 832, s. 1; 1973, c. 476, s. 128; 1989, c. 727, s. 170; 1997-261, s. 90; 1997-443, s. 11A.97; 2015-241, s. 14.30(u).)

§ 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: Repealed by Session Laws 2017-57, s. 12.1(b), effective July 1, 2017.

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 set by the Board, not to exceed one hundred twenty-five dollars ($125.00). 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 multi-year 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. 3-7; 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; 2026-11, s. 11.)

§ 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 non-refundable 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 license renewal by completion of continuing certification credit requirements as prescribed by the Board or reexaminations at intervals not more frequent than four years. (1971, c. 832, s. 1; 1975, c. 425, s. 4; 2010-31, s. 11.1(c); 2015-263, s. 29(a).)

§ 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 non-refundable 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 by completion of continuing certification credit requirements as prescribed by the Board or reexaminations 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); 2015-263, s. 29(b).)

§ 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 non-refundable 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, continuing certification credit requirements, 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); 2015-263, s. 29(c).)

§ 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) Repealed by Session Laws 2017-57, s. 12.1(b), effective July 1, 2017.

(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 non-chlorophyll-bearing thallophyte (that is any non-chlorophyll-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 consumer-sized 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. 9-11; 1987, c. 559, ss. 2, 18-20; 1991, c. 87, ss. 1, 2; 1995, c. 445, ss. 6, 7; 2017-57, s. 12.1(b).)

§ 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 Chapter 160D of the General Statutes, or from exercising its fire prevention or inspection authority. (1971, c. 832, s. 1; 1995, c. 445, s. 8; 2022-62, s. 37.)

§ 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 subclassifications 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.)