

1 **Chapter 130A.**

2 **Public Health.**

3 Article 1.

4 Definitions, General Provisions and Remedies.

5 Part 1. General Provisions.

6 **§ 130A-1. Title.**

7 This Chapter shall be known as the Public Health Law of North Carolina. (1983, c. 891, s.
8 2.)

9
10 **§ 130A-1.1. Mission and essential services.**

11 (a) The General Assembly recognizes that unified purpose and direction of the public
12 health system is necessary to ensure that all citizens in the State have equal access to essential
13 public health services. The General Assembly declares that the mission of the public health
14 system is to promote and contribute to the highest level of health possible for the people of
15 North Carolina by:

- 16 (1) Preventing health risks and disease;
17 (2) Identifying and reducing health risks in the community;
18 (3) Detecting, investigating, and preventing the spread of disease;
19 (4) Promoting healthy lifestyles;
20 (5) Promoting a safe and healthful environment;
21 (6) Promoting the availability and accessibility of quality health care services
22 through the private sector; and
23 (7) Providing quality health care services when not otherwise available.

24 (b) As used in this section, the term "essential public health services" means those
25 services that the State shall ensure because they are essential to promoting and contributing to
26 the highest level of health possible for the citizens of North Carolina. The Departments of
27 Environment and Natural Resources and Health and Human Services shall attempt to ensure
28 within the resources available to them that the following essential public health services are
29 available and accessible to all citizens of the State, and shall account for the financing of these
30 services:

- 31 (1) Health Support:
32 a. Assessment of health status, health needs, and environmental risks to
33 health;
34 b. Patient and community education;
35 c. Public health laboratory;
36 d. Registration of vital events;
37 e. Quality improvement; and
38 (2) Environmental Health:
39 a. Lodging and institutional sanitation;
40 b. On-site domestic sewage disposal;
41 c. Water and food safety and sanitation; and
42 (3) Personal Health:
43 a. Child health;
44 b. Chronic disease control;
45 c. Communicable disease control;
46 d. Dental public health;
47 e. Family planning;
48 f. Health promotion and risk reduction;
49 g. Maternal health; and
50 (4) Public Health Preparedness.

1 The Commission for Public Health shall determine specific services to be provided under
2 each of the essential public health services categories listed above.

3 (c) The General Assembly recognizes that there are health-related services currently
4 provided by State and local government and the private sector that are important to maintaining
5 a healthy social and ecological environment but that are not included on the list of essential
6 public health services required under this section. Omission of these services from the list of
7 essential public health services shall not be construed as an intent to prohibit or decrease their
8 availability. Rather, such omission means only that the omitted services may be more
9 appropriately assured by government agencies or private entities other than the public health
10 system.

11 (d) The list of essential public health services required by this section shall not be
12 construed to limit or restrict the powers and duties of the Commission for Public Health or the
13 Departments of Environment and Natural Resources and Health and Human Services as
14 otherwise conferred by State law. (1991, c. 299, s. 1; 1997-443, s. 11A.54; 2007-182, s. 2;
15 2009-442, s. 1.)
16

17 § 130A-2. Definitions.

18 The following definitions shall apply throughout this Chapter unless otherwise specified:

- 19 (1) "Accreditation board" or "Board" means the Local Health Department
20 Accreditation Board.
21 (1a) "Commission" means the Commission for Public Health.
22 (1b) "Communicable condition" means the state of being infected with a
23 communicable agent but without symptoms.
24 (1c) "Communicable disease" means an illness due to an infectious agent or its
25 toxic products which is transmitted directly or indirectly to a person from an
26 infected person or animal through the agency of an intermediate animal,
27 host, or vector, or through the inanimate environment.
28 (2) "Department" means the Department of Health and Human Services.
29 (3) "Imminent hazard" means a situation that is likely to cause an immediate
30 threat to human life, an immediate threat of serious physical injury, an
31 immediate threat of serious adverse health effects, or a serious risk of
32 irreparable damage to the environment if no immediate action is taken.
33 (3a) "Isolation authority" means the authority to issue an order to limit the
34 freedom of movement or action of persons or animals that are infected or
35 reasonably suspected to be infected with a communicable disease or
36 communicable condition for the period of communicability to prevent the
37 direct or indirect conveyance of the infectious agent from the person or
38 animal to other persons or animals who are susceptible or who may spread
39 the agent to others.
40 (4) "Local board of health" means a district board of health or a public health
41 authority board or a county board of health.
42 (5) "Local health department" means a district health department or a public
43 health authority or a county health department.
44 (6) "Local health director" means the administrative head of a local health
45 department appointed pursuant to this Chapter.
46 (6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in
47 excess of the usual number of cases of the disease.
48 (7) "Person" means an individual, corporation, company, association,
49 partnership, unit of local government or other legal entity.
50 (7a) "Quarantine authority" means the authority to issue an order to limit the
51 freedom of movement or action of persons or animals which have been

1 exposed to or are reasonably suspected of having been exposed to a
2 communicable disease or communicable condition for a period of time as
3 may be necessary to prevent the spread of that disease. Quarantine authority
4 also means the authority to issue an order to limit access by any person or
5 animal to an area or facility that may be contaminated with an infectious
6 agent. The term also means the authority to issue an order to limit the
7 freedom of movement or action of persons who have not received
8 immunizations against a communicable disease when the State Health
9 Director or a local health director determines that the immunizations are
10 required to control an outbreak of that disease.

11 (8) "Secretary" means the Secretary of Health and Human Services.

12 (9) "Unit of local government" means a county, city, consolidated city-county,
13 sanitary district or other local political subdivision, authority or agency of
14 local government.

15 (10) "Vital records" means birth, death, fetal death, marriage, annulment and
16 divorce records registered under the provisions of Article 4 of this Chapter.
17 (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1;
18 1973, c. 476, s. 128; 1975, c. 751, s. 1; 1981, c. 130, s. 1; c. 340, ss. 1-4;
19 1983, c. 891, s. 2; 1989, c. 727, s. 141; 1989 (Reg. Sess., 1990), c. 1004, s.
20 19(b); 1991, c. 631, s. 1; 1997-443, s. 11A.55; 1997-502, s. 2(a), (b);
21 2002-179, s. 4; 2004-80, s. 1; 2005-369, s. 1(a); 2007-182, s. 2.)
22

23 **§ 130A-3. Appointment of the State Health Director.**

24 The Secretary shall appoint the State Health Director. The State Health Director shall be a
25 physician licensed to practice medicine in this State. The State Health Director shall perform
26 duties and exercise authority assigned by the Secretary. (1983, c. 891, s. 2.)
27

28 **§ 130A-4. Administration.**

29 (a) Except as provided in subsection (c) of this section, the Secretary shall administer
30 and enforce the provisions of this Chapter and the rules of the Commission. A local health
31 director shall administer the programs of the local health department and enforce the rules of
32 the local board of health.

33 (b) When requested by the Secretary, a local health department shall enforce the rules
34 of the Commission under the supervision of the Department. The local health department shall
35 utilize local staff authorized by the Department to enforce the specific rules.

36 (c) The Secretary of Environment and Natural Resources shall administer and enforce
37 the provisions of Articles 9 and 10 of this Chapter and the rules of the Commission.

38 (d) When requested by the Secretary of Environment and Natural Resources, a local
39 health department shall enforce the rules of the Commission and the rules adopted by the
40 Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the
41 Department of Environment and Natural Resources. The local health department shall utilize
42 local staff authorized by the Department of Environment and Natural Resources to enforce the
43 specific rules. (1983, c. 891, s. 2; 1995, c. 123, s. 2; 1997-443, s. 11A.56; 2001-474, s. 18;
44 2006-202, s. 5; 2006-255, s. 13.1; 2011-145, s. 13.3(pp).)
45

46 **§ 130A-4.1. State funds for maternal and child health care/nonsupplanting.**

47 (a) The Department shall ensure that local health departments do not reduce county
48 appropriations for maternal and child health services provided by the local health departments
49 because they have received State appropriations for this purpose.

50 (b) All income earned by local health departments for maternal and child health
51 programs supported in whole or in part from State or federal funds, received from the

1 Department, shall be budgeted and expended by local health departments to further the
2 objectives of the program that generated the income. (1991, c. 689, s. 170; 1997-443, s.
3 11A.57.)
4

5 **§ 130A-4.2. State funds for health promotion/nonsupplanting.**

6 The Department shall ensure that local health departments do not reduce county
7 appropriations for health promotion services provided by the local health departments because
8 they have received State appropriations for this purpose. (1991, c. 689, s. 171; 1997-443, s.
9 11A.58.)
10

11 **§ 130A-5. Duties of the Secretary.**

12 The Secretary shall have the authority:

- 13 (1) To enforce the State health laws and the rules of the Commission;
- 14 (2) To investigate the causes of epidemics and of infectious, communicable and
15 other diseases affecting the public health in order to control and prevent
16 these diseases; to provide, under the rules of the Commission, for the
17 prevention, detection, reporting and control of communicable, infectious or
18 any other diseases or health hazards considered harmful to the public health;
- 19 (3) To develop and carry out reasonable health programs that may be necessary
20 for the protection and promotion of the public health and the control of
21 diseases. The Commission is authorized to adopt rules to carry out these
22 programs;
- 23 (4) To make sanitary and health investigations and inspections;
- 24 (5) To investigate occupational health hazards and occupational diseases and to
25 make recommendations for the elimination of the hazards and diseases. The
26 Secretary shall work with the Industrial Commission and shall file sufficient
27 reports with the Industrial Commission to enable it to carry out all of the
28 provisions of the Workers' Compensation Act with respect to occupational
29 disease.
- 30 (6) To receive donations of money, securities, equipment, supplies, realty or any
31 other property of any kind or description which shall be used by the
32 Department for the purpose of carrying out its public health programs;
- 33 (7) To acquire by purchase, devise or otherwise in the name of the Department
34 equipment, supplies and other property, real or personal, necessary to carry
35 out the public health programs;
- 36 (8) To use the official seal of the Department. Copies of documents in the
37 possession of the Department may be authenticated with the seal of the
38 Department, attested by the signature or a facsimile of the signature of the
39 Secretary, and when authenticated shall have the same evidentiary value as
40 the originals;
- 41 (9) To disseminate information to the general public on all matters pertaining to
42 public health; to purchase, print, publish, and distribute free, or at cost,
43 documents, reports, bulletins and health informational materials. Money
44 collected from the distribution of these materials shall remain in the
45 Department to be used to replace the materials;
- 46 (10) To be the health advisor of the State and to advise State officials in regard to
47 the location, sanitary construction and health management of all State
48 institutions; to direct the attention of the State to health matters which affect
49 the industries, property, health and lives of the people of the State; to inspect
50 at least annually State institutions and facilities; to make a report as to the
51 health conditions of these institutions or facilities with suggestions and

1 recommendations to the appropriate State agencies. It shall be the duty of the
2 persons in immediate charge of these institutions or facilities to furnish all
3 assistance necessary for a thorough inspection;

- 4 (11) To establish a schedule of fees based on income to be paid by a recipient for
5 services provided by Migrant Health Clinics and Development Evaluation
6 Centers;
- 7 (12) To establish fees for the sale of specimen containers, vaccines and other
8 biologicals. The fees shall not exceed the actual cost of such items, plus
9 transportation costs;
- 10 (13) To establish a fee to cover costs of responding to requests by employers for
11 industrial hygiene consultation services and occupational consultation
12 services. The fee shall not exceed two hundred dollars (\$200.00) per on site
13 inspection; and
- 14 (14) To establish a fee for companion animal certificate of examination forms to
15 be distributed, upon request, by the Department to licensed veterinarians.
16 The fee shall not exceed the cost of the form and shipping costs.
- 17 (15) To establish a fee not to exceed the cost of analyzing clinical Pap smear
18 specimens sent to the State Laboratory by local health departments and
19 State-owned facilities and for reporting the results of the analysis. This fee
20 shall be in addition to the charge for the Pap smear test kit.
- 21 (16) To charge a fee of up to fifty-five dollars (\$55.00) for analyzing private
22 well-water samples sent to the State Laboratory of Public Health by local
23 health departments. The fee shall be imposed only for analyzing samples
24 from newly constructed wells. The fee shall be computed annually by the
25 Director of the State Laboratory of Public Health by analyzing the previous
26 year's testing at the State Laboratory of Public Health, and applying the
27 amount of the total cost of the private well-water testing, minus State
28 appropriations that support this effort. The fee includes the charge for the
29 private well-water panel test kit. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c.
30 833, s. 14; 1969, c. 982; 1973, c. 476, ss. 128, 138; 1979, c. 714, s. 2; 1981,
31 c. 562, s. 4; 1983, c. 891, s. 2; 1985, c. 470, s. 1; 1991, c. 227, s. 1; 1993
32 (Reg. Sess., 1994), c. 715, s. 1; 2003-284, s. 34.13(a); 2006-66, s. 10.20(a);
33 2007-115, s. 2.)

34
35 **§ 130A-5.1. State health standards.**

36 (a) The Secretary shall adopt measurable standards and goals for community health
37 against which the State's actions to improve the health status of its citizens will be measured.
38 The Secretary shall report annually to the General Assembly upon its convening or reconvening
39 and to the Governor on all of the following:

- 40 (1) How the State compares to national health measurements and established
41 State goals for each standard. Comparisons shall be reported using
42 disaggregated data for health standards.
- 43 (2) Steps taken by State and non-State entities to meet established goals.
- 44 (3) Additional steps proposed or planned to be taken to achieve established
45 goals.

46 (b) The Secretary may coordinate and contract with other entities to assist in the
47 establishment of standards and preparation of the report. The Secretary may use resources
48 available to implement this section. (2000-67, s. 11.)

49
50 **§ 130A-6. Delegation of authority.**

1 Whenever authority is granted by this Chapter upon a public official, the authority may be
2 delegated to another person authorized by the public official. (1983, c. 891, s. 2.)

3
4 **§ 130A-7. Grants-in-aid.**

5 The State is authorized to accept, allocate and expend any grants-in-aid for public health
6 purposes which may be made available to the State by the federal government. This Chapter is
7 to be liberally construed in order that the State and its citizens may benefit fully from these
8 grants-in-aid. The Commission is authorized to adopt rules, not inconsistent with the laws of
9 this State, as required by the federal government for receipt of federal funds. Any federal funds
10 received are to be deposited with the State Treasurer and are to be appropriated by the General
11 Assembly for the public health purposes specified. (1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

12
13 **§ 130A-8. Counties to recover indirect costs on certain federal public health or mental
14 health grants.**

15 (a) The Department shall include in its request for federal funds applicable to public
16 health or mental health grants from the federal government to the State or any of its agencies,
17 indirect costs incurred by counties acting as subgrantees under the grants or otherwise
18 providing services to the Department with regard to the grants to the full extent permitted by
19 OMB Circular A-87 or its successor. The Department shall allow counties to claim and recover
20 their indirect costs on these grants to the full extent permitted by the Circular.

21 (b) This section shall not apply to those federal public health or mental health grants
22 which are formula grants to the State or which are otherwise limited as to the maximum
23 amounts receivable on a statewide basis. (1977, c. 876, ss. 1, 2; 1983, c. 891, s. 2.)

24
25 **§ 130A-9. Standards.**

26 The Commission is authorized to establish reasonable standards governing the nature and
27 scope of public health services rendered by local health departments. (1957, c. 1357, s. 1; 1973,
28 c. 110; 1975, c. 83; 1979, c. 504, s. 15; 1983, c. 891, s. 2.)

29
30 **§ 130A-10. Advisory Committees.**

31 The Secretary is authorized to establish and appoint as many special advisory committees
32 as may be necessary to advise and confer with the Department concerning the public health.
33 Members of any special advisory committee shall serve without compensation but may be
34 allowed travel and subsistence expenses in accordance with G.S. 138-6. (1957, c. 1357, s. 1;
35 1975, c. 281; 1983, c. 891, s. 2.)

36
37 **§ 130A-11. Residencies in public health.**

38 The Department shall establish a residency program designed to attract dentists into the
39 field of public health and to train them in the specialty of public health practice. The program
40 shall include practical experience in public health principles and practices. (1975, c. 945, s. 1;
41 1983, c. 891, s. 2; 1991, c. 342, s. 6.)

42
43 **§ 130A-12. Confidentiality of records.**

44 All records containing privileged patient medical information, information protected under
45 Code of Federal Regulations Parts 160 and 164, and information collected under the
46 authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of
47 Health and Human Services or local health departments shall be confidential and shall not be
48 public records pursuant to G.S. 132-1. Notwithstanding G.S. 8-53, the information contained in
49 the records may be disclosed for purposes of treatment, payment, research, or health care
50 operations to the extent that disclosure is permitted under 45 Code of Federal Regulations §§
51 164.506 and 164.512(i). For purposes of this section, the terms "treatment," "payment,"

1 "research," and "health care operations" have the meanings given those terms in 45 Code of
2 Federal Regulations § 164.501. (1985, c. 470, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 9; 1995,
3 c. 428, s. 1.1; 2004-80, s. 4; 2006-255, s. 13.2; 2011-145, s. 13.3(qq); 2011-314, s. 3.)
4

5 **§ 130A-13. Application for eligibility for Department medical payment program**
6 **constitutes assignment to the State of right to third party benefits.**

7 (a) Notwithstanding any other provisions of law, by applying for financial eligibility for
8 any Department medical payment program administered under this Chapter, the recipient
9 patient or responsible party for the recipient patient shall be deemed to have made an
10 assignment to the State of the right to third party benefits, contractual or otherwise, to which he
11 may be entitled to the extent of the amount of the Department's payment on behalf of the
12 recipient patient. Any attorney retained by the recipient patient shall be compensated for his
13 services in accordance with the following schedule and in the following order of priority from
14 any amount of such third party benefits obtained on behalf of the recipient by settlement, with
15 judgment against, or otherwise from a third party:

- 16 (1) First to the payment of any court costs taxed by the judgment;
- 17 (2) Second to the payment of the fee of the attorney representing the beneficiary
18 making the settlement or obtaining the judgment, but this fee shall not
19 exceed one-third of the amount obtained or recovered to which the right of
20 subrogation applies;
- 21 (3) Third to the payment of the amount of assistance received by the beneficiary
22 as prorated with other claims against the amount obtained or received from
23 the third party to which the right of subrogation applies, but the amount shall
24 not exceed one-third of the amount obtained or recovered to which the right
25 of subrogation applies; and
- 26 (4) Fourth to the payment of any amount remaining to the beneficiary or his
27 personal representative.

28 The United States and the State of North Carolina shall be entitled to shares in each net
29 recovery under this section. Their shares shall be promptly paid under this section and their
30 proportionate parts of such sum shall be determined in accordance with the matching formulas
31 in use during the period for which assistance was paid to the recipient.

32 (b) The Department shall establish a third party resources collection unit that is
33 adequate to ensure collection of third party resources.

34 (c) The Commission may adopt rules necessary to implement this section.

35 (d) Notwithstanding any other law to the contrary, in all actions brought by the State
36 pursuant to subsection (a) of this section to obtain reimbursement for payments for medical
37 services, liability shall be determined on the basis of the same laws and standards, including
38 bases for liability and applicable defenses, as would be applicable if the action were brought by
39 the individual on whose behalf the medical services were rendered. (1989, c. 483, s. 1; 1995, c.
40 508, s. 1.)
41

42 **§ 130A-14. Department may assist private nonprofit foundations.**

43 (a) The Secretary may allow employees of the Department to assist any private
44 nonprofit foundation that works directly with services or programs of the Department and
45 whose sole purpose is to support the services and programs of the Department, and may
46 provide other appropriate services to any such foundation. No employee of the Department may
47 work with a foundation for more than 20 hours in any one month. Chapter 150B of the General
48 Statutes does not apply to any assistance or services provided to a private nonprofit foundation
49 pursuant to this section.

50 (b) The board of directors of any private nonprofit foundation that receives assistance or
51 services pursuant to this section shall secure and pay for the services of the Department of State

1 Auditor or shall employ a certified public accountant to conduct an annual audit of the financial
2 accounts of the foundation. The board of directors of the foundation shall transmit a copy of
3 the annual financial audit report to the Secretary. (1991, c. 761, s. 37.3; 1993, c. 553, s. 40.1)
4

5 **§ 130A-15. Access to information.**

6 (a) Health care providers and persons in charge of health care facilities or laboratories
7 shall, upon request and proper identification, permit the State Health Director to examine,
8 review, and obtain a copy of records containing privileged medical information or information
9 protected under the Health Information Portability and Accountability Act (HIPAA) medical
10 privacy rule, 45 C.F.R. Parts 160 and 164, that the State Health Director deems are necessary to
11 prevent, control, or investigate a disease or health hazard that may present a clear danger to the
12 public health.

13 (b) Privileged medical information or protected health information received by the State
14 Health Director pursuant to this section shall be confidential and is not a public record under
15 G.S. 132-1. The information shall not be released, except when the release is made pursuant to
16 any other provision of law, to another federal, state, or local public health agency for the
17 purpose of preventing or controlling a disease or public health hazard or to a court or law
18 enforcement official or law enforcement officer for the purpose of enforcing the provisions of
19 this Chapter or for the purpose of investigating a disease or public health hazard.

20 (c) A person who permits examination, review, or copying of records or who provides
21 copies of the records pursuant to subsection (a) of this section is immune from any civil or
22 criminal liability that might otherwise be incurred or imposed. (2007-115, s. 1.)
23

24 **§ 130A-16. Collection and reporting of race and ethnicity data.**

25 All medical care providers required by the provisions of this Chapter to report to the
26 Division of Public Health shall collect and document patient self-reported race and ethnicity
27 data and shall include such data in their reports to the Division. (2008-119, s. 1.)
28

29 Part 2. Remedies.

30 **§ 130A-17. Right of entry.**

31 (a) The Secretary and a local health director shall have the right of entry upon the
32 premises of any place where entry is necessary to enforce the provisions of this Chapter or the
33 rules adopted by the Commission or a local board of health. If consent for entry is not obtained,
34 an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2.
35 However, if an imminent hazard exists, no warrant is required for entry upon the premises.

36 (b) The Secretary of Environment and Natural Resources and a local health director
37 shall have the same rights enumerated in subsection (a) of this section to enforce the provisions
38 of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.60; 2001-474, s. 19;
39 2006-255, s. 13.3; 2011-145, s. 13.3(rr).)
40

41 **§ 130A-18. Injunction.**

42 (a) If a person shall violate any provision of this Chapter, the rules adopted by the
43 Commission or rules adopted by a local board of health, or a condition or term of a permit or
44 order issued under this Chapter, the Secretary or a local health director may institute an action
45 for injunctive relief, irrespective of all other remedies at law, in the superior court of the county
46 where the violation occurred or where a defendant resides.

47 (b) The Secretary of Environment and Natural Resources and a local health director
48 shall have the same rights enumerated in subsection (a) of this section to enforce the provisions
49 of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.61; 2001-474, s. 20;
50 2006-255, s. 13.4; 2007-550, s. 2(a); 2011-145, s. 13.3(ss).)
51

1 **§ 130A-19. Abatement of public health nuisance.**

2 (a) If the Secretary or a local health director determines that a public health nuisance
3 exists, the Secretary or a local health director may issue an order of abatement directing the
4 owner, lessee, operator or other person in control of the property to take any action necessary to
5 abate the public health nuisance. If the person refuses to comply with the order, the Secretary or
6 the local health director may institute an action in the superior court of the county where the
7 public health nuisance exists to enforce the order. The action shall be calendared for trial within
8 60 days after service of the complaint upon the defendant. The court may order the owner to
9 abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If
10 the Secretary or the local health director is ordered to abate the nuisance, the Department or the
11 local health department shall have a lien on the property for the costs of the abatement of the
12 nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the
13 General Statutes and the lien may be enforced as provided therein.

14 (b) The Secretary of Environment and Natural Resources and a local health director
15 shall have the same rights enumerated in subsection (a) of this section to enforce the provisions
16 of Articles 9 and 10 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss.
17 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443,
18 s. 11A.62; 2006-255, s. 13.5; 2011-145, s. 13.3(tt).)

19
20 **§ 130A-20. Abatement of an imminent hazard.**

21 (a) If the Secretary or a local health director determines that an imminent hazard exists,
22 the Secretary or a local health director may order the owner, lessee, operator, or other person in
23 control of the property to abate the imminent hazard or may, after notice to or reasonable
24 attempt to notify the owner, lessee, operator, or other person in control of the property enter
25 upon any property and take any action necessary to abate the imminent hazard. If the Secretary
26 or a local health director abates the imminent hazard, the Department or the local health
27 department shall have a lien on the property of the owner, lessee, operator, or other person in
28 control of the property where the imminent hazard existed for the cost of the abatement of the
29 imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter
30 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard
31 did not exist at the time the Secretary or the local health director took the action. The owner,
32 lessee, operator, or any other person against whose property the lien has been filed may defeat
33 the lien by showing that that person was not culpable in the creation of the imminent hazard.

34 (b) The Secretary of Environment and Natural Resources and a local health director
35 shall have the same rights enumerated in subsection (a) of this section to enforce the provisions
36 of Articles 9 and 10 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss.
37 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443,
38 s. 11A.63; 2002-179, s. 6; 2006-255, s. 13.6; 2011-145, s. 13.3(uu).)

39
40 **§ 130A-20.01. Action for the recovery of costs of hazardous materials emergency medical**
41 **response.**

42 A person who causes the release of a hazardous material that results in the activation of one
43 or more State Medical Assistance Teams (SMATs) or the Epidemiology Section of the
44 Division of Public Health of the Department of Health and Human Services shall be liable for
45 all reasonable costs incurred by each team or the Epidemiology Section that responds to or
46 mitigates the incident. The Secretary of Health and Human Services shall invoice the person
47 liable for the hazardous materials release and, in the event of nonpayment, may institute an
48 action to recover those costs in the superior court of the county in which the release occurred.
49 (2007-107, s. 3.1(b).)

50
51 **§ 130A-21. Embargo.**

1 (a) In addition to the authority of the Department of Agriculture and Consumer Services
2 pursuant to G.S. 106-125, the Secretary or a local health director has authority to exercise
3 embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the
4 food or drink is in an establishment that is subject to regulation by the Department of Health
5 and Human Services pursuant to this Chapter, that is subject to rules adopted by the
6 Commission, or that is the subject of an investigation pursuant to G.S. 130A-144; however, no
7 such action shall be taken in any establishment or part of an establishment that is under
8 inspection or otherwise regulated by the Department of Agriculture and Consumer Services or
9 the United States Department of Agriculture other than the part of the establishment that is
10 subject to regulation by the Department of Health and Human Services pursuant to this
11 Chapter. Any action under this section shall only be taken by, or after consultation with,
12 Department of Health and Human Services regional environmental health specialists, or the
13 Director of the Division of Public Health or the Director's designee, in programs regulating
14 food and drink pursuant to this Chapter or in programs regulating food and drink that are
15 subject to rules adopted by the Commission. Authority under this section shall not be delegated
16 to individual environmental health specialists in local health departments otherwise authorized
17 and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to
18 this section, the Department of Health and Human Services or the local health director shall
19 immediately notify the Department of Agriculture and Consumer Services. For the purposes of
20 this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary
21 of Health and Human Services or the local health director and shall not be required to be
22 carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for
23 any person to remove or dispose of the food or drink by sale or otherwise without the
24 permission of a Department of Health and Human Services regional environmental health
25 specialist, the Director of the Division of Public Health or the Director's designee, the local
26 health director, or a duly authorized agent of the Department of Agriculture and Consumer
27 Services, or by the court in accordance with the provisions of G.S. 106-125.

28 (b) Recodified as G.S. 106-266.36 by Session Laws 2011-145, s. 13.3(s), effective July
29 1, 2011.

30 (c) Recodified as G.S. 113-221.4 by Session Laws 2011-145, s. 13.3(ttt), effective July
31 1, 2011.

32 (d) Nothing in this section is intended to limit the embargo authority of the Department
33 of Agriculture and Consumer Services. The Department of Health and Human Services and the
34 Department of Agriculture and Consumer Services are authorized to enter agreements
35 respecting the duties and responsibilities of each agency in the exercise of their embargo
36 authority.

37 (e) For the purpose of this section, a food or drink is adulterated if the food or drink is
38 deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed
39 misbranded under G.S. 106-130. (1983, c. 891, s. 2; 1997-261, s. 109; 1997-443, s. 11A.63A;
40 2006-80, s. 1; 2007-7, s. 1; 2011-145, ss. 13.3(s), (vv), (ww), (ttt).)

41 42 **§ 130A-22. Administrative penalties.**

43 (a) The Secretary of Environment and Natural Resources may impose an administrative
44 penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission
45 pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each
46 day of a continuing violation shall constitute a separate violation. The penalty shall not exceed
47 fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous
48 waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day
49 in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or
50 involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a
51 manner that results in medical waste entering waters or lands of the State; and shall not exceed

1 fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal
2 of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in
3 medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two
4 thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial
5 action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant
6 to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars (\$100.00) for a first
7 violation; two hundred dollars (\$200.00) for a second violation within any 12-month period;
8 and five hundred dollars (\$500.00) for each additional violation within any 12-month period for
9 any violation of Part 2G of Article 9 of this Chapter. For violations of Part 7 of Article 9 of this
10 Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the
11 penalty shall not exceed two hundred dollars (\$200.00) for a second violation; and (iii) the
12 penalty shall not exceed five hundred dollars (\$500.00) for subsequent violations. If a person
13 fails to pay a civil penalty within 60 days after the final agency decision or court order has been
14 served on the violator, the Secretary of Environment and Natural Resources shall request the
15 Attorney General to institute a civil action in the superior court of any county in which the
16 violator resides or has his or its principal place of business to recover the amount of the
17 assessment. Such civil actions must be filed within three years of the date the final agency
18 decision or court order was served on the violator.

19 (a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the
20 determination of civil liability or penalty pursuant to subsection (a) of this section.

21 (b) The Secretary of Environment and Natural Resources may impose an administrative
22 penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall
23 constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars
24 (\$25,000) for each day the violation continues.

25 (b1) The Secretary may impose an administrative penalty on a person who violates
26 Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in
27 subsection (b2) of this section, the penalty shall not exceed one thousand dollars (\$1,000) per
28 day per violation. Until the Department has notified the person of the violation, a continuing
29 violation shall be treated as one violation. Each day thereafter of a continuing violation shall be
30 treated as a separate violation.

31 In determining the amount of a penalty under this subsection or subsection (b2) of this
32 section, the Secretary shall consider all of the following factors:

- 33 (1) The degree and extent of harm to the natural resources of the State, to the
34 public health, or to private property resulting from the violation.
- 35 (2) The duration and gravity of the violation.
- 36 (3) The effect on air quality.
- 37 (4) The cost of rectifying the damage.
- 38 (5) The amount of money the violator saved by noncompliance.
- 39 (6) The prior record of the violator in complying or failing to comply with
40 Article 19 of this Chapter or a rule adopted pursuant to that Article.
- 41 (7) The cost to the State of the enforcement procedures.
- 42 (8) If applicable, the size of the renovation and demolition involved in the
43 violation.

44 (b2) The penalty for violations of the asbestos NESHAP for demolition and renovation,
45 as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per
46 violation. Until the Department has provided the person with written notification of the
47 violation of the asbestos NESHAP for demolition and renovation that describes the violation,
48 recommends a general course of action, and establishes a time frame in which to correct the
49 violations, a continuing violation shall be treated as one violation. Each day thereafter of a
50 continuing violation shall be treated as a separate violation. A violation of the asbestos
51 NESHAP for demolition and renovation is not considered to continue during the period a

1 person who has received the notice of violation is following the general course of action and
2 complying with the time frame set forth in the notice of violation.

3 (b3) The Secretary may impose an administrative penalty on a person who violates
4 Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this
5 Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed
6 one thousand dollars (\$1,000) for each day the violation continues for Article 19A of this
7 Chapter. The penalty shall not exceed seven hundred fifty dollars (\$750.00) for each day the
8 violation continues for Article 19B of this Chapter. The penalty authorized by this section does
9 not apply to a person who is not required to be certified under Article 19A or 19B.

10 (c) The Secretary may impose an administrative penalty on a person who willfully
11 violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or
12 any condition imposed upon a permit issued under Article 11. An administrative penalty may
13 not be imposed upon a person who establishes that neither the site nor the system may be
14 improved or a new system installed so as to comply with Article 11 of this Chapter. Each day
15 of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty
16 dollars (\$50.00) per day in the case of a wastewater collection, treatment and disposal system
17 with a design daily flow of no more than 480 gallons or in the case of any system serving a
18 single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per
19 day in the case of a wastewater collection, treatment and disposal system with a design daily
20 flow of more than 480 gallons which does not serve a single one-family dwelling.

21 (c1) The Secretary may impose a monetary penalty on a vendor who violates rules
22 adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary
23 determines that disqualification would result in hardship to participants in the Women, Infants,
24 and Children (WIC) program. The penalty shall be calculated using the following formula:
25 multiply five percent (5%) times the average dollar amount of the vendor's monthly
26 redemptions of WIC food instruments for the 12-month period immediately preceding
27 disqualification, then multiply that product by the number of months of the disqualification
28 period determined by the Secretary.

29 (d) In determining the amount of the penalty in subsections (a), (b) and (c), the
30 Secretary and the Secretary of Environment and Natural Resources shall consider the degree
31 and extent of the harm caused by the violation and the cost of rectifying the damage.

32 (e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a)
33 not later than 30 days after receipt by the petitioner of the document which constitutes agency
34 action, be entitled to an administrative hearing and judicial review in accordance with Chapter
35 150B of the General Statutes, the Administrative Procedure Act.

36 (f) The Commission shall adopt rules concerning the imposition of administrative
37 penalties under this section.

38 (g) The Secretary or the Secretary of Environment and Natural Resources may bring a
39 civil action in the superior court of the county where the violation occurred or where the
40 defendant resides to recover the amount of an administrative penalty authorized under this
41 section whenever a person:

- 42 (1) Who has not requested an administrative hearing in accordance with
43 subsection (e) of this section fails to pay the penalty within 60 days after
44 being notified of the penalty; or
- 45 (2) Who has requested an administrative hearing fails to pay the penalty within
46 60 days after service of a written copy of the final agency decision.

47 (h) A local health director may impose an administrative penalty on any person who
48 willfully violates the wastewater collection, treatment, and disposal rules of the local board of
49 health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed
50 upon a permit issued under the approved local rules. An administrative penalty may not be
51 imposed upon a person who establishes that neither the site nor the system may be improved or

1 a new system installed so as to comply with Article 11 of this Chapter. The local health director
2 shall establish and recover the amount of the administrative penalty in accordance with
3 subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation.
4 The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater
5 collection, treatment and disposal system with a design daily flow of no more than 480 gallons
6 or in the case of any system serving a single one-family dwelling. The penalty shall not exceed
7 three hundred dollars (\$300.00) per day in the case of a wastewater collection, treatment and
8 disposal system with a design daily flow of more than 480 gallons which does not serve a
9 single one-family dwelling. A person contesting a penalty imposed under this subsection shall
10 be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24.
11 A local board of health shall adopt rules concerning the imposition of administrative penalties
12 under this subsection.

13 (h1) A local health director may take the following actions and may impose the
14 following administrative penalty on a person who manages, operates, or controls a public place
15 or place of employment and fails to comply with the provisions of Part 1C of Article 23 of this
16 Chapter or with rules adopted thereunder or with local ordinances, rules, laws, or policies
17 adopted pursuant to Part 2 of Article 23 of this Chapter:

- 18 (1) First violation. – Provide the person in violation with written notice of the
19 person's first violation and notification of action to be taken in the event of
20 subsequent violations.
- 21 (2) Second violation. – Provide the person in violation with written notice of the
22 person's second violation and notification of administrative penalties to be
23 imposed for subsequent violations.
- 24 (3) Subsequent violations. – Impose on the person in violation an administrative
25 penalty of not more than two hundred dollars (\$200.00) for the third and
26 subsequent violations.

27 Each day on which a violation of this Article or rules adopted pursuant to this Article
28 occurs may be considered a separate and distinct violation. Notwithstanding G.S. 130A-25, a
29 violation of Article 23 of this Chapter shall not be punishable as a criminal violation.

30 (i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to
31 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

32 (j) The Secretary of Environment and Natural Resources may also assess the
33 reasonable costs of any investigation, inspection, or monitoring associated with the assessment
34 of the civil penalty against any person who is assessed a civil penalty under this section. (1983,
35 c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247; 1989, c. 742, s. 4; 1991, c.
36 691, s. 1; c. 725, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 11; 1993 (Reg. Sess., 1994), c. 686, s.
37 1; 1995, c. 504, s. 8; 1997-443, s. 11A.64; 1997-523, s. 2; 1998-215, s. 54(a); 2001-474, s. 21;
38 2002-154, s. 1; 2007-550, ss. 3(a), 4(a); 2009-27, s. 2; 2009-163, s. 2; 2009-488, s. 2;
39 2010-180, s. 14(c); 2011-145, s. 13.3(xx).)

40 **§ 130A-23. Suspension and revocation of permits and program participation.**

41 (a) The Secretary may suspend or revoke a permit issued under this Chapter upon a
42 finding that a violation of the applicable provisions of this Chapter, the rules of the
43 Commission or a condition imposed upon the permit has occurred. A permit may also be
44 suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate
45 information that materially affected the decision to issue the permit.

46 (b) The Secretary may suspend or revoke a person's participation in a program
47 administered under this Chapter upon a finding that a violation of the applicable provisions of
48 this Chapter or the rules of the Commission has occurred. Program participation may also be
49 suspended or revoked upon a finding that participation was based upon incorrect or inadequate
50 information that materially affected the decision to grant program participation.
51

1 (c) A person shall be given notice that there has been a tentative decision to suspend or
2 revoke the permit or program participation and that an administrative hearing will be held in
3 accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at
4 which time the person may challenge the tentative decision.

5 (d) A permit shall be suspended or revoked immediately if a violation of the Chapter,
6 the rules or a condition imposed upon the permit presents an imminent hazard. An operation
7 permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public
8 swimming pool to maintain minimum water quality or safety standards or design and
9 construction standards pertaining to the abatement of suction hazards which result in an unsafe
10 condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure
11 of an establishment to maintain a minimum grade of C. The Secretary of Environment and
12 Natural Resources shall immediately give notice of the suspension or revocation and the right
13 of the permit holder or program participant to appeal the suspension or revocation under G.S.
14 150B-23.

15 (e) The Secretary of Environment and Natural Resources shall have all of the applicable
16 rights enumerated in this section to enforce the provisions of Articles 9 and 10 of this Chapter.
17 (1983, c. 891, s. 2; 1987, c. 827, s. 1; c. 438, s. 3; 1993, c. 211, s. 2; 1993 (Reg. Sess., 1994), c.
18 732, s. 2; 1995, c. 123, s. 15; 1997-443, s. 11A.65; 2011-145, s. 13.3(yy).)

19
20 **§ 130A-24. Appeals procedure.**

21 (a) Appeals concerning the enforcement of rules adopted by the Commission,
22 concerning the suspension and revocation of permits and program participation by the
23 Secretary and concerning the imposition of administrative penalties by the Secretary shall be
24 governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

25 (a1) Any person appealing an action taken by the Department pursuant to this Chapter or
26 rules of the Commission shall file a petition for a contested case with the Office of
27 Administrative Hearings as provided in G.S. 150B-23(a). The petition shall be filed not later
28 than 30 days after notice of the action which confers the right of appeal unless a federal statute
29 or regulation provides for a different time limitation. The time limitation imposed under this
30 subsection shall commence when notice of the agency decision is given to all persons
31 aggrieved. Such notice shall be provided to all persons known to the agency by personal
32 delivery or by the placing of notice in an official depository of the United States Postal Service
33 addressed to the person at the latest address provided to the agency by the person.

34 (b) Appeals concerning the enforcement of rules adopted by the local board of health
35 and concerning the imposition of administrative penalties by a local health director shall be
36 conducted in accordance with this subsection and subsections (c) and (d) of this section. The
37 aggrieved person shall give written notice of appeal to the local health director within 30 days
38 of the challenged action. The notice shall contain the name and address of the aggrieved
39 person, a description of the challenged action and a statement of the reasons why the
40 challenged action is incorrect. Upon filing of the notice, the local health director shall, within
41 five working days, transmit to the local board of health the notice of appeal and the papers and
42 materials upon which the challenged action was taken.

43 (c) The local board of health shall hold a hearing within 15 days of the receipt of the
44 notice of appeal. The board shall give the person not less than 10 days' notice of the date, time
45 and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse
46 the challenged action. The local board of health shall issue a written decision based on the
47 evidence presented at the hearing. The decision shall contain a concise statement of the reasons
48 for the decision.

49 (d) A person who wishes to contest a decision of the local board of health under
50 subsection (b) of this section shall have a right of appeal to the district court having jurisdiction

1 within 30 days after the date of the decision by the board. The scope of review in district court
2 shall be the same as in G.S. 150B-51.

3 (e) The appeals procedures enumerated in this section shall apply to appeals concerning
4 the enforcement of rules, the imposition of administrative penalties, or any other action taken
5 by the Department of Environment and Natural Resources pursuant to Articles 8, 9, 10, 11, and
6 12 of this Chapter. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248; 1993, c. 211, s. 1; 1997-443,
7 s. 11A.66; 1998-217, s. 33.)

8
9 **§ 130A-25. Misdemeanor.**

10 (a) Except as otherwise provided, a person who violates a provision of this Chapter or
11 the rules adopted by the Commission or a local board of health shall be guilty of a
12 misdemeanor.

13 (b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S.
14 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but
15 shall instead be sentenced to a term of imprisonment of no more than two years and shall serve
16 any prison sentence in McCain Hospital, Section of Prisons of the Division of Adult
17 Correction, McCain, North Carolina; the North Carolina Correctional Center for Women,
18 Section of Prisons of the Division of Adult Correction, Raleigh, North Carolina; or any other
19 confinement facility designated for this purpose by the Secretary of Public Safety after
20 consultation with the State Health Director. The Secretary of Public Safety shall consult with
21 the State Health Director concerning the medical management of these persons.

22 (c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law,
23 a person imprisoned for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released
24 prior to the completion of the person's term of imprisonment unless and until a determination
25 has been made by the District Court that release of the person would not create a danger to the
26 public health. This determination shall be made only after the medical consultant of the
27 confinement facility and the State Health Director, in consultation with the local health director
28 of the person's county of residence, have made recommendations to the Court.

29 (d) A violation of Part 7 of Article 9 of this Chapter or G.S. 130A-309.10(m) shall be
30 punishable as a Class 3 misdemeanor. (1983, c. 891, s. 2; 1987, c. 782, s. 19; 1991, c. 187, s. 1;
31 1993, c. 539, s. 946; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 767, s. 18;
32 2010-180, s. 14(d); 2011-145, s. 19.1(h), (i), (j).)

33
34 **§ 130A-26: Repealed by Session Laws 1995, c. 311, s. 1.**

35
36 **§ 130A-26.1. Criminal violation of Article 9.**

37 (a) The definition of "person" set out in G.S. 130A-290 shall apply to this section. In
38 addition, for purposes of this section, the term "person" shall also include any responsible
39 corporate or public officer or employee.

40 (b) No proceeding shall be brought or continued under this section for or on account of
41 a violation by any person who has previously been convicted of a federal violation based upon
42 the same set of facts.

43 (c) In proving the defendant's possession of actual knowledge, circumstantial evidence
44 may be used, including evidence that the defendant took affirmative steps to shield himself
45 from relevant information. Consistent with the principles of common law, the subjective mental
46 state of defendants may be inferred from their conduct.

47 (d) For the purposes of the felony provisions of this section, a person's state of mind
48 shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject
49 of the prosecution is the result of any of the following occurrences or circumstances:

- 50 (1) A natural disaster or other act of God which could not have been prevented
51 or avoided by the exercise of due care or foresight.

- 1 (2) An act of third parties other than agents, employees, contractors, or
2 subcontractors of the defendant.
- 3 (3) An act done in reliance on the written advice or emergency on-site direction
4 of an employee of the Department of Environment and Natural Resources. In
5 emergencies, oral advice may be relied upon if written confirmation is
6 delivered to the employee as soon as practicable after receiving and relying
7 on the advice.
- 8 (4) An act causing no significant harm to the environment or risk to the public
9 health, safety, or welfare and done in compliance with other conflicting
10 environmental requirements or other constraints imposed in writing by
11 environmental agencies or officials after written notice is delivered to all
12 relevant agencies that the conflict exists and will cause a violation of the
13 identified standard.
- 14 (5) Violations of permit limitations causing no significant harm to the
15 environment or risk to the public health, safety, or welfare for which no
16 enforcement action or civil penalty could have been imposed under any
17 written civil enforcement guidelines in use by the Department of
18 Environment and Natural Resources at the time, including but not limited to,
19 guidelines for the pretreatment permit civil penalties. This subdivision shall
20 not be construed to require the Department of Environment and Natural
21 Resources to develop or use written civil enforcement guidelines.

22 (e) All general defenses, affirmative defenses, and bars to prosecution that may apply
23 with respect to other criminal offenses under State criminal offenses may apply to prosecutions
24 brought under this section or other criminal statutes that refer to this section and shall be
25 determined by the courts of this State according to the principles of common law as they may
26 be applied in the light of reason and experience. Concepts of justification and excuse applicable
27 under this section may be developed in the light of reason and experience.

28 (f) Any person who knowingly and willfully does any of the following shall be guilty
29 of a Class I felony, which may include a fine not to exceed one hundred thousand dollars
30 (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of
31 five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation
32 continues:

- 33 (1) Transports or causes to be transported any hazardous waste identified or
34 listed under G.S. 130A-294(c) to a facility which does not have a permit or
35 interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq.
- 36 (2) Transports or causes to be transported such hazardous waste with the intent
37 of delivery to a facility without a permit.
- 38 (3) Treats, stores, or disposes of such hazardous waste without a permit or
39 interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq., or in
40 knowing violation of any material condition or requirement or such permit
41 or applicable interim status rules.

42 (g) Any person who knowingly and willfully does any of the following shall be guilty
43 of a Class I felony, which may include a fine not to exceed one hundred thousand dollars
44 (\$100,000) per day of violation, provided that the fine shall not exceed a cumulative total of
45 five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation
46 continues:

- 47 (1) Transports or causes to be transported hazardous waste without a manifest as
48 required under G.S. 130A-294(c).
- 49 (2) Transports hazardous waste without a United States Environmental
50 Protection Agency identification number as required by rules promulgated
51 under G.S. 130A-294(c).

- 1 (3) Omits material information or makes any false material statement or
2 representation in any application, label, manifest, record, report, permit, or
3 other document filed, maintained, or used for purposes of compliance with
4 rules promulgated under G.S. 130A-294(c).
- 5 (4) Generates, stores, treats, transports, disposes of, exports, or otherwise
6 handles any hazardous waste or any used oil burned for energy recovery and
7 who knowingly destroys, alters, conceals, or fails to file any record,
8 application, manifest, report, or other document required to be maintained or
9 filed for purposes of compliance with rules promulgated under G.S.
10 130A-294(c).
- 11 (5) Provides false information or fails to provide information relevant to a
12 decision by the Department as to whether or not to enter into a brownfields
13 agreement under Part 5 of Article 9 of this Chapter.
- 14 (6) Provides false information or fails to provide information required by a
15 brownfields agreement under Part 5 of Article 9 of this Chapter.
- 16 (7) Provides false information relevant to a decision by the Department pursuant
17 to:
- 18 a. G.S. 130A-308(b).
19 b. G.S. 130A-310.7(c).
20 c. G.S. 143-215.3(f).
21 d. G.S. 143-215.84(e).

22 (h) For the purposes of subsections (f) and (g) of this section, the phrase "knowingly
23 and willfully" shall mean intentionally and consciously as the courts of this State, according to
24 the principles of common law interpret the phrase in the light of reason and experience.

- 25 (i) (1) Any person who knowingly transports, treats, stores, disposes of, or exports
26 any hazardous waste or used oil regulated under G.S. 130A-294(c) in
27 violation of subsection (f) or (g) of this section, who knows at the time that
28 he thereby places another person in imminent danger of death or personal
29 bodily injury shall be guilty of a Class C felony which may include a fine
30 not to exceed two hundred fifty thousand dollars (\$250,000) per day of
31 violation, provided that this fine shall not exceed a cumulative total of one
32 million dollars (\$1,000,000) for each period of 30 days during which a
33 violation continues.
- 34 (2) For the purposes of this subsection, a person's state of mind is knowing with
35 respect to:
- 36 a. His conduct, if he is aware of the nature of his conduct;
37 b. An existing circumstance, if he is aware or believes that the
38 circumstance exists; or
39 c. A result of his conduct, if he is aware or believes that his conduct is
40 substantially certain to cause danger of death or serious bodily injury.
- 41 (3) Under this subsection, in determining whether a defendant who is a natural
42 person knew that his conduct placed another person in imminent danger of
43 death or serious bodily injury:
- 44 a. The person is responsible only for actual awareness or actual belief
45 that he possessed; and
46 b. Knowledge possessed by a person other than the defendant but not
47 by the defendant himself may not be attributed to the defendant.
- 48 (4) It is an affirmative defense to a prosecution under this subsection that the
49 conduct charged was conduct consented to by the person endangered and
50 that the danger and conduct charged were reasonably foreseeable hazards of
51 an occupation, a business, or a profession; or of medical treatment or

1 medical or scientific experimentation conducted by professionally approved
2 methods and such other person had been made aware of the risks involved
3 prior to giving consent. The defendant may establish an affirmative defense
4 under this subdivision by a preponderance of the evidence.

5 (j) Any person convicted of an offense under subsection (f), (g), or (h) of this section
6 following a previous conviction under this section shall be subject to a fine, or imprisonment,
7 or both, not exceeding twice the amount of the fine, or twice the term of imprisonment
8 provided in the subsection under which the second or subsequent conviction occurs. (1989
9 (Reg. Sess., 1990), c. 1045, s. 9; 1993, c. 539, ss. 1303-1305; 1994, Ex. Sess., c. 24, s. 14(c);
10 1997-357, s. 3; 1997-443, s. 11A.67.)

11
12 **§ 130A-26.2. Penalty for false reporting under Article 9.**

13 Any person who knowingly makes any false statement, representation, or certification in
14 any application, record, report, plan, or other document filed or required to be maintained under
15 Article 9 of this Chapter or rules adopted under Article 9 of this Chapter; or who knowingly
16 makes a false statement of a material fact in a rule-making proceeding or contested case under
17 Article 9 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any
18 recording or monitoring device or method required to be operated or maintained under Article 9
19 of this Chapter or rules adopted under Article 9 of this Chapter is guilty of a Class 2
20 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten
21 thousand dollars (\$10,000). (1993 (Reg. Sess., 1994), c. 598, s. 3.)

22
23 **§ 130A-26A. Violations of Article 4.**

24 (a) A person who commits any of the following acts shall be guilty of a Class 1
25 misdemeanor:

- 26 (1) Willfully and knowingly makes any false statement in a certificate, record,
27 or report required by Article 4 of this Chapter;
- 28 (2) Removes or permits the removal of a dead body of a human being without
29 authorization provided in Article 4 of this Chapter;
- 30 (3) Refuses or fails to furnish correctly any information in the person's
31 possession or furnishes false information affecting a certificate or record
32 required by Article 4 of this Chapter;
- 33 (4) Fails, neglects, or refuses to perform any act or duty required by Article 4 of
34 this Chapter or by the instructions of the State Registrar prepared under
35 authority of the Article.
- 36 (5) Charges a fee for performing any act or duty required by Article 4 of this
37 Chapter or by the State Registrar pursuant to Article 4 of this Chapter, other
38 than fees specifically authorized by law.

39 (b) A person who commits any of the following acts shall be guilty of a Class I felony:

- 40 (1) Willfully and knowingly makes any false statement in an application for a
41 certified copy of a vital record, or who willfully and knowingly supplies
42 false information intending that the information be used in the obtaining of
43 any copy of a vital record;
- 44 (2) Without lawful authority and with the intent to deceive makes, counterfeits,
45 alters, amends, or mutilates a certificate, record, or report required by Article
46 4 of this Chapter or a certified copy of the certificate, record, or report;
- 47 (3) Willfully and knowingly obtains, possesses, sells, furnishes, uses, or
48 attempts to use for any purpose of deception, a certificate, record, or report
49 required by Article 4 of this Chapter or a certified copy of the certificate,
50 record, or report, which is counterfeited, altered, amended, or mutilated, or

1 which is false in whole or in part or which relates to the birth of another
2 person, whether living or deceased;

- 3 (4) When employed by the Vital Records Section of the Department or
4 designated under Article 4 of this Chapter, willfully and knowingly furnishes
5 or processes a certificate of birth, death, marriage, or divorce, or certified
6 copy of a certificate of birth, death, marriage, or divorce with the knowledge
7 or intention that it be used for the purposes of deception;
- 8 (5) Without lawful authority possesses a certificate, record, or report required by
9 Article 4 of this Chapter or a certified copy of the certificate, record, or
10 report knowing that it was stolen or otherwise unlawfully obtained;
- 11 (6) Willfully alters, except as provided by G.S. 130A-118, or falsifies a
12 certificate or record required by Article 4 of this Chapter; or willfully alters,
13 falsifies, or changes a photocopy, certified copy, extract copy, or any
14 document containing information obtained from an original or copy of a
15 certificate or record required by Article 4 of this Chapter; or willfully makes,
16 creates, or uses any altered, falsified or changed record, reproduction, copy
17 or document for the purpose of attempting to prove or establish for any
18 purpose whatsoever any matter purported to be shown on it;
- 19 (7) Without lawful authority, manufactures or possesses the seal of: (i) the Vital
20 Records Section, (ii) a county register of deeds, or (iii) a county health
21 department, or without lawful authority, manufactures or possesses a
22 reproduction or a counterfeit copy of the seal;
- 23 (8) Without lawful authority prepares or issues any certificate which purports to
24 be an official certified copy of a vital record;
- 25 (9) Without lawful authority, manufactures or possesses Vital Records Section,
26 county register of deeds, or county health department vital records forms or
27 safety paper used to certify births, deaths, marriages, and divorces, or
28 reproductions or counterfeit copies of the forms or safety paper; or
- 29 (10) Willfully and knowingly furnishes a certificate of birth or certified copy of a
30 record of birth with the intention that it be used by an unauthorized person or
31 for an unauthorized purpose. (1995, c. 311, s. 2.)
32

33 **§ 130A-27. Recovery of money.**

34 The Secretary or the Secretary of Environment and Natural Resources may institute an
35 action in the county where the action arose or the county where the defendant resides to recover
36 any money, other property or interest in property or the monetary value of goods or services
37 provided or paid for by the Department or the Secretary of Environment and Natural Resources
38 which are wrongfully paid or transferred to a person under a program administered by the
39 Department or the Secretary of Environment and Natural Resources pursuant to this Chapter.
40 (1983, c. 891, s. 2; 1997-443, s. 11A.68.)
41

42 **§ 130A-28. Forfeiture of gain.**

43 In the case of a violation of this Chapter or the rules adopted by the Commission, money or
44 other property or interest in property so acquired shall be forfeited to the State unless
45 ownership by an innocent person may be established. An action may be instituted by the
46 Attorney General or a district attorney pursuant to G.S. 1-532. (1983, c. 891, s. 2.)