

Article 51A.

North Carolina Antifreeze Law of 1975.

§ 106-579.1. Short title.

This Article shall be known as the "North Carolina Antifreeze Law of 1975." (1975, c. 719, s. 1.)

§ 106-579.2. Purpose.

It is desirable that there should be uniformity between the requirements of the several states. Therefore, the Board and Commission are directed, consistent with the purposes of this Article, to so enforce this Article as to strive for achievement of such uniformity and are also authorized and empowered to cooperate with and enter into agreements with any other agency of this State, or any other state regulating antifreeze, for the purpose of carrying out the provisions of this Article and securing uniformity of regulations in conformity to the primary standards established by this Article. (1975, c. 719, s. 2.)

§ 106-579.3. Definitions.

As used in this Article, the following words and phrases have the following meanings:

- (1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of antifreeze products.
- (2) "Antifreeze" means any substance or preparation sold, distributed or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point.
- (3) "Antifreeze-coolant" or "antifreeze and summer coolant" or "summer coolant" means any substance as defined in (2) above which also is sold, distributed or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."
- (4) "Board" means the North Carolina State Board of Agriculture, as defined by G.S. 106-2.
- (5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.
- (6) "Distribute" means to hold with intent to sell, offer for sale, to sell, barter or otherwise supply to the consumer.
- (7) "Home consumer-sized package" as used in G.S. 106-579.9(12) shall refer to packages of one fluid U.S. gallon or less.
- (8) "Label" means any display of written, printed, or graphic matter on, or attached to, a package, or to the outside individual container or wrapper of the package.
- (9) "Labeling" means (i) the labels and (ii) any other written, printed or graphic matter accompanying a package.
- (10) "Package" means (i) a sealed tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or (ii) a container from which the antifreeze may be installed directly by the seller into

the cooling system, but does not include shipping containers containing properly labeled inner containers.

- (11) "Person," as used in this Article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165; 1975, c. 719, s. 3.)

§ 106-579.4. Registrations.

On or before the first day of July of each year, and before any antifreeze may be distributed for the permit year beginning July 1, the manufacturer, packager, or person whose name appears on the label shall make application to the Commissioner on forms provided by the latter for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes to be distributed, when requested by the Commissioner; a license and inspection fee of five hundred dollars (\$500.00) for each brand of antifreeze and a properly labeled sample of the antifreeze shall also be submitted at this time. The Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the Board, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner shall thereafter issue a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails to meet standards promulgated by the Board, or is in violation of this Article or regulations thereunder, the Commissioner shall refuse to register the antifreeze, and he shall return the application to the applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall, at a later date, find that a properly registered antifreeze product has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations, definitions or standards duly promulgated by the Board, he shall notify the applicant that the license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to modify his application in order to comply with the requirements of this Article and regulations, definitions, and standards promulgated by the Board. All fees received by the Commissioner shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of supporting the antifreeze enforcement and testing program. (1949, c. 1165; 1975, c. 719, s. 4; 1997-261, s. 109; 2011-145, s. 31.10.)

§ 106-579.5. Adulteration.

Antifreeze shall be deemed to be adulterated:

- (1) If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system in which it is installed, or if, when used in such cooling system, it would make the operation of the engine dangerous to the user.
- (2) If its strength, quality, or purity falls below the standard of strength, quality, or purity established by the Board for the particular type or composition of antifreeze product. (1949, c. 1165; 1975, c. 719, s. 5.)

§ 106-579.6. Misbranding.

Antifreeze shall be deemed to be misbranded:

- (1) If it does not bear a label which (i) specifies the identity of the product, (ii) states the name and place of business of the registrant, (iii) states the correct net quantity of contents (in terms of liquid measure) separately and accurately in a uniform location upon the principal display panel, and (iv) contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze, as provided by applicable federal and State product safety laws.
- (2) If the label on a container of less than five gallons, or the labeling for a container of five gallons or more, does not contain a statement or chart showing the appropriate amount, percentage, proportion or concentration of the antifreeze to be used to provide (i) claimed protection from freezing at a specified degree or degrees of temperature, (ii) claimed protection from corrosion, or (iii) claimed increase of boiling point or protection from overheating.
- (3) If its labeling contains any claim that it has been approved or recommended by the Commissioner or the State of North Carolina.
- (4) If its labeling is false, deceptive, or misleading. (1949, c. 1165; 1975, c. 719, s. 6.)

§ 106-579.7. Rules and regulations.

(a) The Board is authorized to promulgate such reasonable rules, regulations and standards for antifreezes as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article and the protection of the public. The Board is authorized to promulgate regulations banning the distribution in North Carolina of any type of product not suitable for antifreeze usage in modern internal combustion engines or motor vehicles, whether by reason of potential damage to the cooling system, improper heat transfer from the engine, absence of a convenient and suitable test method for measuring freeze protection, or other reason bearing upon the ultimate effect of the product when used in such automotive cooling systems. Before the issuance, amendment, or repeal of any rule, regulation or standard authorized by this Article, the Board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the Board shall take appropriate action as dictated by the material weight of objective information presented to the Board.

(b) The Commissioner shall administer this Article by inspections, chemical analyses and other appropriate methods. The Commissioner shall also execute all orders, rules and regulations established by the Board. All authority vested in the Commissioner by virtue of the provisions of this Article may, with like force and effect, be executed by such agents of the Commissioner as he shall designate for such purpose; provided, however, that confidential formula information referred to in G.S. 106-579.11 must be confined to the files of the administrative chemist specifically designated by the Commissioner to handle such information. (1949, c. 1165; 1975, c. 719, s. 7.)

§ 106-579.8. Inspection, sampling and analysis.

The Commissioner, or his authorized agent, shall have free access at reasonable hours to all places and property in this State where antifreeze is manufactured, stored, transported, or

distributed, or offered or intended to be offered, for sale, including the right to inspect and examine all antifreeze there found, and to take reasonable samples of such antifreeze for analysis together with specimens of labeling. All samples so taken shall be properly sealed and sent to the Department of Agriculture and Consumer Services laboratories for examination together with all labeling appertaining thereto. It shall be the duty of the Commissioner to examine promptly all samples received in connection with the administration and enforcement of this Article and to report the results of such examination to the owner and registrant of the antifreeze. (1949, c. 1165; 1975, c. 179, s. 8; 1997-261, s. 109.)

§ 106-579.9. Prohibited acts.

It shall be unlawful to:

- (1) Distribute any antifreeze which is adulterated or misbranded.
- (2) Distribute any antifreeze which has been banned by the Board.
- (3) Distribute any antifreeze which has not been registered in accordance with G.S. 106-579.4 or whose labeling is different from that accepted for registration; provided, that any antifreeze declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued; provided further, that any antifreeze in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Commissioner, unless the antifreeze is acceptable for registration and is continued to be registered by the manufacturer or the person offering the antifreeze for wholesale or retail sale.
- (4) Refuse to permit entry or inspection or to permit the acquisition of a sample of antifreeze as authorized by G.S. 106-579.8.
- (5) Dispose of any antifreeze that is under "stop sale" or "withdrawal from distribution" order in accordance with G.S. 106-579.10.
- (6) Distribute any antifreeze unless it is in the registrant's or manufacturer's unbroken package or is installed by the seller into the cooling system of the purchaser's vehicle directly from the registrant's or manufacturer's package, and the label on such package if less than five gallons, or the labeling of such package if five gallons or more, does not bear the information required by G.S. 106-579.6(1), (2), (3), and (4).
- (7) Use the term "ethylene glycol" in connection with the name of a product which contains other glycols unless it is qualified by the word "base," "type," or similar word, and unless the product meets the following requirements:
 - a. It consists essentially of ethylene glycol;
 - b. If it contains suitable glycols other than ethylene glycol, that no more than a maximum of fifteen percent (15%) of such other glycols be present;
 - c. It contains a minimum total glycol content of ninety-three percent (93%) by weight;
 - d. The specific gravity is corrected to give reliable freezing-point readings on a commercial ethylene glycol type hydrometer; and
 - e. The freezing point of a fifty percent (50%) by volume aqueous mixture of the antifreeze shall not be above -34° F.

- (8) Refuse, when requested, to permit a purchaser to see the container from which antifreeze is drawn for installation into the purchaser's vehicle.
- (9) Refill any container bearing a registered label, unless by the registrant or his duly designated jobber, under regulations established by the Board.
- (10) Distribute any antifreeze for which a practical, rapid means for measuring the freeze protection by the user is not readily available, whether by hydrometer or other means.
- (11) Distribute antifreeze which is in violation of the Federal Poison Prevention Packaging Act and regulations and related federal and State product safety laws and regulations.
- (12) Distribute antifreeze in home consumer-sized packages which are constructed of either transparent or translucent packaging materials.
- (13) Disseminate any false or misleading advertisement relating to an antifreeze product. (1975, c. 719, s. 9.)

§ 106-579.10. Enforcement.

(a) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted under this Article by the Board, he may issue and enforce a written or printed "stop sale" or "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the Commissioner or the court. Copies of such orders shall also be sent by certified mail to the registrant and to the person whose name and address appears on the labeling of the antifreeze. The Commissioner shall release for distribution the lot of antifreeze so withdrawn when said provisions of this Article and applicable rules and regulations have been complied with. If compliance is not obtained within 30 days of the date of notification to the registrant and the person whose name and address appears on the label, the Commissioner may begin proceedings for condemnation.

(b) Notwithstanding the provisions of subsection (a) of this section, any lot of antifreeze not in compliance with said provisions and regulations shall be subject to seizure upon complaint of the Commissioner to the district court in the county in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this Article and its duly adopted regulations, it may then order the condemnation of said antifreeze and the same shall be disposed of in any manner consistent with the rules and regulations of the Board and the laws of the State at the expense of the claimants thereof, under the supervision of the Commissioner; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, however, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving 30 days' notice, by certified mail at his last known address, to the owner of same, if he is known to the Commissioner, and to the registrant, if the antifreeze is registered, at the address shown on the label or on the registration certificate, so that such persons may apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this Article. When the violation can be corrected by proper labeling, processing of the product, or other action, the court, after all costs, fees and expenses incurred by the Commissioner have been paid and a good and sufficient bond, conditioned that such article shall be so corrected, has been executed, may by order direct that such article be delivered to the claimant thereof for such action as necessary to bring it into compliance with this Article and regulations under the supervision of the Commissioner. The expense of such

supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner that the antifreeze is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(c) A copy of the analysis made by any chemist of the Department of Agriculture and Consumer Services of any antifreeze certified to by him shall be administered as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this Article.

(d) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted by the Board, he may request, and the person whose name and address appears on the labeling or the person who is primarily responsible for the product must promptly supply to him, the distribution data for such product in this State, so as to assure that violative products are not further distributed herein and that an orderly withdrawal from distribution may be attained where necessary to protect the public interest. (1949, c. 1165; 1975, c. 719, s. 10; 1997-261, s. 109.)

§ 106-579.11. Submission of formula.

When application for a license or permit to sell antifreeze in this State is made to the Commissioner, he may require the applicant to furnish a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Commissioner; provided, however, that the statement of formula or contents may state the content of inhibitor ingredients in generic terms if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the Commissioner with satisfactory evidence, other than by disclosure of the actual chemical names and percentages of the inhibitor ingredients, that the said antifreeze is in conformity with this Article and any rules and regulations promulgated and adopted by the Board. All statements of content, formulas or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the Commissioner. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the applicant furnishing such statements to the Commissioner; provided, however, that in emergency situations information may be revealed to physicians or to other qualified persons for use in preparation of antidotes. The disclosure of any such information, except as provided in this section, shall be a Class 2 misdemeanor. (1949, c. 1165; 1975, c. 719, s. 11; 1993, c. 539, s. 806; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-579.12. Violation.

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

(b) Nothing in this Article shall be construed as requiring the Commissioner to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a "stop sale" or "withdrawal from distribution" order, as a result of minor violations of the Article, or when he believes the public

interest will best be served by suitable notice of warning in writing to the registrant or the person whose name and address appears on the labeling.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rules or regulations promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Article 33 of Chapter 143 of the General Statutes. (1949, c. 1165; 1973, c. 47, s. 2; 1975, c. 719, s. 12; 1993, c. 539, s. 807; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-579.13. Publications.

(a) The Commission [Commissioner] may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the State Chemist during the fiscal year which have been found to be in accord with this Article and for which a license or permit for sale has been issued.

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

(c) The Commissioner may also cause to be disseminated such information regarding antifreezes as he deems necessary in the interest of protection of the public. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigations of the Department. (1975, c. 719, s. 13.)

§ 106-579.14. Exclusive jurisdiction.

Jurisdiction in all matters pertaining to the distribution, sale and transportation of antifreeze by this Article are vested exclusively in the Board and Commissioner. (1975, c. 719, s. 15.)