Chapter 8.

Evidence.

Article 1.

Statutes.

§ 8-1. Printed statutes and certified copies evidence.

All statutes, or joint resolutions, passed by the General Assembly may be read in evidence from the printed statute book; or a copy of any act of the General Assembly certified by the Secretary of State shall be received in evidence in every court. (1826, c. 7; R.C., c. 44, ss. 4, 5; Code, ss. 1339, 1340; Rev., ss. 1592, 1593; C.S., s. 1747.)

§ 8-2. Martin's collection of private acts.

Any private act published by Francis X. Martin, in his collection of private acts, shall be received in evidence in every court. (1826, c. 7, s. 2; R.C., c. 44, s. 5; Code, s. 1340; Rev., s. 1593; C.S., s. 1748.)

§ 8-3. Laws of other states or foreign countries.

(a) A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree or ordinance, by the executive thereof, contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the judicial tribunals thereof, shall be evidence of the statute law, proclamation, edict, decree, or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country, may be proved as a fact by oral evidence. The books of the reports of cases, adjudged in the courts thereof, shall also be admitted as evidence of the unwritten or common law thereof.

(b) Any party may exhibit a copy of the law of another state, territory, or foreign country copied from a printed volume of the laws of such state, territory, or country on file in

(1) The offices of the Governor or the Secretary of State, and duly certified by the Secretary of State, or

(2) The State Library and certified as provided in G.S. 125-6, or

(3) The Supreme Court Library and certified as provided in G.S. 7A-13 (f). (1823, c. 1193, ss. 1, 3, P.R.; R.C., c. 44, s. 3; C.C.P., s. 360; Code, s. 1338; Rev., s. 1594; C.S., s. 1749; 1967, c. 565.)

§ 8-4. Judicial notice of laws of United States, other states and foreign countries.

When any question shall arise as to the law of the United States, or of any other state or territory of the United States, or of the District of Columbia, or of any foreign country, the court shall take notice of such law in the same manner as if the question arose under the law of this State. (1931, c. 30.)

§ 8-5. Town ordinances certified.

In a trial in which the offense charged is the violation of a town ordinance, a copy of the ordinance alleged to have been violated, proven as provided in G.S. 160A-79, shall be prima facie evidence of the existence of such ordinance. (1899, c. 277, s. 2; Rev., s. 1595; C.S., s. 1750; 1971, c. 381, s. 3; 1973, c. 1446, s. 17.)

Article 2.

Grants, Deeds and Wills.

§ 8-6. Copies certified by Secretary of State or State Archivist.

Copies of the plats and certificates of survey, or their accompanying warrants, and all abstracts of grants, which may be filed in the office of the Secretary of State, or in the Department of Natural and Cultural Resources, which copies, upon certification by the Secretary of State as to those records in his office, or the State Archivist as to those records in the Department of Natural and Cultural Resources, as true copies, shall be as good evidence, in any court, as the original. (1822, c. 1154, P.R.; R.C., c. 44, s. 6; Code, s. 1341; Rev., s. 1596; C.S., s. 1751; 1961, c. 740, s. 1; 1973, c. 476, s. 48; 2015-241, s. 14.30(s).)

§ 8-7. Certified copies of grants and abstracts.

For the purpose of showing title from the State of North Carolina to the grantee or grantees therein named and for the lands therein described, duly certified copies of all grants and of all memoranda and abstracts of grants on record in the office of the Secretary of State, or in the Department of Natural and Cultural Resources, given in abstract or in full, and with or without the signature of the Governor and the great seal of the State appearing upon such record, shall be competent evidence in the courts of this State or of the United States or of any territory of the United States, and in the absence of the production of the original grant shall be conclusive evidence of a grant from the State to the grantee or grantees named and for the lands described therein. (1915, c. 249, s. 1; C.S., s. 1752; 1961, c. 740, s. 2; 1973, c. 476, s. 48; 2015-241, s. 14.30(s).)

§ 8-8. Certified copies of grants and abstracts recorded.

Duly certified copies of such grants and of such memoranda and abstracts of grants may be recorded in the county where the lands therein described are situated, and the records thereof in such counties, or certified copies thereof, shall likewise be competent evidence for the purpose of showing title from the State of North Carolina to the grantee or grantees named and for the lands described therein. (1915, c. 249, s. 2; C.S., s. 1753.)

§ 8-9. Copies of grants certified by clerk of Secretary of State validated.

All copies of grants heretofore issued from the office of the Secretary of State, duly certified under the great seal of the State, and to which the name of the Secretary has been written or affixed by the clerk of the said Secretary of State, are hereby ratified and approved and declared to be good and valid copies of the original grants and admissible in evidence in all courts of this State when duly registered in the counties in which the land lies; all such copies heretofore registered in said counties are hereby declared to be lawful and regular in all respects as if the same had been signed by the Secretary of State in person and duly registered. (1901, c. 613; Rev., s. 1597; C.S., s. 1754.)

§ 8-10. Copies of grants in Burke.

Copies of grants issued by the State within the County of Burke prior to the destruction of the records of said county by General Stoneman in the year 1865, shall be admitted in evidence in all actions when the same are duly registered; and when the original grants are lost, destroyed or cannot be found after due search, it shall be presumed that the same were duly registered within the time prescribed by law, as provided upon the face of original grant. (1901, c. 513; Rev., s. 1610; C.S., s. 1755.)

§ 8-11. Copies of grants in Moore.

Copies of grants for land situated in Moore County and the counties of which Moore was a part, entered in a book, and the book being certified under the seal of the Secretary of State, shall have the force and effect of the originals and be evidence in all courts. (1903, c. 214; Rev., s. 1613; C.S., s. 1756.)

§ 8-12. Copies of grants in Onslow.

The copies of grants made by the register of deeds of Onslow County under laws of 1907, chapter 434, of grants, abstracts of grants, and other documents pertaining to titles of land in Onslow County issued prior to the year 1800, and contained in a book called Book of Transcribed Grants Issued Prior to One Thousand Eight Hundred, duly authenticated as prescribed in said Chapter 434 of the laws of 1907, shall be received as evidence in all courts of the State, and certified copies therefrom shall be received as evidence. (1907, c. 434; C.S., s. 1757.)

§ 8-13. Certain deeds dated before 1835 evidence of due execution.

In all actions hereafter instituted in which the title or ownership of any lands situated in North Carolina is at issue or in dispute, any deed or release, or a duly certified copy thereof, in which the people of the State of North Carolina are grantees and bearing date prior to the year 1835 and purporting to have been filed and recorded in the office of the Secretary of State of North Carolina prior to said year and now on file and of record in said office, and executed or purporting to have been executed by any person or persons as the representatives or agents or for or on behalf of any society, tribe, nation or aggregation of persons, whether signed or executed individually or in their representative capacity, and any such deed or release having been authorized to be executed by an act of the General Assembly of North Carolina by the properly authorized agents of such society, tribe, nation or aggregation of persons, shall be prima facie evidence that the person or persons signing or executing any such deed or release were the properly authorized agent or agents of such society, tribe, nation or aggregation of persons. Any recitals or statements of fact in any such deed or release shall be prima facie evidence of the truth thereof in any such actions. (1915, c. 75; C.S., s. 1758.)

§ 8-14. Certified copies of maps of Cherokee lands.

Certified copies by the Secretary of State of the copies, or parts thereof, of the maps of the Cherokee lands and of the Cherokee Country, as provided for and described in Chapter 175 of the laws of 1911, shall have the same force and effect and be entitled to the same force and effect as evidence as certified copies of the whole or parts of the original maps. (1911, c. 175; C.S., s. 1759.)

§ 8-15. Certified copies of certain surveys and maps obtained from the State of Tennessee.

A certified copy of the report of the survey made by the North Carolina commissioners, McDowell, Vance and Matthews, of that portion of the State of Tennessee extending from a point on the Virginia line to a point on the Smoky Mountain west of the Pigeon River, as obtained and filed by the Secretary of State under the provisions of Chapter 162 of the laws of 1913, shall, when certified under the hand and seal of the Secretary of State, be competent evidence in the trial of any action in the courts of the State. (1913, c. 162; C.S., s. 1760.)

§ 8-16. Evidence of title under H.E. McCulloch grants.

In all actions or suits, wherein it may be necessary for either party to prove title, by virtue of a grant or grants made by the king of Great Britain or Earl Granville to Henry McCulloch, or Henry Eustace McCulloch, it shall be sufficient for such party, in the usual manner, to give evidence of the grant or conveyance from the king of Great Britain or Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, and the mesne conveyances thereafter, without giving any evidence of the deed or deeds of release, relinquishment or confirmation of Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, or the power or powers of attorney by which the conveyances from the said Henry McCulloch, or Henry Eustace McCulloch, purport to have been made. (1819, c. 1021, P.R.; R.C., c. 44, s. 1; Code, s. 1336; Rev., s. 1600; C.S., s. 1761.)

§ 8-17. Conveyances or certified copies evidence of title under McCulloch.

In all trials where the title of either plaintiff or defendant shall be derived from Henry Eustace McCulloch, or Henry McCulloch, out of their tracts numbers one and three, it shall not be required of such party to produce, in support of his title, either the original grant from the crown to the proprietors, or a registered copy thereof; but in all such cases the grant or deed executed by such reputed proprietors, or by his or their lawful attorney, or a certified copy thereof, shall be deemed and held sufficient proof of the title of such proprietors, in the same manner as though the original grants were produced in evidence. (1807, c. 724, P.R.; R.C., c. 44, s. 2; Code, s. 1337; Rev., s. 1601; C.S., s. 1762.)

§ 8-18. Certified copies of registered instruments evidence.

A copy of the record of any deed, mortgage, power of attorney, or other instrument required or allowed to be registered, duly authenticated by the certificate and official seal of the register of deeds of the county where the original or duly certified copy has been registered, may be given in evidence in any of the courts of the State where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court. (1846, c. 68, s. 1; R.C., c. 37, s. 16; Code, s. 1251; 1893, c. 119, s. 2; Rev., s. 1598; C.S., s. 1763.)

§ 8-19. Common survey of contiguous tracts evidence.

Whenever any person owns several tracts of land which are contiguous or adjoining, but held under different deeds and different surveys, it may be lawful for any such person to have all such bodies of land included in one common survey by running around the lines of the outer tracts, and thereupon the possession of any part of said land covered by such common survey shall be deemed and held in law as a possession of the whole and every part thereof: Provided, that nothing in this section shall be construed to affect the rights or claims of persons which have already accrued to any part of said land. In all cases where such common surveys are made as directed by this section, the same may be recorded and registered as in cases of deeds, and shall be evidence in like manner. (1869-70, c. 34, ss. 1, 2; Code, s. 1277; Rev., s. 1505; C.S., s. 1764.)

§ 8-20: Repealed by Session Laws 1993, c. 288, s. 1.

§ 8-21. Deeds and records thereof lost, presumed to be in due form.

Whenever it is shown in any judicial proceeding that a deed or conveyance of real estate has been lost or destroyed, and that the same had been registered, and that the register's book containing the copy has been destroyed by fire or other accident, so that a copy thereof cannot be had, it shall be presumed and held, unless the contents be shown to have been otherwise, that such deed or conveyance transferred an estate in fee simple, if the grantor was entitled to such an estate at the time of conveyance, and that it was made upon sufficient consideration. (1854, c. 17; R.C., c. 44, s. 14; Code, s. 1348; Rev., s. 1602; C.S., s. 1766.)

§ 8-22. Local: recitals in tax deeds in Haywood and Henderson.

In all legal controversies touching lands in the Counties of Haywood and Henderson, in which either party shall claim title under any sale for taxes alleged to have been due and laid, in and for the year one thousand seven hundred and ninety-six, or any preceding year, the recital contained in the deed or assurance, made by the sheriff or other officer conveying or assuring the same, of the taxes having been laid and assessed, and of the same having remained due and unpaid, shall be held and taken to be prima facie evidence of the truth of each and every of the matters so recited. (R.C., c. 44, s. 11; Code, s. 1346; Rev., s. 1606, C.S., s. 1767.)

§ 8-22.1. Local: tax deeds in Richmond.

Proof of execution and delivery of a deed recorded before 1971 to a grantee by the sheriff of Richmond County pursuant to sale under execution in a tax foreclosure proceeding brought by Richmond County under G.S. 105-375 establishes a presumption that all notices required by G.S. 105-375 and Article 29B of Chapter 1 of the General Statutes were duly given and served, as required by law, to all persons entitled to receive the notices. (1981, c. 517.)

§ 8-23. Local: copies of records from Tyrrell.

Copies of records of the County of Tyrrell between the years one thousand seven hundred and thirty-five and one thousand seven hundred and ninety-nine, when copied in a book and certified to by the clerk of the Superior Court of Tyrrell County as to the records of his office and by the register of deeds as to the records of his office, and deposited in their respective offices in Washington County, shall be treated in all respects as original records and received as evidence in all courts of Washington County. (1903, c. 199; Rev., s. 1612, C.S., s. 1768.)

§ 8-24. Local: records of partition in Duplin.

The transcripts made by the clerk of the Superior Court of Duplin County, in accordance with Chapter three hundred and ninety-five of the laws of one thousand nine hundred and seven, of the reports of committees relating to the partition of real estate on file in his office prior and up to the year one thousand eight hundred and fifty-six, entered and indexed in a book entitled Reports of Committees, A, and the reports of committees beginning with and subsequent to the year one thousand eight hundred and fifty-six, entered and indexed in a book entitled Reports of Committees, B, shall be as competent evidence as are the original reports of the committees. (1907, c. 395, ss. 3, 4; C.S., s. 1769.)

§ 8-25. Local: records of wills in Duplin.

The transcripts made by the clerk of the Superior Court of Duplin County, in accordance with Chapter three hundred and ninety-five of the laws of one thousand nine hundred and seven, of all

wills and entries of probate and dates of registration appearing on the same, on file in his office prior and up to the January term of the County Court of Duplin County, one thousand eight hundred and thirty, and entered in a book designated as Records of Wills, A, and duly indexed as provided by law, shall be as competent evidence in any court as are the originals of such wills. (1907, c. 395, ss. 1, 2; C.S., s. 1770.)

§ 8-26. Local: records of deeds and wills in Anson.

The copies of the deeds and deed books and of the wills and will books made in Anson County under the act of March second, one thousand nine hundred and five, shall have the same force and effect as the original deeds and deed books copied and as the original wills and will books copied, and shall take the place of said original deeds and deed books and wills and will books as evidence in all court procedure; and wherever said deed books or will books are ordered or directed to be produced in court by subpoena or other order of court, the copies made under such act shall be produced, unless the court shall specially order the production of the original books, and the copies so produced in court shall have the same validity and effect and be used for the same purposes, with the same effect, as the original books. (1905, c. 663, s. 3; Rev., s. 1615; C.S., s. 1771.)

§ 8-27. Local: records of wills in Brunswick.

Under the provisions of Chapter one hundred and six of the laws of one thousand nine hundred and eight, authorizing and directing that all unrecorded wills, dated prior to January first, one thousand eight hundred and seventy-five, on file in the office of the clerk of the Superior Court of Brunswick County, and which have been duly proved in the form required by law, and bearing the adjudication certificate of the proper officer, shall be recorded in the books of wills in the said office and properly indexed; that all wills recorded in the minutes of the court of pleas and quarter sessions or other books of record in said office shall be transcribed and indexed in the book of wills in said office; and that all wills recorded in the office of the register of deeds of said county shall be properly indexed in the book kept for the purpose in the office of the clerk of the superior court of the county; the record of any instrument or certified copy thereof, recorded under the provisions of this Article, shall be admitted in evidence in the trial of any cause, subject to the same rules upon which other wills are admitted. (1908, s. 106; C.S., s. 1772.)

§ 8-28. Copies of wills.

Copies of wills, duly certified by the proper officer, may be given in evidence in any proceeding wherein the contents of the will may be competent evidence. (1784, c. 225, s. 6, P.R.; R.C., c. 119, s. 21; Code, s. 2175; Rev., s. 1603; C.S., s. 1773.)

§ 8-29. Copies of wills in Secretary of State's office.

Copies of wills filed or recorded in the office of the Secretary of State, attested by the Secretary, may be given in evidence in any court, and shall be taken as sufficient proof of the devise of real estate, and are declared good and effectual to pass the estate therein devised: Provided, that no such will may be given in evidence in any court nor taken as sufficient proof of the devise unless a certificate of probate appear thereon. (1852, c. 172; R.C., c. 44, s. 12; 1856-7, c. 22; Code, s. 2181; Rev., s. 1607; C.S., s. 1774.)

§ 8-30. Copies of wills recorded in wrong county.

Whereas, by reason of the uncertainty of the boundary lines of many of the counties of the State, wills have been proved, recorded and registered in the wrong county, whereby titles are insecure; for remedy whereof: The registry or duly certified copy of the record of any will, duly recorded, may be given in evidence in any of the courts of this State. (1858-9, c. 18; Code, s. 2182; Rev., s. 1608; C.S., s. 1775.)

§ 8-31. Copy of will proved and lost before recorded.

When any will which has been proved and ordered to be recorded was destroyed during the war between the states, before it was recorded, a copy of such will, so entitled to be admitted to record, though not certified by any officer, shall, when the court shall be satisfied of the genuineness thereof, be ordered to be recorded, and shall be received in evidence whenever the original or duly certified exemplification would be; and such copies may be proved and admitted to record under the same rules, regulations and restrictions as are prescribed in Chapter 98 entitled Burnt and Lost Records. (1866-7, c. 127; Code, s. 2183; Rev., s. 1609; C.S., s. 1776.)

§ 8-32. Certified copies of deeds and wills from other states.

In cases where inhabitants of other states or territories, by will or deed, devise or convey property situated in this State, and the original will or deed cannot be obtained for registration in the county where the land lies, or where the property shall be in dispute, a copy of said will or deed (after the same has been proved and registered or deposited, agreeable to the laws of the state where the person died or made the same) being properly certified, either according to the act of Congress or by the proper officer of the said state or territory, shall be read as evidence. (1802, c. 623, P.R.; R.C., c. 44, s. 9; Code, s. 1344; Rev., s. 1619; C.S., s. 1777.)

§ 8-33. Copies of lost records in Bladen.

The clerk of the Superior Court of Bladen County shall transcribe the judgment docket and index books and the will books in his office, and all other books in said office containing records made since the year one thousand eight hundred and sixty-eight, and the records so transcribed shall have the same force and effect as the original records would have, and shall be received in evidence as the original records and be prima facie evidence of their correctness and of the sufficiency of their probate, though the probates are lost and are not transcribed. (1895, c. 415; 1903, c. 65; Rev., s. 1611; C.S., s. 1778.)

Article 3.

Public Records.

§ 8-34. Copies of official writings.

(a) Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, or the State Department of Natural and Cultural Resources, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of the keeper's office when there is such seal, or under the keeper's hand when there is no such seal, unless the court shall order the production of the original. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under the clerk's hand and seal of the county.

(b) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration.

Nonerasable, computer-readable storage media may be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d). (1792, c. 368, s. 11, P.R.; R.C., c. 44, s. 8; 1868-9, c. 20, s. 21; 1871-2, c. 91; Code, ss. 715, 1342; Rev., s. 1616; C.S., s. 1779; 1961, c. 739; 1973, c. 476, s. 48; 1999-131, s. 3; 1999-456, s. 47(c); 2011-326, s. 13(a); 2015-241, s. 14.30(s).)

§ 8-35. Authenticated copies of public records.

All copies of bonds, contracts, notes, mortgages, or other papers relating to or connected with any loan, account, settlement of any account or any part thereof, or other transaction, between the United States or any state thereof or any corporation all of whose stock is beneficially owned by the United States or any state thereof, either directly or indirectly, and any person, natural or artificial; or extracts therefrom when complete on any one subject, or copies from the books or papers on file, or records of any public office of the State or the United States or of any corporation all of whose stock is beneficially owned by the United States or by any state thereof, directly or indirectly, shall be received in evidence and entitled to full faith and credit in any of the courts of this State when certified to by the chief officer or agent in charge of such public office or of such office of such corporation, or by the secretary or an assistant secretary of such corporation, to be true copies, and authenticated under the seal of the office, department, or corporation concerned. Any such certificate shall be prima facie evidence of the genuineness of such certificate and seal, the truth of the statements made in such certificate, and the official character of the person by which it purports to have been executed. (1891, c. 501; Rev., s. 1617; C.S., s. 1780; 1939, c. 149.)

§ 8-35.1. Division of Motor Vehicles' record admissible as prima facie evidence of convictions of offenses involving impaired driving.

Notwithstanding the provisions of G.S. 15A-924(d), a properly certified copy under G.S. 8-35 or G.S. 20-26(b) of the license records of a defendant kept by the Division of Motor Vehicles under G.S. 20-26(a) is admissible as prima facie evidence of any prior conviction of a defendant for an offense involving impaired driving as defined in G.S. 20-4.01(24a). (1975, c. 642, s. 1; c. 716, s. 5; 1983, c. 435, s. 3.)

§ 8-35.2. Records of clerk of court criminal index admissible in certain cases.

Notwithstanding the provisions of G.S. 15A-924(d) or 15A-1340.4(e), certified copies of the records contained in the criminal index or similar records maintained manually or by automatic data processing equipment by the clerk of superior court, are admissible as prima facie evidence of any prior convictions of the person named in the records, if the original documents upon which the records are based have been destroyed pursuant to law. The index must contain at least the following information:

(1) The case file number;
(2) The name, sex, and race of the defendant;
(3) His address;
(4) His driver's license number, if the conviction is for a motor vehicle offense and the number is available;
(5) The date of birth of the defendant, if it is available;
(6) The offense for which he was charged and the date of same;
(7) The disposition of the charge and the date of same;
(8) Whether the defendant was indigent;

(9) Whether he was represented by an attorney, and if so, the name of the attorney;
(10) Whether the defendant waived his right to an attorney, and
(11) The name and address of any victim, if available. (1985, c. 606, s. 1; 1997-456, s. 27.)

§ 8-36. Authenticated copy of record of administration.

When letters testamentary or of administration on the goods and chattels of any person deceased, being an inhabitant in another state or territory, have been granted, or a return or inventory of the estate has been made, a copy of the record of administration or of the letters testamentary, and a copy of an inventory or return of the effects of the deceased, after the same has been granted or made, agreeable to the laws of the state where the same has been done, being properly certified, either according to the act of Congress or by the proper officer of such state or territory, shall be allowed as evidence. (1834, c. 4; R.C., c. 44, s. 7; Code, s. 1343; Rev., s. 1618; C.S., s. 1781.)

§ 8-37. Certificate of Commissioner of Motor Vehicles as to ownership of automobile.

In any civil or criminal action in which the ownership of a motor vehicle is relevant, evidence as to the letters and numbers appearing upon the registration plate attached to such vehicle or of the motor vehicle identification number, together with certified copies of records furnished pursuant to G.S. 20-42 by the Commissioner of Motor Vehicles showing the name of the owner of the vehicle to which such registration plate or vehicle identification number is assigned, or a certified copy of the certificate of title for such motor vehicle on file with the Commissioner of Motor Vehicles, is prima facie evidence of the ownership of such motor vehicle. (1931, c. 88, s. 1; 1943, c. 650; 1979, c. 980.)

Article 3A.

Findings, Records and Reports of Federal Officers and Employees.

§ 8-37.1. Finding of presumed death.

(a) A written finding of presumed death, made by the Secretary of War, the Secretary of the Navy, or other officer or employee of the United States authorized to make such finding, pursuant to the Federal Missing Persons Act (56 Stat. 143, 1092, and P.L. 408, ch. 371, 2d Sess. 78th Cong.; 50 U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this State as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance. This subsection applies only to findings of presumed death made prior to the effective date of Section 5(b) of Public Law 89-554.

(b) A written finding of presumed death, made by the Secretary pursuant to Chapter 10 of Title 37 of the U.S. Code, P.L. 89-554 as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this State as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances, and place of his disappearance. This subsection applies only to findings of presumed death made on or after the effective date of Section 5(b) of Public Law 89-554. (1945, c. 731, s. 1; 1995, c. 379, s. 3.)

§ 8-37.2. Report or record that person missing, interned, captured, etc.

An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy,

or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in § 8-37.1, or by any other law of the United States to make same, shall be received in any court, office or other place in this State as prima facie evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be. (1945, c. 731, s. 2.)

§ 8-37.3. Deemed signed and issued pursuant to law; evidence of authority to certify.

For the purposes of §§ 8-37.1 and 8-37.2 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify. (1945, c. 731, s. 3.)

Article 4.

Other Writings in Evidence.

§ 8-38: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1037, s. 13.

§ 8-39. Parol evidence to identify land described.

In all actions for the possession of or title to any real estate parol testimony may be introduced to identify the land sued for, and fit it to the description contained in the paper-writing offered as evidence of title or of the right of possession, and if from this evidence the jury is satisfied that the land in question is the identical land intended to be conveyed by the parties to such paper-writing, then such paper-writing shall be deemed and taken to be sufficient in law to pass such title to or interest in such land as it purports to pass: Provided, that such paper-writing is in all other respects sufficient to pass such title or interest. (1891, c. 465, s. 1; Rev., s. 1605; C.S., s. 1783.)

§ 8-40: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1037, s. 12.

§ 8-40.1: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1037, s. 10.

§ 8-41. Bills of lading in evidence.

In all actions by or against common carriers or in the trial of any criminal action in which it shall be thought necessary to introduce in evidence any bills of lading issued by said common carrier or by a connecting carrier, it shall be competent to introduce in evidence any paper-writing purporting to be the original bill of lading, or a duplicate thereof, upon proof that such paper purporting to be such bill of lading or duplicate was received in due course of mail from consignor or agent of said carrier or connecting carrier, or delivered by said common carrier to the consignee or other person entitled to the possession of the property for which said paper purports to be the bill of lading: Provided, that such purported bill of lading shall not be declared to be the bill of lading unless the said purported bill of lading is first exhibited by the plaintiff or his agent or attorney to the defendant or its attorney, or its agent upon whom process may be served, ten days before the trial where the point of shipment is in the State, and twenty days when the point of shipment is without the State. Upon such proof and introduction of the bill of lading, the due execution thereof shall be prima facie established. (1915, c. 287; C.S., s. 1785; 1945, c. 97.)

§ 8-42. Book accounts under sixty dollars.

When any person shall bring an action upon a contract, or shall plead, or give notice of, a setoff or counterclaim for goods, wares and merchandise by him sold and delivered, or for work done and performed, he shall file his account with his complaint, or with his plea or notice of setoff or counterclaim, and if upon the trial of the issue, or executing a writ of inquiry of damages in such action, he shall declare upon his oath that the matter in dispute is a book account, and that he hath no means to prove the delivery of any of the articles which he then shall propose to prove by himself but by this book, in that case such book may be given in evidence, if he shall make out by his own oath that it doth contain a true account of all the dealings, or the last settlement of accounts between himself and the opposing party, and that all the articles therein contained, and by him so proved, were bona fide delivered, and that he hath given the opposing party all just credits; and such book and oath shall be received as evidence for the several articles so proved to be delivered within two years next before the commencement of the action, but not for any article of a longer standing, nor for any greater amount than sixty dollars ($60.00). (1756, c. 57, ss. 2, 6, 7, P.R.; R.C., c. 15, s. 1; Code, s. 591; Rev., s. 1622; C.S., s. 1786.)

§ 8-43. Book accounts proved by personal representative.

In all actions where executors and administrators are parties, such book account for all articles delivered within two years previous to the death of the deceased may be proved under the like circumstances, rules and conditions; and in such case, the executor or administrator may prove by himself that he found the account so stated on the books of the deceased; that there are no witnesses, to his knowledge, capable of proving the delivery of the articles which he shall propose to prove by said book, and that he believes the same to be just, and doth not know of any other or further credit to be given than what is therein mentioned: Provided, that if two years shall not have elapsed previous to the death of the deceased, the executor or administrator may prove the said book account, if the suit shall be commenced within three years from the delivery of the articles: Provided further, that whenever by the aforesaid proviso the time of proving a book account in manner aforesaid is enlarged as to the one party, to the same extent shall be enlarged the time as to the other party. (1756, c. 57, s. 2, P.R.; 1796, c. 465, P.R.; R.C., c. 15, s. 2; Code, s. 592; Rev., s. 1623; C.S., s. 1787.)

§ 8-44. Copies of book accounts in evidence.

A copy from the book of accounts proved in manner above directed may be given in evidence in any such action or setoff as aforesaid, and shall be as available as if such book had been produced, unless the party opposing such proof shall give notice to the adverse party or his attorney, at the joining of the issue, or 10 days before the trial, that he will require the book to be produced at the trials; and in that case no such copy shall be admitted as evidence. (1756, c. 57, s. 33, P.R.; R.C., c. 15, s. 3; C.C.P., s. 343c; Code, s. 593; Rev., s. 1624; C.S., s. 1788.)

§ 8-44.1. Hospital medical records.

Copies or originals of hospital medical records shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication, and shall be received as evidence if otherwise admissible, in any court or quasi-judicial proceeding, if they have been tendered to the presiding judge or designee by the custodian of the

records, in accordance with G.S. 1A-1, Rule 45(c), or if they are certified, identified, and authenticated by the live testimony of the custodian of such records.

Hospital medical records are defined for purposes of this section and G.S. 1A-1, Rule 45(c) as records made in connection with the diagnosis, care and treatment of any patient or the charges for such services except that records covered by G.S. 122-8.1, G.S. 90-109.1 and federal statutory or regulatory provisions regarding alcohol and drug abuse, are subject to the requirements of said statutes. (1973, c. 1332, s. 1; 1983, c. 665, s. 2.)

§ 8-45. Itemized and verified accounts.

In any actions instituted in any court of this State upon an account for goods sold and delivered, for rents, for services rendered, or labor performed, or upon any oral contract for money loaned, a verified itemized statement of such account shall be received in evidence, and shall be deemed prima facie evidence of its correctness. (1897, c. 480; Rev., s. 1625; 1917, c. 32; C.S., s. 1789; 1941, c. 104.)

Article 4A.

Photographic Copies of Business and Public Records.

§ 8-45.1. Photographic reproductions admissible; destruction of originals.

(a) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, X ray or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media may be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d). (1951, ch. 262, s. 1; 1977, ch. 569; 1999-131, s. 1; 1999-456, s. 47(a); 2011-326, s. 13(b).)

§ 8-45.2. Uniformity of interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it. (1951, c. 262, s. 2.)

§ 8-45.3. Photographic reproduction of records of Department of Revenue and Division of Employment Security.

(a) The State Department of Revenue is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Department, including tax

returns required by law to be made to the Department, and said photographs, photocopies, or microphotocopies, when certified by the Department as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings and matters as the originals thereof would have been.

(a1) The Division of Employment Security is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Division, including filings required by law to be made to the Division, and said photographs, photocopies, or microphotocopies, when certified by the Division as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings, and matters as the originals thereof would have been.

(b) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media may be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d). (1951, c. 262, s. 3; 1999-131, s. 2; 1999-456, s. 47(b); 2001-115, s. 1; 2011-326, s. 13(c); 2011-401, s. 3.2.)

§ 8-45.4. Title of Article.

This Article may be cited as the "Uniform Photographic Copies of Business and Public Records as Evidence Act." (1951, c. 262, s. 4.)

Article 4B.

Evidence of Fraud, Duress, Undue Influence.

§ 8-45.5. Statements, releases, etc., obtained from persons in shock or under the influence of drugs; fraud presumed.

Any oral or written statement, waiver, release, receipt, or other representation of any kind by any person made or executed while a patient in any hospital and taken by any person in connection with any type of insurance coverage on or for the benefit of said patient which shall have been taken while such patient was in shock or appreciably under the influence of any drug, including drugs given primarily for sedation, shall be deemed to have been obtained by means of fraud, duress or undue influence on the part of the person or persons taking same, and the same shall be incompetent and inadmissible in evidence to prove or disprove any fact or circumstance relating to any claim for which any insurance company may be liable under any policy of insurance issued to, or which may indemnify or provide coverage or protection for the person making or executing any such statement or other instrument while a patient in a hospital, nor may any such person making or executing the same be examined or cross-examined in regard thereto. (1967, c. 928.)

Article 5.

Life Tables.

§ 8-46. Mortality tables as evidence.

Whenever it is necessary to establish the expectancy of continued life of any person from any period of the person's life, whether the person is living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation, as evidence, with other evidence as to the health, constitution and habits of the person, of such expectancy

represented by the figures in the columns headed by the words "completed age" and "expectation" respectively:

Completed Age	Expectation
0	75.8
1	75.4
2	74.5
3	73.5
4	72.5
5	71.6
6	70.6
7	69.6
8	68.6
9	67.6
10	66.6
11	65.6
12	64.6
13	63.7
14	62.7
15	61.7
16	60.7
17	59.8
18	58.8
19	57.9
20	56.9
21	56.0
22	55.1
23	54.1
24	53.2
25	52.2
26	51.3
27	50.4
28	49.4
29	48.5
30	47.5
31	46.6
32	45.7
33	44.7
34	43.8
35	42.9
36	42.0
37	41.0
38	40.1
39	39.2
40	38.3
41	37.4
42	36.5

43	35.6
44	34.7
45	33.8
46	32.9
47	32.0
48	31.1
49	30.2
50	29.3
51	28.5
52	27.6
53	26.8
54	25.9
55	25.1
56	24.3
57	23.5
58	22.7
59	21.9
60	21.1
61	20.4
62	19.7
63	18.9
64	18.2
65	17.5
66	16.8
67	16.1
68	15.5
69	14.8
70	14.2
71	13.5
72	12.9
73	12.3
74	11.7
75	11.2
76	10.6
77	10.0
78	9.5
79	9.0
80	8.5
81	8.0
82	7.5
83	7.1
84	6.6
85 and over	6.6

(1883, c. 225; Code, s. 1352; Rev., s. 1626; C.S., s. 1790; 1955, c. 870; 1971, c. 968; 1997-133, s. 1.)

§ 8-47. Present worth of annuities.

Whenever it is necessary to establish the present worth or cash value of an annuity to a person, payable annually during the person's life, such present worth or cash value may be ascertained by the use of the following table in connection with the mortality tables established by law, the first column representing the number of years the annuity is to run and the second column representing the present cash value of an annuity of one dollar for such number of years, respectively:

No. of Years Annuity is to Run	Cash Value of the Annuity of $1
1	$ 0.943
2	1.833
3	2.673
4	3.465
5	4.212
6	4.917
7	5.582
8	6.210
9	6.802
10	7.360
11	7.887
12	8.384
13	8.853
14	9.295
15	9.712
16	10.106
17	10.477
18	10.828
19	11.158
20	11.470
21	11.764
22	12.042
23	12.303
24	12.550
25	12.783
26	13.003
27	13.211
28	13.406
29	13.591
30	13.765
31	13.929
32	14.084
33	14.230
34	14.368
35	14.498
36	14.621
37	14.737
38	14.846

39	14.949
40	15.046
41	15.138
42	15.225
43	15.306
44	15.383
45	15.456
46	15.524
47	15.589
48	15.650
49	15.708
50	15.762
51	15.813
52	15.861
53	15.907
54	15.950
55	15.991
56	16.029
57	16.065
58	16.099
59	16.131
60	16.161
61	16.190
62	16.217
63	16.242
64	16.266
65	16.289
66	16.310
67	16.331

The present cash value of the annuity for a fraction of a year may be ascertained as follows: Multiply the difference between the cash value of the annuities for the preceding and succeeding full years by the fraction of the year in decimals and add the sum to the present cash value for the preceding full year. When a person is entitled to the use of a sum of money for life, or for a given time, the interest thereon for one year, computed at four and one half percent (4 1/2%), may be considered as an annuity and the present cash value be ascertained as herein provided: Provided, the interest rate in computing the present cash value of a life interest in land shall be six percent (6%).

Whenever the mortality tables set out in G.S. 8-46 are admissible in evidence in any action or proceeding to establish the expectancy of continued life of any person from any period of the person's life, whether the person is living at the time or not, the annuity tables herein set forth shall be evidence, but not conclusive, of the loss of income during the period of life expectancy of the person. (1905, c. 347; Rev., s. 1627; C.S., s. 1791; 1927, c. 215; 1943, c. 543; 1957, c. 497; 1959, c. 879, s. 3; 1965, c. 991; 1997-133, s. 2.)

Article 6.

Calendars.

§ 8-48. Clark's Calendar; proof of dates.

(a) In any controversy or inquiry in any court or before any fact finding board, commission, administrative agency or other body, where it becomes necessary or pertinent to determine any information which may be established by reference to a calendar for any year between the years 1753 A.D. and 2002 A.D., inclusive, it is permissible to introduce in evidence "Clark's Calendar, a Calendar Covering 250 Years, 1753 A.D. to 2002 A.D.," as supplemented, copyrighted, 1940, by E. B. Clark, Entry: Class AA, Number 328,573, Copyright Office of the United States of America, Washington, or any reprint of the 1940 edition certified by the Secretary of State to be an accurate copy of it, and the calendar or reprint, when so introduced, shall be prima facie evidence that the information disclosed by the calendar or reprint is true and correct.

(b) The Secretary of State shall prepare and publish a perpetual calendar similar to Clark's Calendar covering years beginning with 2003 A.D. The perpetual calendar published by the Secretary of State shall be admissible in evidence to the same degree and in the same manner as Clark's Calendar for years beginning with 2003. (1941, c. 312; 1997-58, s. 1.)

Article 7.

Competency of Witnesses.

§ 8-49. Witness not excluded by interest or crime.

No person offered as a witness shall be excluded, by reason of incapacity from interest or crime, from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit or proceeding, civil or criminal, in any court, or before any judge, justice, jury or other person having, by law, authority to hear, receive and examine evidence; and every person so offered shall be admitted to give evidence, notwithstanding such person may or shall have an interest in the matter in question, or in the event of the trial of the issue, or of the suit or other proceeding in which he is offered as a witness. This section shall not be construed to apply to attesting witnesses to wills. (1866, c. 43, ss. 1, 4; C.C.P., c. 342; 1869-70, c. 177; 1871-2, c. 4; Code, ss. 589, 1350; Rev., ss. 1628, 1629; C.S., s. 1792.)

§ 8-50. Parties competent as witnesses.

(a) On the trial of any issue, or of any matter or question, or on any inquiry arising in any action, suit or other proceeding in court, or before any judge, justice, jury or other person having, by law, authority to hear and examine evidence, the parties themselves and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as otherwise provided, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the court, in behalf of either or any of the parties to said action, suit or other proceeding. Nothing in this section shall be construed to apply to any action or other proceeding in any court instituted in consequence of adultery, or to any action for criminal conversation.

(b), (c). Repealed by Session Laws 1967, c. 954, s. 4. (1866, c. 43, ss. 2, 3; Code, s. 1351; Rev., s. 1630; C.S., s. 1793; 1953, c. 885, s. 1; 1967, c. 954, s. 4.)

§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.

(a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the

alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged-parent is not the natural parent; whereupon, the court shall enter the special verdict of not guilty; and

(2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

(b) Repealed by Session Laws 1993, c. 333, s. 2.

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. Any party objecting to or contesting the procedures or results of the blood or genetic marker tests shall file with the court written objections setting forth the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence. The person contesting the results of the blood or genetic marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. The results of the blood or genetic marker tests shall have the following effect:

(1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed

not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence;

(2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;

(3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;

(4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence. (1949, c. 51; 1965, c. 618; 1975, c. 449, ss. 1, 2; 1979, c. 576, s. 1; 1993, c. 333, s. 2; 1993 (Reg. Sess., 1994), c. 733, s. 1.)

§ 8-50.2. Results of speed-measuring instruments; admissibility.

(a) The results of the use of radio microwave, laser, or other speed-measuring instruments shall be admissible as evidence of the speed of an object in any criminal or civil proceeding for the purpose of corroborating the opinion of a person as to the speed of an object based upon the visual observation of the object by such person.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a radio microwave, laser, or other electronic speed-measuring instrument are not admissible in any proceeding unless it is found that:

(1) The operator of the instrument held, at the time the results of the speed-measuring instrument were obtained, a certificate from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) authorizing him to operate the speed-measuring instrument from which the results were obtained.

(2) The operator of the instrument operated the speed-measuring instrument in accordance with the procedures established by the Commission for the operation of such instrument.

(3) The instrument employed was approved for use by the Commission and the Secretary of Public Safety pursuant to G.S. 17C-6.

(4) The speed-measuring instrument had been calibrated and tested for accuracy in accordance with the standards established by the Commission for that particular instrument.

(c) All radio microwave, laser, and other electronic speed-measuring instruments shall be tested for accuracy within a 12-month period prior to the alleged violation by a technician possessing at least a General Radiotelephone Operator License from the Federal Communications Commissions or possessing a Certified Electronics Technician certificate issued by a Federal Communications Commission Commercial Operators License Examination Manager or by a laboratory established by the International Association of Chiefs of Police. A written certificate by the technician or laboratory showing that the test was made within the required period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.

All radio microwave, laser, and other speed enforcement instruments shall be tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission. The Commission shall provide for certification of all radio microwave, laser, and other speed enforcement instruments.

(d) In every proceeding where the results of a radio microwave, laser, or other speed-measuring instrument is sought to be admitted, judicial notice shall be taken of the rules approving the use of the models and types of radio microwave, laser, and other speed-measuring instruments and the procedures for operation and calibration or measuring accuracy of such instruments. (1979, 2nd Sess., c. 1184, s. 3; 1983, c. 34; 1987, c. 318; c. 827, s. 60; 1994, Ex. Sess., c. 18, s. 1; 2005-137, s. 1; 2011-145, s. 19.1(g).)

§ 8-50.3: Expired September 30, 2007.

§ 8-51: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1037, s. 5.

§ 8-51.1. Dying declarations.

Dying declarations admissible in administrative proceedings shall be as provided in G.S. 8C-1, Rule 804. (1973, c. 464, s. 1; 1983 (Reg. Sess., 1984), c. 1037, s. 11.)

§ 8-52. Repealed by Session Laws 1973, c. 41.

§ 8-53. Communications between health care provider and patient.

No person, duly authorized to practice under Article 1 of Chapter 90 of the General Statutes, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon, and no such information shall be considered public records under G.S. 132-1. Confidential information obtained in medical records shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or, in the case of unadministered estates, the next of kin. Any resident or presiding judge in the district, either at the trial or prior thereto, or the Industrial Commission pursuant to law may, subject to G.S. 8-53.6, compel disclosure if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1885, c. 159; Rev., s. 1621; C.S., s. 1798; 1969, c. 914; 1977, c. 1118; 1983, c. 410, ss. 1, 2; c. 471; 2019-191, s. 41.)

§ 8-53.1. Physician-patient and nurse privilege; limitations.

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information pursuant to G.S. 90-21.20B. (1965, c. 472, s. 2; 1971, c. 710, s. 2; 1981, c. 469, s. 24; 1998-202, s. 13(b); 2004-186, s. 16.2; 2006-253, s. 18; 2007-115, s. 4.)

§ 8-53.2. Communications between clergymen and communicants.

No priest, rabbi, accredited Christian Science practitioner, or a clergyman or ordained minister of an established church shall be competent to testify in any action, suit or proceeding concerning any information which was communicated to him and entrusted to him in his professional capacity, and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted, provided, however, that this section shall not apply where communicant in open court waives the privilege conferred. (1959, c. 646; 1963, c. 200; 1967, c. 794.)

§ 8-53.3. Communications between psychologist and client or patient.

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be required to disclose any information which he or she may have acquired in the practice of psychology and which information was necessary to enable him or her to practice psychology. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes. (1967, c. 910, s. 18; 1983, c. 410, ss. 3, 7; 1987, c. 323, s. 2; 1993, c. 375, s. 2; c. 553, s. 78; 1998-202, s. 13(c).)

§ 8-53.4. School counselor privilege.

No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, and which information was necessary to enable him to render counseling services; provided, however, that this section shall not apply where the student in open court waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at the trial or prior thereto, if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be the district court judge, and if the case is in superior court the judge shall be a superior court judge. (1971, c. 943; 1983, c. 410, ss. 4, 5.)

§ 8-53.5. Communications between licensed marital and family therapist and client(s).

No person, duly licensed as a licensed marriage and family therapist, nor any of the person's employees or associates, shall be required to disclose any information which the person may have acquired in rendering professional marriage and family therapy services, and which information was necessary to enable the person to render professional marriage and family therapy services. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in the court's opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1979, c. 697, s. 2; 1983, c. 410, ss. 6, 7; 1985, c. 223. s. 1; 2001-487, s. 40(a); 2004-203, s. 18.)

§ 8-53.6. No disclosure in alimony and divorce actions.

In an action pursuant to G.S. 50-5.1, 50-6, 50-7, 50-16.2A, and 50-16.3A if either or both of the parties have sought and obtained marital counseling by a licensed physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, or licensed marriage and family therapist, the person or persons rendering such counseling shall not be competent to testify in the action concerning information acquired while rendering such counseling. (1983, c. 410, s. 8; 2001-152, s. 1.)

§ 8-53.7. Social worker privilege.

No person engaged in delivery of private social work services, duly licensed or certified pursuant to Chapter 90B of the General Statutes shall be required to disclose any information that he or she may have acquired in rendering professional social services, and which information was necessary to enable him or her to render professional social services: provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by G.S. 8-53.6 or any other statute or regulation. (1983, c. 495, s. 2; 2001-152, s. 2; 2001-487, s. 40(b).)

§ 8-53.8. Counselor privilege.

No person, duly licensed pursuant to Chapter 90, Article 24, of the General Statutes, shall be required to disclose any information which he or she may have acquired in rendering clinical mental health counseling services, and which information was necessary to enable him or her to render clinical mental health counseling services: Provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by other statute or regulation. (1983, c. 755, s. 2; 1993, c. 514, s. 2; 2019-240, s. 3(a).)

§ 8-53.9. Optometrist/patient privilege.

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric services and which information was necessary to enable that person to render professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule. (1997-75, s. 4; 1997-304, 3.)

§ 8-53.10. Peer support group counselors.

(a) Definitions. – The following definitions apply in this section:

(1) Client law enforcement employee. – Any law enforcement employee or a member of his or her immediate family who is in need of and receives peer counseling services offered by the officer's employing law enforcement agency.

(1a) Emergency personnel officer. – Firefighting, search and rescue, or emergency medical service personnel, or any employee of any duly accredited State or local government agency possessing authority to enforce the criminal laws of the State who (i) is actively serving in a position with assigned primary duties and responsibilities for the prevention and detection of crime or the general enforcement of the criminal laws of the State and (ii) possesses the power of arrest by virtue of an oath administered under the authority of the State.

(1b) Corrections employee. – Any corrections employee or a member of his or her immediate family who is in need of and receives peer counseling services offered by the employee's corrections agency.

(2) Immediate family. – A spouse, child, stepchild, parent, or stepparent.

(3) Peer counselor. – Any active or retired law enforcement officer, corrections officer, emergency personnel officer, or civilian employee of a law enforcement agency, corrections agency, or emergency agency who meets both of the following criteria:

a. Has received training to provide emotional and moral support and counseling to client law enforcement employees, corrections employees, emergency personnel officers, and their immediate families.

b. Has been designated by a sheriff, police chief, or other head of a law enforcement, corrections, or emergency agency to provide counseling to client law enforcement employees, corrections employees, and emergency personnel officers.

(4) Privileged communication. – Any communication made by a client law enforcement employee, corrections employee, emergency personnel officer, or a member of the client law enforcement employee's, corrections employee's, or emergency personnel officer's immediate family to a peer counselor while receiving counseling.

(a1) Nothing in this section shall be construed to require the designation as a peer counselor required by sub-subdivision b. of subdivision (3) of subsection (a) of this section be made by the head of the same agency that employs the client law enforcement employee, corrections employee, or emergency personnel officer.

(b) A peer counselor shall not disclose any privileged communication that was necessary to enable the counselor to render counseling services unless one of the following apply:

(1) The disclosure is authorized by the client or, if the client is deceased, the disclosure is authorized by the client's executor, administrator, or in the case of unadministrated estates, the client's next of kin.

(2) The disclosure is necessary to the proper administration of justice and, subject to G.S. 8-53.6, is compelled by a resident or presiding judge. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

(c) The privilege established by this section shall not apply:

(1) If the peer counselor was an initial responding officer, a witness, or a party to the incident that prompted the delivery of peer counseling services.

(2) To communications made while the peer counselor was not acting in his or her official capacity as a peer counselor.

(3) To communications related to a violation of criminal law. This subdivision does not require the disclosure of otherwise privileged communications related to an officer's use of force.

(d) Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes. (1999-374, s. 1; 2022-58, s. 5(a); 2023-121, s. 12(a).)

§ 8-53.11. Persons, companies, or other entities engaged in gathering or dissemination of news.

(a) Definitions. – The following definitions apply in this section:

(1) Journalist. – Any person, company, or entity, or the employees, independent contractors, or agents of that person, company, or entity, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. – Any grand jury proceeding or grand jury investigation; any criminal prosecution, civil suit, or related proceeding in any court; and any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. – Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by the greater weight of the evidence that the testimony or production sought:

(1) Is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production.

(d) Notwithstanding subsections (b) and (c) of this section, a journalist has no privilege against disclosure of any information, document, or item obtained as the result of the journalist's eyewitness observations of criminal or tortious conduct, including any physical evidence or visual or audio recording of the observed conduct. (1999-267, s. 1.)

§ 8-53.12. Communications with agents of rape crisis centers and domestic violence programs privileged.

(a) Definitions. – The following definitions apply in this section:

(1) Agent. – An employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.

(2) Center. – A domestic violence program or rape crisis center.

(3) Domestic violence program. – A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims.

(4) Domestic violence victim. – Any person alleging domestic violence as defined by G.S. 50B-1, who consults an agent of a domestic violence program for the purpose of obtaining, for himself or herself, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the domestic violence. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by the domestic violence against the victim.

(5) Rape crisis center. – Any publicly or privately funded agency, institution, organization, or facility that offers counseling and other services to victims of sexual assault and their families.

(6) Services. – Includes, but is not limited to, crisis hotlines; safe homes and shelters; assessment and intake; children of violence services; individual counseling; support in medical, administrative, and judicial systems; transportation, relocation, and crisis intervention. The term does not include investigation of physical or sexual assault of children under the age of 16.

(7) Sexual assault. – Any alleged violation of G.S. 14-27.21, 14-27.22, 14-27.24, 14-27.25, 14-27.26, 14-27.27, 14-27.29, 14-27.30, 14-27.31, 14-27.32, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation.

(8) Sexual assault victim. – Any person alleging sexual assault, who consults an agent of a rape crisis center for the purpose of obtaining, for themselves, advice, counseling, or other services concerning mental, physical, or emotional injuries suffered as a result of sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who have sought, for themselves, advice, counseling, or other services concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by sexual assault of a victim.

(9) Victim. – A sexual assault victim or a domestic violence victim.

(b) Privileged Communications. – No agent of a center shall be required to disclose any information which the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services; provided, however, that this subsection shall not apply where the victim waives the privilege conferred. Any agent or center that receives a request for such information shall make every effort to inform the victim of the request and provide the victim a copy of the request if the request was in writing. Any resident or presiding judge in the district in which the action is pending shall compel disclosure, either at the trial or prior thereto, if the court finds, by a preponderance of the evidence, a good faith, specific and reasonable basis for believing that (i) the records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material, and exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense, (ii) the evidence is not sought merely for character impeachment purposes, and (iii) the evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel. If the case is in district court, the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

The judge in any court proceeding subject to this section shall inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement. Before requiring production of records, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection. If the court finds a sufficient showing has been made, the court shall order that the records be produced for the court under seal, shall examine the records in camera, and may allow disclosure of those portions of the records which the court finds contain information subject to disclosure under this subsection. After all appeals in the action have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court. The privilege afforded under this subsection terminates upon the death of the victim.

(c) Duty in Case of Abuse or Neglect. – Nothing in this section shall be construed to relieve any person of any duty pertaining to abuse or neglect of a child or disabled adult as required by law. (2001-277, s. 1; 2015-181, s. 31; 2019-216, s. 1.5.)

§ 8-53.13. Nurse privilege.

No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional nursing services, and which information was necessary to enable that person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule. Nothing in this section shall preclude the admission of otherwise admissible written or printed medical records in any judicial proceeding, in accordance with the procedure set forth in G.S. 8-44.1, after a determination by the court that disclosure should be compelled as set forth herein. (2003-342, s. 1; 2004-186, s. 16.1.)

§ 8-53.14. Communications between behavior analyst and client or patient.

No individual authorized as a licensed behavior analyst, or any of the individual's employees or associates, shall be required to disclose any information that the individual may have acquired in the practice of behavior analysis and which information was necessary to enable the individual to practice behavior analysis. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at or before trial, if in the judge's opinion, disclosure is necessary to a proper administration of justice. If the case is in district court, the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

Notwithstanding the provisions of this section, the behavior analyst-client or behavior analyst-patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the behavior analyst-client or behavior analyst-patient privilege shall not be grounds for excluding any evidence of abuse, neglect, illness, or injuries of a child or for excluding any evidence regarding the abuse, neglect, exploitation, illness, or injuries of a disabled adult in any judicial proceeding related to a report pursuant to Article 3 of Chapter 7B of the General Statutes. (2021-22, s. 3.)

§ 8-54. Defendant in criminal action competent but not compellable to testify.

In the trial of all indictments, complaints, or other proceedings against persons charged with the commission of crimes, offenses or misdemeanors, the person so charged is, at his own request, but not otherwise, a competent witness, and his failure to make such request shall not create any presumption against him. But every such person examined as a witness shall be subject to cross-examination as other witnesses. Except as above provided, nothing in this section shall render any person, who in any criminal proceeding is charged with the commission of a criminal offense, competent or compellable to give evidence against himself, nor render any person compellable to answer any question tending to criminate himself. (1856-7, c. 23; 1866, c. 43, s. 3; 1868-9, c. 209, s. 4; 1881, c. 89, s. 3; c. 110, ss. 2, 3; Code ss. 1353, 1354; Rev., ss. 1634, 1635; C.S., s. 1799.)

§ 8-55. Testimony enforced in certain criminal investigations; immunity.

If any justice, judge or magistrate of the General Court of Justice shall have good reason to believe that any person within his jurisdiction has knowledge of the existence and establishment of any faro bank, faro table or other gaming table prohibited by law, or of any place where alcoholic beverages are sold contrary to law, in any town or county within his jurisdiction, such person not being minded to make voluntary information thereof on oath, then it shall be lawful for such justice, magistrate, or judge to issue to the sheriff of the county in which such faro bank, faro table, gaming table, or place where alcoholic beverages are sold contrary to law is supposed to be a subpoena, capias ad testificandum, or other summons in writing, commanding such person to appear immediately before such justice, magistrate, or judge and give evidence on oath as to what he may know touching the existence, establishment and whereabouts of such faro bank, faro table or other gaming table, or place where alcoholic beverages are sold contrary to law, and the name and personal description of the keeper thereof. Such evidence, when obtained, shall be considered and held in law as an information on oath, and the justice, magistrate or judge may thereupon proceed to seize and arrest such keeper and destroy such table, or issue process therefor as provided by law. No person shall be excused, on any prosecution, from testifying touching any unlawful

gaming done by himself or others; but no discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offenses so done or participated in by him. (R.C., c. 35, s. 50; 1858-9, c. 34, s. 1; Code, ss. 1050, 1215; 1889, c. 355; Rev., ss. 1637, 3721; 1913, c. 141; C.S., s. 1800; 1969, c. 44, s. 22; 1971, c. 381, s. 4; 1981, c. 412, s. 4(4); c. 747, s. 66.)

§ 8-56. Husband and wife as witnesses in civil action.

In any trial or inquiry in any suit, action or proceeding in any court, or before any person having, by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as herein stated, be competent and compellable to give evidence, as any other witness on behalf of any party to such suit, action or proceeding. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage. (1866, c. 43, ss. 3, 4; C.C.P., s. 341; Code, s. 588; Rev., s. 1636; 1919, c. 18; C.S., s. 1801; 1945, c. 635; 1977, c. 547; 1983 (Reg. Sess., 1984), c. 1037, s. 3.)

§ 8-57. Husband and wife as witnesses in criminal actions.

(a) The spouse of the defendant shall be a competent witness for the defendant in all criminal actions, but the failure of the defendant to call such spouse as a witness shall not be used against him. Such spouse is subject to cross-examination as are other witnesses.

(b) The spouse of the defendant shall be competent but not compellable to testify for the State against the defendant in any criminal action or grand jury proceedings, except that the spouse of the defendant shall be both competent and compellable to so testify:

(1) In a prosecution for bigamy or criminal cohabitation, to prove the fact of marriage and facts tending to show the absence of divorce or annulment;

(2) In a prosecution for assaulting or communicating a threat to the other spouse;

(3) In a prosecution for trespass in or upon the separate lands or residence of the other spouse when living separate and apart from each other by mutual consent or court order;

(4) In a prosecution for abandonment of or failure to provide support for the other spouse or their child;

(5) In a prosecution of one spouse for any other criminal offense against the minor child of either spouse, including any child of either spouse who is born out of wedlock or adopted or a foster child.

(c) No husband or wife shall be compellable in any event to disclose any confidential communication made by one to the other during their marriage. (1856-7, c. 23; 1866, c. 43; 1868-9, c. 209; 1881, c. 110; Code, ss. 588, 1353, 1354; Rev., ss. 1634, 1635, 1636; C.S., s. 1802; 1933, c. 13, s. 1; c. 361; 1951, c. 296; 1957, c. 1036; 1967, c. 116; 1971, c. 800; 1973, c. 1286, s. 11; 1983, c. 170, s. 1; 1985 (Reg. Sess., 1986), c. 843, s. 5; 1987 (Reg. Sess., 1988), c. 1040, s. 1; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c, 686, s. 3; 2013-198, s. 2.)

§ 8-57.1. Husband-wife privilege waived in child abuse.

Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the husband-wife privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial

proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes of North Carolina. (1971, c. 710, s. 3; 1998-202, s. 13(d).)

§ 8-57.2. Presumed father or mother as witnesses where paternity at issue.

Whenever an issue of paternity of a child born or conceived during a marriage arises in any civil or criminal proceeding, the presumed father or the mother of such child is competent to give evidence as to any relevant matter regarding paternity of the child, including nonaccess to the present or former spouse, regardless of any privilege which may otherwise apply. No parent offering such evidence shall thereafter be prosecuted based upon that evidence for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony. (1981, c. 634, s. 1.)

§ 8-58: Repealed by Session Laws 1973, c. 1286, ss. 11, 26.

§ 8-58.1. Injured party as witness when medical charges at issue.

(a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in any civil proceeding, the injured party or his guardian, administrator, or executor is competent to give evidence regarding the amount paid or required to be paid in full satisfaction of such charges, provided that records or copies of such charges showing the amount paid or required to be paid in full satisfaction of such charges accompany such testimony.

(b) The testimony of a person pursuant to subsection (a) of this section establishes a rebuttable presumption of the reasonableness of the amount paid or required to be paid in full satisfaction of the charges. However, in the event that the provider of hospital, medical, dental, pharmaceutical, or funeral services gives sworn testimony that the charge for that provider's service either was satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of an amount less than the amount charged, then with respect to that provider's charge only, the presumption of the reasonableness of the amount charged is rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount of the charges for the testifying provider's services. For the purposes of this subsection, the word "provider" shall include the agent or employee of a provider of hospital, medical, dental, pharmaceutical, or funeral services, or a person with responsibility to pay a provider of hospital, medical, dental, pharmaceutical, or funeral services on behalf of an injured party.

(c) The fact that a provider charged for services provided to the injured person establishes a permissive presumption that the services provided were reasonably necessary but no presumption is established that the services provided were necessary because of injuries caused by the acts or omissions of an alleged tortfeasor. (1983, c. 776, s. 1; 2011-283, s. 1.2; 2011-317, s. 1.1.)

§ 8-58.2. Reserved for future codification purposes.

§ 8-58.3. Reserved for future codification purposes.

§ 8-58.4. Reserved for future codification purposes.

§ 8-58.5. Reserved for future codification purposes.

Article 7A.

Restrictions on Evidence in Rape Cases.

§§ 8-58.6 through 8-58.11: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1037, s. 2.

Article 7B.

Expert Testimony.

§§ 8-58.12 through 8-58.14: Repealed by Session Laws 1983 (Regular Session, 1984), c. 1037, s. 9.

§ 8-58.15: Reserved for future codification purposes.

§ 8-58.16: Reserved for future codification purposes.

§ 8-58.17: Reserved for future codification purposes.

§ 8-58.18: Reserved for future codification purposes.

§ 8-58.19: Reserved for future codification purposes.

Article 7C.

Admissibility of Forensic Evidence.

§ 8-58.20. Forensic analysis admissible as evidence.

(a) In any criminal prosecution, a laboratory report of a written forensic analysis, including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and that is signed and sworn to by the person performing the analysis shall be admissible in evidence without the testimony of the analyst who prepared the report in accordance with the requirements of this section.

(b) A forensic analysis, to be admissible under this section, shall be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses. The analyses of DNA samples and typing results of DNA samples shall be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the ILAC Mutual Recognition Arrangement For Testing.

(c) The analyst who analyzes the forensic sample and signs the report shall complete an affidavit on a form developed by the State Crime Laboratory. In the affidavit, the analyst shall state (i) that the person is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, and (iii) that performing the analysis is part of that person's regular duties. The analyst shall also aver in the affidavit that the tests were performed pursuant to the accrediting body's standards for that discipline and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute prima facie evidence regarding the

person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the district attorney in the prosecutorial district in which the criminal charges are pending. An affidavit by a forensic analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any criminal proceeding with respect to the forensic analysis administered and the procedures followed.

(d) The district attorney shall serve a copy of the laboratory report and affidavit and indicate whether the report and affidavit will be offered as evidence at any proceeding against the defendant on the attorney of record for the defendant, or on the defendant if that person has no attorney, no later than five business days after receiving the report and affidavit, or 30 business days before any proceeding in which the report may be used against the defendant, whichever occurs first.

(e) Upon receipt of a copy of the laboratory report and affidavit, the attorney of record for the defendant or the defendant if that person has no attorney, shall have 15 business days to file a written objection to the use of the laboratory report and affidavit at any proceeding against the defendant. The written objection shall be filed with the court in which the matter is pending with a copy provided to the district attorney.

(f) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court to the use of the laboratory report and affidavit within the time allowed by this section, then the objection shall be deemed waived and the laboratory report and affidavit shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise at the proceeding when offered. If, however, a written objection is filed, this section does not apply and the admissibility of the evidence shall be determined and governed by the appropriate rules of evidence.

(g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic Analysis Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of evidence that has been subjected to forensic analysis performed as provided in subsection (b) of this section, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (a) of this section.

(3) The provisions of this subsection may be utilized by the State only if (i) the State notifies the defendant at least 15 business days before any proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement and (ii) the defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the statement into evidence.

(4) In lieu of the notice required in subdivision (3) of this subsection, the State may include the statement with the laboratory report and affidavit, as provided in subsection (d) of this section.

(5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement.

(6) Upon filing a timely objection, the admissibility of the statement shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness, except an analyst regarding the results of forensic testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to G.S. 15A-1225.3. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) This section does not apply to chemical analyses under G.S. 20-139.1. (2004-124, s. 15.2(c); 2007-484, s. 1; 2009-473, s. 7; 2011-19, s. 7; 2011-307, s. 9; 2012-168, s. 6; 2013-171, ss. 2, 3; 2013-194, s. 2; 2013-338, s. 1; 2014-100, s. 17.1(u); 2015-173, s. 1; 2021-180, s. 16.17(b).)

§ 8-58.21: Reserved for future codification purposes.

§ 8-58.22: Reserved for future codification purposes.

§ 8-58.23: Reserved for future codification purposes.

§ 8-58.24: Reserved for future codification purposes.

§ 8-58.25: Reserved for future codification purposes.

§ 8-58.26: Reserved for future codification purposes.

§ 8-58.27: Reserved for future codification purposes.

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§ 8-58.46: Reserved for future codification purposes.

§ 8-58.47: Reserved for future codification purposes.

§ 8-58.48: Reserved for future codification purposes.

§ 8-58.49: Reserved for future codification purposes.

Article 7D.

Environmental Audit Privilege and Limited Immunity.

§ 8-58.50. (Article has a contingent effective date – see note). Purpose.

(a) In order to encourage owners and operators of facilities and persons conducting activities regulated under those portions of the General Statutes set forth in G.S. 8-58.52, or conducting activities regulated under other environmental laws, to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) Nothing in this Article shall be construed to protect owners and operators of facilities and regulated persons from a criminal investigation or prosecution carried out by any appropriate governmental entity.

(c) Any privilege granted by this Article shall apply only to those communications, oral or written, pertaining to and made in connection with the environmental audit and shall not apply to the facts relating to the violation itself. (2015-286, s. 4.1(a).)

§ 8-58.51. (Article has a contingent effective date – see note) Definitions.

The following definitions apply in this Article:

(1) "Department" means the Department of Environmental Quality.

(2) "Enforcement agencies" means the Department, any other agency of the State, and units of local government responsible for enforcement of environmental laws.

(3) "Environmental audit" means a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws. For the purposes of this Article, an environmental audit does not include an environmental site assessment of a facility conducted solely in anticipation of the purchase, sale, or transfer of the business or facility. An environmental audit may be conducted by the owner or operator, the parent corporation of the owner or operator or by their officers or employees, or by independent contractors. An environmental audit must be a discrete activity with a specified beginning date and scheduled ending date reflecting the auditor's bona fide intended completion schedule.

(4) "Environmental audit report" means a document marked or identified as such with a completion date existing either individually or as a compilation prepared in connection with an environmental audit. An environmental audit report may include field notes and records of observations, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report, when completed, may include all of the following components:

a. An audit report prepared by an auditor, which may include the scope and date of the audit and the information gained in the audit, together with exhibits and appendices and may include conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing any portion of the audit report or issues relating to the implementation of an audit report.

c. An implementation plan that addresses correcting past noncompliance, improving current compliance, or preventing future noncompliance.

(5) "Environmental laws" means all provisions of federal, State, and local laws, rules, and ordinances pertaining to environmental matters. (2015-241, s. 14.30(u); 2015-286, s. 4.1(a).)

§ 8-58.52. (Article has a contingent effective date – see note) Applicability.

(a) This Article applies to activities regulated under environmental laws, including all of the following provisions of the General Statutes, and rules adopted thereunder:

(1) Article 7 of Chapter 74.

(2) Chapter 104E.
(3) Article 25 of Chapter 113.
(4) Articles 1, 4, and 7 of Chapter 113A.
(5) Article 9 of Chapter 130A, except as provided in subsection (b) of this section.
(6) Articles 21, 21A, and 21B of Chapter 143.
(7) Part 1 of Article 7 of Chapter 143B.

(b) This Article shall not apply to activities regulated under the Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules promulgated pursuant to that Part. (2015-286, s. 4.1(a).)

§ 8-58.53. (Article has a contingent effective date – see note) Environmental audit report; privilege.

(a) An environmental audit report or any part of an environmental audit report is privileged and, therefore, immune from discovery and is not admissible as evidence in civil or administrative proceedings, except as provided in G.S. 8-58.54 and G.S. 8-58.56. Provided, however, all of the following documents are exempt from the privilege established by this Article:

(1) Information obtained by observation of an enforcement agency.
(2) Information obtained from a source independent of the environmental audit.
(3) Documents, communication, data, reports, or other information required to be collected, maintained, otherwise made available, or reported to an enforcement agency or any other entity by environmental laws, permits, orders, consent agreements, or as otherwise provided by law.
(4) Documents prepared either prior to the beginning of the environmental audit or subsequent to the completion date of the audit report and, in all cases, any documents prepared independent of the audit or audit report.
(5) Documents prepared as a result of multiple or continuous self-auditing conducted in an effort to intentionally avoid liability for violations.
(6) Information that is knowingly misrepresented or misstated or that is knowingly deleted or withheld from an environmental audit report, whether or not included in a subsequent environmental audit report.
(7) Information in instances where the material shows evidence of noncompliance with environmental laws, permits, orders, consent agreements, and the owner or operator failed to either promptly take corrective action or eliminate any violation of law identified during the environmental audit within a reasonable period of time.

(b) If an environmental audit report or any part of an environmental audit report is subject to the privilege provided for in subsection (a) of this section, no person who conducted or participated in the audit or who significantly reviewed the audit report may be compelled to testify regarding the audit report or a privileged part of the audit report except as provided for in G.S. 8-58.53(d), 8-58.54, or 8-58.56.

(c) Nothing in this Article shall be construed to restrict a party in a proceeding before the Industrial Commission from obtaining or discovering any evidence necessary or appropriate for the proof of any issue pending in an action before the Commission, regardless of whether evidence is privileged pursuant to this Article. Further, nothing in this Article shall be construed to prevent the admissibility of evidence that is otherwise relevant and admissible in a proceeding before the Industrial Commission, regardless of whether the evidence is privileged pursuant to this Article.

Provided, however, the Commission, upon motion made by a party to the proceeding, may issue appropriate protective orders preventing disclosure of information outside of the Commission's proceeding.

(d) Nothing in this Article shall be construed to circumvent the employee protection provisions provided by federal or State law.

(e) The privilege created by this Article does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this Article shall continue to apply and is not waived in civil and administrative proceedings and is not discoverable or admissible in civil or administrative proceedings even if disclosed during a criminal proceeding. (2015-286, s. 4.1(a).)

§ 8-58.54. (Article has a contingent effective date – see note) Waiver of privilege.

(a) The privilege established under G.S. 8-58.53 does not apply to the extent that it is expressly waived in writing by the owner or operator of a facility at which an environmental audit was conducted and who prepared or caused to be prepared the audit report as a result of the audit.

(b) The audit report and information generated by the audit may be disclosed without waiving the privilege established under G.S. 8-58.53 to all of the following persons:

(1) A person employed by the owner or operator or the parent corporation of the audited facility.

(2) A legal representative of the owner or operator or parent corporation.

(3) An independent contractor retained by the owner or operator or parent corporation to conduct an audit on or to address an issue or issues raised by the audit.

(c) Disclosure of an audit report or information generated by the audit under all of the following circumstances shall not constitute a waiver of the privilege established under G.S. 8-58.53:

(1) Disclosure made under the terms of a confidentiality agreement between the owner or operator of the facility audited and a potential purchaser of the business or facility audited.

(2) Disclosure made under the terms of a confidentiality agreement between governmental officials and the owner or operator of the facility audited.

(3) Disclosure made under the terms of a confidentiality agreement between a customer, lending institution, or insurance company with an existing or proposed relationship with the facility. (2015-286, s. 4.1(a).)

§ 8-58.55. (Article has a contingent effective date – see note) Notification of audit.

In order to assert the privilege established under G.S. 8-58.53, the owner or operator of the facility conducting the environmental audit shall, upon inspection of the facility by an enforcement agency, or no later than 10 working days after completion of an agency's inspection, notify the enforcement agency of the existence of any audit relevant to the subject of the agency's inspection, as well as the beginning date and completion date of that audit. Any environmental audit report shall include a signed certification from the owner or operator of the facility that documents the date the audit began and the completion date of the audit. (2015-286, s. 4.1(a).)

§ 8-58.56. (Article has a contingent effective date – see note) Revocation of privilege in civil and administrative proceedings.

In a civil or administrative proceeding, an enforcement agency may seek by motion a declaratory ruling on the issue of whether an environmental audit report is privileged. The court shall revoke the privilege established under G.S. 8-58.53 for an audit report if the factors set forth in this section apply. In a civil proceeding, the court, after an in camera review, shall revoke the privilege established under G.S. 8-58.53 if the court determines that disclosure of the environmental audit report was sought after the effective date of this Article and either of the following apply:

(1) The privilege is asserted for purposes of deception or evasion.

(2) The material shows evidence of significant noncompliance with applicable environmental laws; the owner or operator of the facility has not promptly initiated and pursued with diligence appropriate action to achieve compliance with these environmental laws or has not made reasonable efforts to complete any necessary permit application; and, as a result, the owner or operator of the facility did not or will not achieve compliance with applicable environmental laws or did not or will not complete the necessary permit application within a reasonable period of time. (2015-286, s. 4.1(a).)

§ 8-58.57. (Article has a contingent effective date – see note) Privilege in criminal proceedings.

The privilege established under G.S. 8-58.53 is not applicable in any criminal proceeding. (2015-286, s. 4.1(a).)

§ 8-58.58. (Article has a contingent effective date – see note) Burden of proof.

A party asserting the privilege established under G.S. 8-58.53 has the burden of proving that (i) the materials claimed as privileged constitute an environmental audit report as defined by this Article, and (ii) compliance has been achieved or will be achieved within a reasonable period of time. A party seeking disclosure under G.S. 8-58.56 has the burden of proving the condition for disclosure set forth in that section. (2015-286, s. 4.1(a).)

§ 8-58.59. (Article has a contingent effective date – see note) Stipulations; declaratory rulings.

The parties to a proceeding may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege. In the absence of an ongoing proceeding, where the parties are not in agreement, an enforcement agency may seek a declaratory ruling from a court on the issue of whether the materials are privileged under G.S. 8-58.53 and whether the privilege, if existing, should be revoked pursuant to G.S. 8-58.56. (2015-286, s. 4.1(a).)

§ 8-58.60. (Article has a contingent effective date – see note) Construction of Article.

Nothing in this Article limits, waives, or abrogates any of the following:

(1) The scope or nature of any statutory or common law privilege, including the work-product privilege or the attorney-client privilege.

(2) Any existing ability or authority under State law to challenge privilege.

(3) An enforcement agency's ability to obtain or use documents or information that the agency otherwise has the authority to obtain under State law adopted pursuant to federally delegated programs. (2015-286, s. 4.1(a).)

§ 8-58.61. (Article has a contingent effective date – see note) Voluntary disclosure; limited immunity from civil and administrative penalties and fines.

(a) An owner or operator of a facility is immune from imposition of civil and administrative penalties and fines for a violation of environmental laws voluntarily disclosed subject to the requirements and criteria set forth in this section. Provided, however, that waiver of penalties and fines shall not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time. If compliance is not certified by the enforcement agency, the enforcement agency shall retain discretion to assess penalties and fines for the violation.

(b) If a person or entity makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit, that person has the burden of proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection (c) of this section and (ii) that the person is therefore entitled to immunity from any administrative or civil penalties associated with the issues disclosed. Nothing in this section may be construed to provide immunity from criminal penalties.

(c) For purposes of this section, disclosure is voluntary if all of the following criteria are met:

(1) The disclosure is made within 14 days following a reasonable investigation of the violation's discovery through the environmental audit.

(2) The disclosure is made to an enforcement agency having regulatory authority over the violation disclosed.

(3) The person or entity making the disclosure initiates an action to resolve the violation identified in the disclosure in a diligent manner.

(4) The person or entity making the disclosure cooperates with the applicable enforcement agency in connection with investigation of the issues identified in the disclosure.

(5) The person or entity making the disclosure diligently pursues compliance and promptly corrects the noncompliance within a reasonable period of time.

(d) A disclosure is not voluntary for purposes of this section if any of the following factors apply:

(1) Specific permit conditions require monitoring or sampling records and reports or assessment plans and management plans to be maintained or submitted to the enforcement agency pursuant to an established schedule.

(2) Environmental laws or specific permit conditions require notification of releases to the environment.

(3) The violation was committed intentionally, willfully, or through criminal negligence by the person or entity making the disclosure.

(4) The violation was not corrected in a diligent manner.

(5) The violation posed or poses a significant threat to public health, safety, and welfare; the environment; and natural resources.

(6) The violation occurred within one year of a similar prior violation at the same facility, and immunity from civil and administrative penalties was granted by the applicable enforcement agency for the prior violation.

(7) The violation has resulted in a substantial economic benefit to the owner or operator of the facility.

(8) The violation is a violation of the specific terms of a judicial or administrative order.

(e) If a person meets the burden of proving that the disclosure is voluntary, the burden shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the factors set forth in this section. The person claiming immunity from civil or administrative penalties or fines under this section retains the ultimate burden of proving the violations were voluntarily disclosed.

(f) A voluntary disclosure made pursuant to this section is subject to disclosure pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the General Statutes. (2015-286, s. 4.1(a).)

§ 8-58.62. (Article has a contingent effective date – see note) Additional limitations on exercise of privilege or immunity.

An owner or operator of a facility who makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit shall only be entitled to exercise of the privilege or immunity established by this Article once in a two-year period, not more than twice in a five-year period, and not more than three times in a 10-year period. (2015-286, s. 4.1(a).)

§ 8-58.63. (Article has a contingent effective date – see note) Preemption of local laws.

No local law, rule, ordinance, or permit condition may circumvent or limit the privilege established by this Article or the exercise of the privileges or the presumption and immunity established by this Article. (2015-286, s. 4.1(a).)

Article 8.

Attendance of Witness.

§ 8-59. Issue and service of subpoena.

In obtaining the testimony of witnesses in causes pending in the trial divisions of the General Court of Justice, subpoenas shall be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure for civil actions. Provided that in criminal cases any employee of a local law-enforcement agency may effect service of a subpoena for the attendance of witnesses by telephone communication with the person named. However, in the case of a witness served by telephone communication pursuant to this section, neither an order to show cause nor an order for arrest shall be issued until such person has been served personally with the written subpoena. (1777, c. 115, s. 36, P.R.; R.C., c. 31, s. 59; Code, s. 1355; Rev., s. 1639; C.S., s. 1803; 1959, c. 522, s. 2; 1967, c. 954, s. 3; 1971, c. 381, s. 5; 1981, c. 267; 1989, c. 262, s. 2.)

§ 8-60. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-61. Subpoena for the production of documentary evidence.

Subpoenas for the production of records, books, papers, documents, or tangible things may be issued in criminal actions in the same manner as provided for civil actions in Rule 45 of the Rules of Civil Procedure. (1797, c. 476, P.R.; R.C., c. 31, s. 81; Code, s. 1372; Rev., s. 1641; C.S., s. 1805; 1967, c. 954, s. 3; c. 1168.)

§ 8-62. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-63. Witnesses attend until discharge; effect of nonattendance.

Every witness, being summoned to appear in any of the said courts, in manner before directed, shall appear accordingly, and, subject to the provisions of G.S. 6-51, continue to attend from session to session until discharged, when summoned in a civil action or special proceeding, by the court or the party at whose instance such witness shall be summoned, or, when summoned in a criminal prosecution, until discharged by the court, the prosecuting officer, or the party at whose instance he was summoned; and in default thereof shall forfeit and pay, in civil actions or special proceedings, to the party at whose instance the subpoena issued, the sum of forty dollars ($40.00), to be recovered by motion in the cause, and shall be further liable to his action for the full damages which may be sustained for the want of such witness's testimony; or if summoned in a criminal prosecution shall forfeit and pay eighty dollars ($80.00) for the use of the State, or the party summoning him. If the civil action or special proceeding shall, in the vacation, be compromised and settled between the parties, and the party at whose instance such witness was summoned should omit to discharge him from further attendance, and for want of such discharge he shall attend the next session, in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk in the same manner as other witnesses, and shall recover from the party at whose instance he was summoned the allowance which is given to witnesses for their attendance, with costs.

No execution shall issue against any defaulting witness for the forfeiture aforesaid but after notice made known to him to show cause against the issuing thereof; and if sufficient cause be shown of his incapacity to attend, execution shall not issue, and the witness shall be discharged of the forfeiture without costs; but otherwise the court shall, on motion, award execution for the forfeiture against the defaulting witness. (1777, c. 115, ss. 37, 38, 43, P.R.; 1799, c. 528, P.R.; 1801, c. 591, P.R.; R.C., c. 31, ss. 60, 61, 62; Code, s. 1356; Rev., s. 1643; C.S., s. 1807; 1965, c. 284; 1971, c. 381, s. 12.)

§ 8-64. Witnesses exempt from civil arrest.

Every witness shall be exempt from arrest in civil actions or special proceedings during his attendance at any court, or before a commissioner, arbitrator, referee, or other person authorized to command the attendance of such witness, and during the time such witness is going to and returning from the place of such attendance, allowing one day for every thirty miles such witness has to travel to and from his place of residence. (1777, c. 115, s. 44, P.R.; R.C., c. 31, s. 70; Code, s. 1367; Rev., s. 1644; C.S., s. 1808.)

Article 9.

Attendance of Witnesses from without State.

§§ 8-65 through 8-70. Transferred to §§ 15A-811 through 15A-816 by Session Laws 1973, c. 1286, s. 9.

Article 10.

Depositions.

§§ 8-71 through 8-73. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-74. Depositions for defendant in criminal actions.

In all criminal actions, hearings and investigations it shall be lawful for the defendant in any such action to make affidavit before the clerk of the superior court of the county in which said action is pending, that it is important for the defense that he have the testimony of any person, whose name must be given, and that such person is so infirm, or otherwise physically incapacitated, or nonresident of this State, that he cannot procure his attendance at the trial or hearing of said cause. Upon the filing of such affidavit, it shall be the duty of the clerk to appoint some responsible person to take the deposition of such witness, which deposition may be read in the trial of such criminal action under the same rules as now apply by law to depositions in civil actions: provided, that the district attorney or prosecuting attorney of the district, county or town in which such action is pending have 10 days' notice of the taking of such deposition, who may appear in person or by representative to conduct the cross-examination of such witness. (Code, s. 1357; 1891, c. 522; 1893, c. 80; Rev., s. 1652; 1915, c. 251; C.S., s. 1812; 1971, c. 381, s. 6; 1973, c. 47, s. 2.)

§ 8-75. Repealed by Session Laws 1971, c. 381, s. 13.

§ 8-76. Depositions before municipal authorities.

Any board of aldermen, board of town or county commissioners or any person interested in any proceeding, investigation, hearing or trial before such board, may take the depositions of all persons whose evidence may be desired for use in said proceeding, investigation, hearing or trial; and to do so, the chairman of such board or such person may apply in person or by attorney to the superior court clerk of that county in which such proceeding, investigation, hearing or trial is pending, for a commission to take the same, and said clerk, upon such application, shall issue such commission, or such deposition may be taken by a notary public of this State or of any other state or foreign country without a commission issuing from the court; and the notice and proceedings upon the taking of said depositions shall be the same as provided for in civil actions; and if the person upon whom the notice of the taking of such deposition is to be served is absent from or cannot after due diligence be found within this State, but can be found within the county in which the deposition is to be taken, then, and in that case, said notice shall be personally served on such person by the commissioner appointed to take such deposition or by the notary taking such deposition, as the case may be; and when any such deposition is returned to the clerk it shall be opened and passed upon by him and delivered to such board, and the reading and using of such deposition shall conform to the rules of the superior court. (1889, c. 151; Rev., s. 1653; C.S., s. 1814; 1943, c. 543.)

§ 8-77: Repealed by Session Laws 1995, c. 379, s. 9.

§ 8-78. Commissioner may subpoena witness and punish for contempt.

Commissioners to take depositions appointed by the courts of this State, or by the courts of the states or territories of the United States, arbitrators, referees, and all persons acting under a commission issuing from any court of record in this State, are hereby empowered, they or the clerks of the courts respectively in this State, to which such commission shall be returnable, to issue subpoenas, specifying the time and place for the attendance of witnesses before them, and to administer oaths to said witnesses, to the end that they may give their testimony. And any witness appearing before any of the said persons and refusing to give his testimony on oath touching such matters as he may be lawfully examined unto shall be committed, by warrant of the person before whom he shall so refuse, to the common jail of the county, there to remain until he may be willing

to give his evidence; which warrant of commitment shall recite what authority the person has to take the testimony of such witness, and the refusal of the witness to give it. (1777, c. 115, s. 42, P.R.; 1805, c. 685, ss. 1, 2, P.R.; 1848, c. 66; 1850, c. 188; R.C., c. 31, s. 64; Code, s. 1362; Rev., s. 1649; C.S., s. 1816.)

§ 8-79. Attendance before commissioner enforced.

The sheriff of the county where the witness may be shall execute all such subpoenas, and make due return thereof before the commissioner, or other person, before whom the witness is to appear, in the same manner, and under the same penalties, as in case of process of a like kind returnable to court; and when the witness shall be subpoenaed five days before the time of his required attendance, and shall fail to appear according to the subpoena and give evidence, the default shall be noted by the commissioner, arbitrator, or other person aforesaid; and in case the default be made before a commissioner acting under authority from courts without the State, the defaulting witness shall forfeit and pay to the party at whose instance he may be subpoenaed fifty dollars, and on the trial for such penalty the subpoena issued by the commissioner, or other person, as aforesaid, with the indorsement thereon of due service by the officer serving the same, together with the default noted as aforesaid and indorsed on the subpoena, shall be prima facie evidence of the forfeiture, and sufficient to entitle the plaintiff to judgment for the same, unless the witness may show his incapacity to have attended. (1848, c. 66, s. 2; 1850, c. 188, ss. 1, 2; R.C., c. 31, s. 65; Code, s. 1363; Rev., s. 1650; C.S., s. 1817.)

§ 8-80. Remedies against defaulting witness before commissioner.

But in case the default be made before a commissioner, arbitrator, referee or other person, acting under a commission or authority from any of the courts of this State, then the same shall be certified under his hand, and returned with the subpoena to the court by which he was commissioned or empowered to take the evidence of such witness; and thereupon the court shall adjudge the defaulting witness to pay to the party at whose instance he was summoned the sum of forty dollars ($40.00); but execution shall not issue therefor until the same be ordered by the court, after such proceedings had as shall give said witness an opportunity to show cause, if he can, against the issuing thereof. (1850, c. 188, s. 2; R.C., c. 31, s. 66; Code, s. 1364; Rev., s. 1651; C.S., s. 1818.)

§ 8-81. Objection to deposition before trial.

At any time before the trial, or hearing of an action or proceeding, any party may make a motion to the judge or court to reject a deposition for irregularity in the taking of it, either in whole or in part, for scandal, impertinence, the incompetency of the testimony, for insufficient notice, or for any other good cause. The objecting party shall state his exceptions in writing. (1869-70, c. 227, ss. 13, 17; Code, s. 1361; 1895, c. 312; 1903, c. 132; Rev., s. 1648; C.S., s. 1819.)

§ 8-82. Deposition not quashed after trial begun.

No deposition shall be quashed, or rejected, on objection first made after a trial has begun, merely because of an irregularity in taking the same, provided it shall appear that the party objecting had notice that it had been taken, and it was on file long enough before the trial to enable him to present his objection. (1869-70, c. 227, s. 12; Code, s. 1360; Rev., s. 1647; C.S., s. 1820.)

§ 8-83. When deposition may be read on the trial.

Every deposition taken and returned in the manner provided by law may be read on the trial of the action or proceeding, or before any referee, in the following cases, and not otherwise:

(1) If the witness is dead, or has become insane since the deposition was taken.
(2) If the witness is a resident of a foreign country, or of another state, and is not present at the trial.
(3) If the witness is confined in a prison outside the county in which the trial takes place.
(4) If the witness is so old, sick or infirm as to be unable to attend court.
(5) If the witness is the President of the United States, or the head of any department of the federal government, or a judge, district attorney, or clerk of any court of the United States, and the trial shall take place during the term of such court.
(6) If the witness is the Governor of the State, or the head of any department of the State government, or the president of the University, or the head of any other incorporated college in the State, or the superintendent or any physician in the employ of any of the hospitals for the insane for the State.
(7) If the witness is a justice of the Supreme Court, judge of the Court of Appeals, or a judge, presiding officer, clerk or district attorney of any court of record, and the trial shall take place during the term of such court.
(8) If the witness is a member of the Congress of the United States, or a member of the General Assembly, and the trial shall take place during a time that such member is in the service of that body.
(9) Except in actions or proceedings governed by the Rules of Civil Procedure, if the witness has been duly summoned, and at the time of the trial is out of the State, or is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition.
(10) If the action is pending in a magistrate's court the deposition may be read on the trial of the action, provided the witness is more than 75 miles by the usual public mode of travel from the place where the court is sitting.
(11) Except in actions or proceedings governed by the Rules of Civil Procedure, if the witness is a physician duly licensed to practice medicine in the State of North Carolina, and resides or maintains his office outside the county in which the action is pending.

If any provision of this section conflicts with the Rules of Civil Procedure, then those Rules shall control in actions or proceedings governed by them. (1777, c. 115, ss. 39, 40, 41, P.R.; 1803, c. 633, P.R.; 1828, ch. 24, ss. 1, 2; 1836, c. 30; R.C., c. 31, s. 63; 1869-70, c. 227, s. 11; 1881, c. 279, ss. 1, 3; Code, s. 1358; 1905, c. 366; Rev., s. 1645; 1919, c. 324; C.S., s. 1821; 1965, c. 675; 1969, c. 44, s. 23; 1971, c. 381, s. 7; 1973, c. 47, s. 2; 1991, c. 491, s. 1.)

§ 8-84. Repealed by Session Laws 1975, c. 762, s. 4.

Article 11.

Perpetuation of Testimony.

§ 8-85. Court reporter's certified transcription.

Testimony taken and transcribed by a court reporter and certified by the reporter or by the judge who presided at the trial at which the testimony was given, may be offered in evidence in any court

as the deposition of the witness whose testimony is so taken and transcribed, in the manner, and under the rules governing the introduction of depositions in civil actions. (1971, c. 377, s. 1.)

§§ 8-86 through 8-88. Repealed by Session Laws 1967, c. 954, s. 4.

Article 12.

Inspection and Production of Writings.

§ 8-89. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-89.1. Repealed by Session Laws 1975, c. 762, s. 4.

§§ 8-90 through 8-91. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-92. Reserved for future codification purposes.

§ 8-93. Reserved for future codification purposes.

§ 8-94. Reserved for future codification purposes.

§ 8-95. Reserved for future codification purposes.

§ 8-96. Reserved for future codification purposes.

Article 13.

Photographs.

§ 8-97. Photographs as substantive or illustrative evidence.

Any party may introduce a photograph, video tape, motion picture, X-ray or other photographic representation as substantive evidence upon laying a proper foundation and meeting other applicable evidentiary requirements. This section does not prohibit a party from introducing a photograph or other pictorial representation solely for the purpose of illustrating the testimony of a witness. (1981, c. 451, s. 1.)

§ 8-98. Reserved for future codification purposes.

§ 8-99. Reserved for future codification purposes.

§ 8-100. Reserved for future codification purposes.

§ 8-101. Reserved for future codification purposes.

§ 8-102. Reserved for future codification purposes.

Article 14.

Chain of Custody.

§ 8-103. Courier service and contract carriers.

For purposes of maintaining a chain of custody for any item of evidence, depositing the item with the State courier service operated by the Department of Administration or a common or contract carrier shall be considered the same as depositing such item in first class United States mail. (1983, c. 375, s. 1.)

§ 8-104. Reserved for future codification purposes.

§ 8-105. Reserved for future codification purposes.

§ 8-106. Reserved for future codification purposes.

§ 8-107. Reserved for future codification purposes.

§ 8-108. Reserved for future codification purposes.

§ 8-109. Reserved for future codification purposes.

Article 15.

Mediation Negotiations.

§ 8-110. Inadmissibility of negotiations.

(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless it has been reduced to writing and signed by the parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.

(b) No mediator shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct occurring in a mediation conducted by a community mediation center authorized by G.S. 7A-38.5. A civil proceeding includes any civil matter in any administrative agency or the General Court of Justice, including a proceeding to enforce a settlement reached at the mediation. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that person. This subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102.

(c) Except as provided in this subsection, no mediator shall be compelled to testify or produce evidence in any criminal misdemeanor or felony proceeding concerning statements made and conduct occurring in a mediation conducted at a community mediation center authorized by G.S. 7A-38.5. A judge presiding over the trial of a felony may, however, compel disclosure of any evidence unrelated to the dispute that is the subject of the mediation if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to a proper administration of justice, and the evidence may not be obtained from any other source. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that

person. This subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102. (1999-354, s. 4; 2015-57, s. 5.)