

**Chapter 80.**  
**Trademarks, Brands, etc.**  
Article 1.  
Trademark Registration Act.

**§ 80-1. Definitions.**

(a) The term "applicant" as used herein means the person filing an application for registration of a trademark under this Article, the person's legal representatives, successors or assigns.

(b) The term "mark" as used herein includes any trademark or service mark entitled to registration under this Article whether registered or not.

(c) The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

(d) The term "registrant" as used herein means the person to whom the registration of a trademark under this Article is issued, the person's legal representatives, successors or assigns.

(d1) The term "Secretary" as used herein means the Secretary of State or the designee of the Secretary charged with the administration of this Article.

(e) The term "service mark" as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(f) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made, sold, or distributed by him and to distinguish them from goods made, sold, or distributed by others.

(g) The term "use" means the bona fide use of a mark in the State of North Carolina in the ordinary course of trade, and not merely the reservation of a right to a mark. For the purposes of this Article, a mark shall be deemed to be "used" in this State (i) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes placement impractical, then on documents associated with the goods, and the goods are currently sold or otherwise distributed in the State, and (ii) on services when it is used or displayed in the sale or advertising of services and the services are currently being rendered in this State, or are being offered and are available to be rendered in this State.

(h) A mark shall be deemed to be "abandoned" when either of the following occurs:

(1) When its use has been discontinued with intent not to resume its use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall constitute prima facie evidence of abandonment.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. (1903, c. 271; Rev., s. 3012; C.S., s. 3971; 1941, c. 255, s. 1; 1967, c. 1007, s. 1; 1991, c. 626, s. 1; 1997-476, s. 1.)

**§ 80-1.1. Purpose.**

The purpose of this Article is to provide a system of State trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, 15 U.S.C. § 1051, et seq., as amended. The construction given the federal act should be examined as persuasive authority for interpreting and construing this Article. (1997-476, s. 2.)

**§ 80-2. Registrability.**

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

(1) Consists of or comprises immoral, deceptive or scandalous matter; or

- 1 (2) Consists of or comprises matter which may disparage or falsely suggest a  
2 connection with persons, living or dead, institutions, beliefs, or national  
3 symbols, or bring them into contempt, or disrepute; or  
4 (3) Consists of or comprises the flag or coat of arms or other insignia of the  
5 United States, or of any state or municipality, or of any foreign nation, or  
6 any simulation thereof; or  
7 (4) Consists of or comprises the name, signature or portrait of any living  
8 individual, except with his written consent; or  
9 (5) Consists of a mark which (i) when applied to the goods or services of the  
10 applicant, is merely descriptive of them or merely describes one or more of  
11 the characteristics, or is deceptively misdescriptive of them, or falsely  
12 describes the nature, function, capacity, or characteristics of them, or (ii)  
13 when applied to the goods or services of the applicant, is primarily  
14 geographically descriptive or deceptively misdescriptive of them, or (iii) is  
15 primarily merely a surname; provided, however, that nothing in this  
16 subdivision (5) shall prevent the registration of a mark used in this State by  
17 the applicant which has become distinctive of the applicant's goods or  
18 services. The Secretary may accept as evidence that the mark has become  
19 distinctive, as applied to the applicant's goods or services, proof of  
20 continuous use thereof as a mark by the applicant in this State for the five  
21 years preceding the date on which the claim of distinctiveness is made; or  
22 (6) Consists of or comprises a mark which so resembles a mark registered in this  
23 State or a mark or trade name previously used in this State by another and  
24 not abandoned, as to be likely, when applied to the goods or services of the  
25 applicant, to cause confusion or mistake or to deceive. (1903, c. 271; Rev.,  
26 ss. 3012, 3017; C.S., ss. 3971, 3976; 1941, c. 255, s. 1; 1967, c. 1007, s. 1;  
27 1991, c. 626, s. 2; 1997-476, s. 3.)  
28

29 **§ 80-3. Application for registration.**

30 (a) Subject to the limitations set forth in this Article, any person who uses a mark, or  
31 any person who controls the nature and quality of the goods or services in connection with  
32 which a mark is used by another, in this State may file in the office of the Secretary in a format  
33 to be prescribed by the Secretary, an application for registration of that mark setting forth, but  
34 not limited to, the following information:

- 35 (1) The name and business address of the person applying for registration; and,  
36 if a corporation, the state of incorporation. If the application for registration  
37 relates to a mark used in connection with goods, the applicant shall list either  
38 the address of the applicant's principal place of business in North Carolina or  
39 a place of distribution and usage of the goods in this State. If the application  
40 for registration relates to a mark used in connection with services, the  
41 applicant shall list a physical location at which the services are being  
42 rendered or offered in this State;  
43 (2) The goods or services in connection with which the mark is used and the  
44 mode or manner in which the mark is used in connection with the goods or  
45 services and the class in which the goods or services fall;  
46 (3) The date when the mark was first used anywhere and the date when it was  
47 first used in this State by the applicant, the applicant's predecessor in  
48 business or by another under the control of the applicant; and  
49 (4) A statement that the applicant is the owner of the mark, that the mark is in  
50 use, and that to the best of the knowledge of the person verifying the  
51 application, no other person has registered in this State, or has the right to

1 use the mark in this State either in the identical form thereof or in such near  
2 resemblance thereto as to be likely, when applied to the goods or services of  
3 the other person, to cause confusion, or to cause mistake, or to deceive.

4 (b) The application shall be signed and verified by the applicant, by a partner, by a  
5 member of the firm, or an officer of the corporation or association applying for registration. In  
6 states in which a notary is not required by law to obtain a notary's stamp or seal, an original  
7 certificate of authority of the notary issued by the appropriate State agency shall be submitted  
8 with the application. If the application is signed by a person acting pursuant to a power of  
9 attorney from the applicant, an original power of attorney or a certified copy of the power of  
10 attorney shall accompany the application.

11 The application shall be accompanied by three specimens of the mark as currently used and  
12 by a filing fee of seventy-five dollars (\$75.00), payable to the Secretary.

13 (c) The Secretary may require a statement as to whether an application to register the  
14 mark, or portions or a component of the mark, has been filed by the applicant or a predecessor  
15 in interest in the United States Patent and Trademark Office and, if so, the applicant shall  
16 provide any relevant information required by the Secretary, including the filing date and serial  
17 number of the application and the status of the application. If any application was finally  
18 refused registration or has otherwise not resulted in a registration, the Secretary may require the  
19 applicant to provide in the statement the reason the application was not registered. The  
20 Secretary may also require that a drawing of the mark accompany the application in a form  
21 specified by the Secretary. (1903, c. 271, s. 3; Rev., s. 3014; C.S., s. 3973; 1935, c. 60; 1941, c.  
22 255, s. 2; 1967, c. 1007, s. 1; 1983, c. 713, s. 49; 1991, c. 626, s. 3; 1997-476, s. 4; 2002-126, s.  
23 29A.36.)  
24

### 25 **§ 80-3.1. Examination of application.**

26 (a) Upon filing an application for registration and payment of the application fee, the  
27 Secretary may cause the application to be examined for conformity with this Article.

28 (b) The applicant shall provide any additional relevant information requested by the  
29 Secretary, including a description of a design mark, and may make, or authorize the Secretary  
30 to make, any amendments to the application reasonably requested by the Secretary or deemed  
31 by the applicant to be advisable to respond to a rejection or objection.

32 (c) The Secretary may require the applicant to disclaim an unregistrable component of  
33 a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark  
34 requested to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's  
35 rights then existing or thereafter arising in the disclaimed matter, or the applicant's or  
36 registrant's rights of registration on another application if the disclaimed matter is distinctive of  
37 the applicant's or registrant's goods or services.

38 (d) The Secretary may (i) amend the application submitted by the applicant, if the  
39 applicant consents, or (ii) require a new application be submitted.

40 (e) If the Secretary finds that the applicant is not entitled to registration, the Secretary  
41 shall advise the applicant of the reasons the applicant is not entitled to registration. The  
42 applicant shall have a reasonable period of time, specified by the Secretary, in which to reply or  
43 to amend the application. If the applicant replies and amends the application, the Secretary shall  
44 reexamine the application. This procedure may be repeated until (i) the Secretary finally  
45 refuses registration of the mark, or (ii) the applicant fails to reply or to amend the application  
46 within the specified period. If the applicant fails to reply or to amend the application, the  
47 application shall be deemed to have been abandoned.

48 (f) If the Secretary finally refuses registration of the mark, the applicant may seek a  
49 writ of mandamus to compel registration. The writ may be granted, without costs to the  
50 Secretary, on proof that all the statements in the application are true and that the mark is  
51 entitled to registration.

1 (g) When the Secretary receives more than one application seeking registration of the  
2 same or confusingly similar marks for the same or related goods or services and processes  
3 those applications concurrently, the Secretary shall grant priority to the applications in order of  
4 filing. If a previously filed application is granted a registration, any other application shall then  
5 be rejected. A rejected applicant may bring an action for cancellation of the registration on  
6 grounds of prior or superior rights to the mark, in accordance with the provisions of this  
7 Article. (1997-476, s. 5.)  
8

9 **§ 80-4. Certificate of registration.**

10 Upon compliance by the applicant with the requirements of this Article, the Secretary shall  
11 cause a certificate of registration to be issued and delivered to the applicant. The certificate of  
12 registration shall be issued under the signature of the Secretary and the seal of the State, and it  
13 shall show the name and business address and, if a corporation, the state of incorporation, of  
14 the person claiming ownership of the mark, the date claimed for the first use of the mark  
15 anywhere and the date claimed for the first use of the mark in this State, the class of goods or  
16 services and a description of the goods or services on which the mark is used, a reproduction of  
17 the mark, the registration date, the registration number and the term of the registration.

18 Any certificate of registration issued by the Secretary under the provisions hereof or a copy  
19 thereof duly certified by the Secretary shall be admissible in evidence as competent and  
20 sufficient proof of the registration of the mark in any action or judicial proceedings in any court  
21 of this State. (1903, c. 271, s. 4; Rev., s. 3015; C.S., s. 3974; 1967, c. 1007, s. 1; 1991, c. 626, s.  
22 4; 1997-476, s. 6.)  
23

24 **§ 80-5. Duration and renewal.**

25 Registration of a mark hereunder shall be effective for a term of 10 years from the date of  
26 registration and shall be renewable for successive terms of 10 years upon application filed  
27 within six months prior to the expiration of any term. A renewal fee of thirty-five dollars  
28 (\$35.00), payable to the Secretary, shall accompany the application for renewal of the  
29 registration. Within six months following the expiration of a term of five years from the date of  
30 registration, or the last renewal of registration of the mark, the applicant shall submit a  
31 specimen showing evidence of current use of the mark and a signed statement verifying the use  
32 of such mark on a form to be furnished by the Secretary of State. Use of the form furnished by  
33 the Secretary of State is mandatory. Failure to submit this verification and specimen showing  
34 evidence of current use shall be grounds for cancellation of the registration of the mark by the  
35 Secretary of State.

36 The Secretary of State shall notify registrants of marks hereunder of the necessity of  
37 renewal within the year next preceding the expiration of the 10 years from the date of  
38 registration, by writing to the last known address of the registrants.

39 The Secretary of State shall notify registrants of marks hereunder of the necessity of  
40 submitting evidence of current use of the mark after five years from the date of registration or  
41 of the last renewal of registration of the mark, by writing to the last known address of the  
42 registrants within the year preceding the due date for such submission.

43 Registration of marks applied for under previous acts shall be continued in force for the full  
44 10-year term without the necessity of submitting evidence of current use of the mark during the  
45 term.

46 All applications for renewals under this Article, whether of registrations made under this  
47 Article or of registrations effected under any prior act, shall be filed with the Secretary in a  
48 format prescribed by the Secretary specifying the information called for by G.S. 80-3 and shall  
49 include a statement that the mark is still in use in this State, setting forth those goods or  
50 services recited in the registration in connection with which the mark is still in use. The

1 registration shall be renewed only as to the goods and services. (1967, c. 1007, s. 1; 1991, c.  
2 626, s. 5; 1997-476, s. 7.)

3  
4 **§ 80-6. Assignment.**

5 (a) Any mark and its registration hereunder shall be assignable with the goodwill of the  
6 business in which the mark is used, or with that part of the goodwill of the business connected  
7 with the use of and symbolized by the mark. Assignment shall be by instruments in writing  
8 duly executed and may be recorded with the Secretary upon the payment of a fee of twenty-five  
9 dollars (\$25.00), payable to the Secretary who, upon recording of the assignment, shall issue in  
10 the name of the assignee a new certificate for the remainder of the term of the registration or of  
11 the last renewal thereof. An assignment of any registration under this Article shall be void as  
12 against any subsequent purchaser for valuable consideration without notice, unless it is  
13 recorded with the Secretary within three months after the date thereof or prior to subsequent  
14 purchase.

15 (b) Any registrant or applicant effecting a change of the name of the person to whom  
16 the mark was issued or for whom an application was filed may record a certificate of change of  
17 name of the registrant or applicant with the Secretary upon payment of the recording fee  
18 required under G.S. 80-7. The Secretary may issue a certificate of registration of an assigned  
19 application in the name of the assignee. The Secretary may issue in the name of the assignee a  
20 new certificate for the remainder of the term of the registration or for the last renewal of the  
21 registration.

22 (c) Other instruments that relate to a mark registered or application pending pursuant to  
23 this Article, including licenses, security interests, and mortgages, may be recorded in the  
24 discretion of the Secretary, upon payment of the recording fee required under G.S. 80-7.  
25 Instruments authorized under this subsection shall be in writing and duly executed.

26 (d) Acknowledgment shall be prima facie evidence of the execution of an assignment or  
27 other instrument and, when recorded by the Secretary, the record shall be prima facie evidence  
28 of execution.

29 (e) A photocopy of any instrument referenced in subsection (a), (b), or (c) of this  
30 section shall be accepted for recording if it is certified by any party to the instrument, or the  
31 party's successor, to be a true and correct copy of the original. (Rev., s. 3016; C.S., s. 3975;  
32 1967, c. 1007, s. 1; 1991, c. 626, s. 6; 1997-476, s. 8.)

33  
34 **§ 80-7. Records.**

35 The Secretary shall keep for public examination all assignments recorded under G.S. 80-6  
36 and a record of all marks registered or renewed under this Article. The Secretary shall collect  
37 the following fees for copying, comparing, and certifying a copy of any filed document relating  
38 to a trademark or service mark:

- 39 (1) Five dollars (\$5.00) for the certificate, and  
40 (2) One dollar (\$1.00) per page for copying or comparing a copy to the original.

41 The Secretary shall collect a recording fee of ten dollars (\$10.00) for recording name  
42 changes of corporate registrants and for recording transfers of the registration of any mark by  
43 merger or consolidation if the articles of merger or consolidation are records not on file in the  
44 Corporate Division of the Department of the Secretary of State. (1967, c. 1007, s. 1; 1991, c.  
45 626, s. 7; 1997-476, s. 9.)

46  
47 **§ 80-8. Cancellation.**

48 The Secretary shall cancel from the register, in whole or in part:

- 49 (1) Repealed by Session Laws 1991, c. 626, s. 8.  
50 (2) Any registration concerning which the Secretary shall receive a voluntary  
51 request for cancellation thereof from the registrant or the assignee of record.

- 1 (3) All registrations granted under this Article and not renewed in accordance  
2 with the provisions hereof.
- 3 (4) Any registration concerning which a court of competent jurisdiction shall  
4 find:
- 5 a. That the registered mark has been abandoned or has become  
6 incapable of serving as a mark;
- 7 b. That the registrant is not the owner of the mark;
- 8 c. That the registration was granted improperly;
- 9 d. That the registration was obtained fraudulently;
- 10 e. That the registration is for a mark that is or has become the generic  
11 name for the goods or services for which it has been registered or for  
12 a portion of the goods or services for which it has been registered;
- 13 f. That the registration was obtained by means of materially false  
14 statements in the application for registration; or
- 15 g. That the registration is so similar to another mark used in the State as  
16 to be likely to cause confusion or mistake or to deceive if (i) the other  
17 mark was registered by another person in the United States Patent  
18 and Trademark Office prior to the date of the applicant's first use of  
19 the mark that is the subject of the application for registration, and (ii)  
20 the other mark has not been abandoned. However, if the registrant  
21 proves that the registrant is the owner of a concurrent registration of  
22 a mark in the United States Patent and Trademark Office covering an  
23 area including the entire State, the registration shall not be cancelled.
- 24 (5) Any registration when a court of competent jurisdiction shall order  
25 cancellation thereof.
- 26 (6), (7) Repealed by Session Laws 1997-476, s. 10. (1967, c. 1007, s. 1; 1991, c.  
27 626, s. 8; 1997-476, s. 10.)
- 28

29 **§ 80-9. Classification.**

30 The Secretary shall establish a classification of goods and services for convenience of  
31 administration of this Article, but not to limit or extend the applicant's or registrant's rights, and  
32 a single application for registration of a mark may include any or all goods upon which, or  
33 services for which, the mark is actually being used indicating the appropriate class or classes of  
34 goods or services. When a single application includes goods or services that fall within  
35 multiple classes, the Secretary may require payment of a fee for each class. The Secretary may  
36 amend the classes herein established to conform them to the classification established for the  
37 United States Patent and Trademark Office as from time to time amended. (1967, c. 1007, s. 1;  
38 1991, c. 626, s. 9; 1997-476, s. 11.)

39

40 **§ 80-10. Fraudulent registration.**

41 Any person who shall for himself, or on behalf of any other person, procure the filing or  
42 registration of any mark in the office of the Secretary under the provisions hereof, by  
43 knowingly making any false or fraudulent representation or declaration, verbally or in writing,  
44 or by any other fraudulent means, shall be liable to pay all damages sustained in consequence  
45 of filing or registration, to be recovered by or on behalf of the party injured thereby in any court  
46 of competent jurisdiction. (1903, c. 271, s. 5; Rev., s. 3018; C.S., s. 3977; 1967, c. 1007, s. 1;  
47 1997-476, s. 12.)

48

49 **§ 80-11. Infringement.**

50 Subject to the provisions of G.S. 80-13, any person who shall

1 (1) Use in this State without the consent of the registrant, any reproduction,  
2 counterfeit, copy, or colorable imitation of a mark registered under this  
3 Article in connection with the sale, offering for sale, or advertising of any  
4 goods or services on or in connection with which such use is likely to cause  
5 confusion or mistake or to deceive as to the source of origin of such goods or  
6 services; or

7 (2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply  
8 such reproduction, counterfeit, copy or colorable imitation to labels, signs,  
9 prints, packages, wrappers, receptacles, or advertisements intended to be  
10 used upon or in conjunction with the sale or other distribution in this State of  
11 such goods or services;

12 shall be liable to a civil action by the owner of such registered mark for any or all of the  
13 remedies provided in G.S. 80-12, except that under subdivision (2) hereof the registrant shall  
14 not be entitled to recover profits or damages or any penalty unless the acts have been  
15 committed with knowledge that such mark is intended to be used to cause confusion or mistake  
16 or to deceive. (1903, c. 271, s. 6; Rev., s. 3019; C.S., s. 3978; 1967, c. 1007, s. 1.)  
17

18 **§ 80-11.1. Criminal use of counterfeit trademark.**

19 (a) For purposes of this section:

20 (1) "Counterfeit mark" means a mark that is used in connection with the sale or  
21 offering for sale of goods or services that are identical to or substantially  
22 indistinguishable from the goods or services with which the mark is used or  
23 registered, and the use of which is likely to cause confusion, mistake, or  
24 deception, with the use occurring without authorization of the:

25 a. Owner of the registered mark, and is identical to or substantially  
26 indistinguishable from a mark that is registered on the principal  
27 register of the United States Patent and Trademark Office or with the  
28 Trademark Division of the Department of the Secretary of State; or

29 b. Owner of the unregistered mark and is identical to or substantially  
30 indistinguishable from symbols, signs, emblems, insignias,  
31 trademarks, trade names, or words protected by section 110 of the  
32 Amateur Sports Act of 1978 (Title 36, U.S.C. § 380).

33 (2) "Retail sales value" means the value computed by multiplying the number of  
34 items having a counterfeit mark used thereon or in connection therewith, by  
35 the retail price at which a similar item having a mark used thereon or in  
36 connection therewith, the use of which is authorized by the owner, is offered  
37 for sale to the public.

38 (b) Any person who knowingly and willfully (i) uses or causes to be used a counterfeit  
39 mark on or in connection with goods or services intended for sale or (ii) has possession,  
40 custody, or control of goods having a counterfeit mark used thereon or in connection therewith,  
41 that are intended for sale, shall be punished as follows:

42 (1) If the goods or services having a counterfeit mark used thereon or in  
43 connection therewith, or on or in connection with which the person intends  
44 to use a counterfeit mark, have a retail sales value not exceeding three  
45 thousand dollars (\$3,000), the person is guilty of a Class 2 misdemeanor;

46 (2) If the goods or services having a counterfeit mark used thereon or in  
47 connection therewith, or on or in connection with which the person intends  
48 to use a counterfeit mark, have a retail sales value exceeding three thousand  
49 dollars (\$3,000) but not exceeding ten thousand dollars (\$10,000), the person  
50 is guilty of a Class I felony; and

1 (3) If the goods or services having a counterfeit mark used thereon or in  
2 connection therewith, or on or in connection with which the person intends  
3 to use a counterfeit mark, have a retail sales value exceeding ten thousand  
4 dollars (\$10,000), the person is guilty of a Class H felony.

5 The possession, custody, or control of more than 25 items having a counterfeit mark used  
6 thereon or in connection therewith creates a presumption that the person having possession,  
7 custody, or control of the items intended to sell those items.

8 (c) Any person who knowingly (i) uses any object, tool, machine, or other device to  
9 produce or reproduce a counterfeit mark or (ii) has possession, custody, or control of any  
10 object, tool, machine, or device with intent to produce or reproduce a counterfeit mark, is guilty  
11 of a Class H felony.

12 (d) Any personal property, including any item, object, tool, machine, device, or vehicle  
13 of any kind, employed as an instrumentality in the commission of, or in aiding or abetting in  
14 the commission of a violation of subsection (b) or (c) of this section, is subject to seizure and  
15 forfeiture and shall be disposed of in accordance with the provisions of Article 2 of Chapter 15  
16 of the General Statutes.

17 (e) For purposes of enforcing this section, the Department of the Secretary of State's  
18 law enforcement agents have statewide jurisdiction. These law enforcement agents may assist  
19 local law enforcement agencies in their investigations and may initiate and carry out, in  
20 coordination with local law enforcement agencies, investigations of violations of this section.  
21 These law enforcement agents have all of the powers and authority of law enforcement officers  
22 when executing arrest warrants. These agents shall be authorized to have fictitious licenses,  
23 license tags, and registrations, pursuant to G.S. 20-39(h) or G.S. 14-250, for the purpose of  
24 conducting criminal investigations.

25 (f) The Secretary of State may refer any available evidence concerning violations of  
26 this section to the proper district attorney, who may, with or without such a reference, institute  
27 the appropriate criminal proceedings.

28 The attorneys employed by the Secretary of State shall be available to prosecute or assist in  
29 the prosecution of criminal cases when requested to do so by a district attorney and the  
30 Secretary of State approves.

31 (g) Pursuant to an agreement between the departments, the Secretary of State may refer  
32 any available evidence concerning violations of this section to the Secretary of Revenue for  
33 purposes of determining the obligations of the violators of this section to the State under the  
34 provisions of Chapter 105 of the General Statutes. (1995, c. 436, s. 1.)  
35

36 **§ 80-12. Violation a deceptive or unfair trade practice.**

37 A violation of G.S. 80-10 or G.S. 80-11 constitutes a violation of G.S. 75-1.1. (1903, c.  
38 271, s. 8; Rev., s. 3021; C.S., s. 3980; 1941, c. 255, s. 3; 1967, c. 1007, s. 1; 1995, c. 436, s. 2.)  
39

40 **§ 80-13. Common-law rights.**

41 Nothing herein shall adversely affect the rights or the enforcement of rights in marks  
42 acquired in good faith at any time at common law. (1967, c. 1007, s. 1.)  
43

44 **§ 80-14. Severability of Article.**

45 If any provision hereof, or the application of such provision to any person or circumstance  
46 is held invalid, the remainder of this Article shall not be affected thereby. (1967, c. 1007, s. 1.)  
47

48 Article 2.

49 Timber Marks.

50 **§ 80-15. Timber dealers may adopt.**

1 Any person dealing in timber in any form shall be known as a timber dealer and as such  
2 may adopt a trademark, in the manner and with the effect in this Article provided. (1903, c.  
3 261, s. 1; Rev., s. 3023; C.S., s. 3985.)  
4

5 **§ 80-16. How adopted, registered and published.**

6 Every such dealer desiring to adopt a trademark may do so by the execution of a writing in  
7 form and effect as follows:

8 Notice is hereby given that I (or we, etc., as the case may be) have adopted the following  
9 trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to wit: (Here  
10 insert the words, letters, figures, etc., constituting the trademark, or if it be any device other  
11 than words, letters or figures, insert a facsimile thereof).

12 Dated this \_\_\_\_ day of \_\_\_\_, \_\_\_\_ A \_\_\_\_ B \_\_\_\_

13 Such writing shall be acknowledged or proved for record in the same manner as deeds are  
14 acknowledged or proved, and shall be registered in the office of the register of deeds of the  
15 county in which the principal office or place of business of such timber dealer may be, in a  
16 book to be kept for that purpose marked Registry of Timber Marks, also in office of Secretary  
17 of State, and a copy thereof shall be published at least once in each week for four successive  
18 weeks in some newspaper printed in such county, or if there be no such newspaper printed  
19 therein, then in some newspaper of general circulation in such county. (1889, c. 142; 1903, c.  
20 261, s. 2; Rev., s. 3024; C.S., s. 3986; 1999, c. 456, s. 59.)  
21

22 **§ 80-17. Property in and use of trademarks.**

23 Every trademark so adopted shall, from the date thereof, be the exclusive property of the  
24 person adopting the same. The proprietor of such trademark shall, in using the same, cause it to  
25 be plainly stamped, branded or otherwise impressed upon each piece of timber upon which the  
26 same is placed. (1889, c. 142; 1903, c. 261, ss. 3, 4; Rev., s. 3025; C.S., s. 3987.)  
27

28 **§ 80-18. Effect of branding timber purchased.**

29 When timber is purchased by the proprietor of any such trademark, and the said trademark  
30 is placed thereon as hereinbefore provided, such timber shall thenceforth be deemed the  
31 property of such purchaser, without any other or further delivery thereof, and such timber shall  
32 thereafter be at the risk of the purchaser, unless otherwise provided by contract in writing  
33 between the parties. (1889, c. 142; 1903, c. 261, s. 6; Rev., s. 3026; C.S., s. 3988.)  
34

35 **§ 80-19. Trademark on timber evidence of ownership.**

36 In any action, suit or contest in which the title to any timber, upon which any trademark has  
37 been placed as aforesaid, shall come in question, it shall be presumed that such timber was the  
38 property of the proprietor of such trademark, in the absence of satisfactory proof to the  
39 contrary. (1903, c. 261, s. 7; Rev., s. 3027; C.S., s. 3989.)  
40

41 **§ 80-20. Fraudulent use of timber trademark, misdemeanor.**

42 If any person shall use or attempt to use any timber trademark without the written consent  
43 of the proprietor thereof, or falsely and fraudulently place any trademark on timber not the  
44 property of the owner of such trademark without his written consent, or intentionally and  
45 without lawful authority remove, deface or destroy any timber trademark or the imprint thereof  
46 on any timber or intentionally put any such timber in such a position or place so remote from  
47 the stream from which it was taken or on which it was afloat as to render it inconvenient or  
48 unnecessarily expensive to replace the same in such stream, he shall be guilty of a Class 1  
49 misdemeanor. (1903, c. 261, ss. 3-5; Rev., s. 3854; C.S., s. 3990; 1993, c. 539, s. 584; 1994,  
50 Ex. Sess., c. 24, s. 14(c).)  
51

1 **§ 80-21. Larceny of branded timber.**

2 If any person shall knowingly and unlawfully buy, sell, take and carry away, secrete,  
3 destroy or convert to his own use, any timber upon which a trademark is stamped, branded or  
4 otherwise impressed, or shall knowingly and unlawfully buy, sell, take and carry away, secrete,  
5 destroy or convert to his own use, any timber upon which a trademark has been intentionally  
6 and without lawful authority removed, defaced or destroyed, he shall be deemed guilty of  
7 larceny thereof and punished as in other cases of larceny. (1903, c. 261, s. 5; Rev., s. 3853;  
8 C.S., s. 3991.)  
9

10 **§ 80-22. Altering timber trademark crime.**

11 If any person shall willfully change, alter, erase or destroy any registered timber mark or  
12 brand put or cut upon any logs, timber, lumber or boards, except by the consent of the owner  
13 thereof, with intent to steal the said logs or timber, he shall be guilty of a Class 3 misdemeanor.  
14 (1889, c. 142, s. 3; 1903, c. 41; Rev., s. 3855; C.S., s. 3992; 1943, c. 543; 1993, c. 539, s. 585;  
15 1994, Ex. Sess., c. 24, s. 14(c).)  
16

17 **§ 80-23. Possession of branded logs without consent, misdemeanor.**

18 If any person shall knowingly and willfully take up or have in his possession any log,  
19 timber, lumber or board upon which a registered timber mark or brand has been put or cut,  
20 except by the consent of the owner thereof, he shall be guilty of a Class 3 misdemeanor. (1889,  
21 c. 142, s. 4; 1903, c. 42; Rev., s. 3856; C.S., s. 3993; 1993, c. 539, s. 586; 1994, Ex. Sess., c.  
22 24, s. 14(c).)  
23

24 Article 3.

25 Mineral Waters and Beverages.

26 **§§ 80-24 through 80-32: Repealed by Session Laws 1987, c. 402.**  
27

28 Article 4.

29 Farm Names.

30 **§ 80-33. Registration of farm names authorized.**

31 Any owner of a farm in the State of North Carolina may have the name of his farm,  
32 together with a description of his lands to which said name applies, recorded in a register kept  
33 for that purpose in the office of the register of deeds of the county in which the farm is located,  
34 and the register of deeds shall furnish to such landowner a proper certificate setting forth the  
35 name and description of the lands. (1915, c. 108, s. 1; C.S., s. 4004.)  
36

37 **§ 80-34. After registry, similar name not registered.**

38 When any name has been recorded as the name of any farm in such county, the name, or  
39 one so nearly like it as to produce confusion, shall not be recorded as the name of any other  
40 farm in the same county. (1915, c. 108, s. 1; C.S., s. 4005.)  
41

42 **§ 80-35. Distinctive name required.**

43 No name shall be registered as the name of a farm where such proposed name or one so  
44 nearly like it as to produce confusion has been so used in connection with another farm in the  
45 same county as to become generally known prior to March 5, 1915, unless the name used has  
46 also prior to March 5, 1915, become well known as the name of the farm proposed to be  
47 registered; and in this event two or more farms in the same county may be registered with the  
48 same name with some prefix or suffix added to distinguish them. (1915, c. 108, s. 2; C.S., s.  
49 4006.)  
50

51 **§ 80-36. Application for registry; publication and hearing.**

1 Before a name shall be registered the clerk shall have publication made at least once a week  
2 for four weeks in some secular newspaper published in the county, if one is so published, and if  
3 one is not so published, then one having a general circulation in the county, giving the name of  
4 the applicant, the proposed name of registration and a sufficient description to identify the farm  
5 and the time of the return; and if the owner or clerk knows of another farm in the county of the  
6 same or very similar name, a summons shall be served on the owner thereof at least 10 days  
7 before the return day. On the return day any person, firm or corporation may file claim to the  
8 name, and the clerk may pass upon the claim and award the name to any party, with the right to  
9 appeal by the aggrieved party to the superior court within 10 days, as in other cases, and on  
10 such appeal the judge shall decide the matters unless a jury be demanded by some party.  
11 (1915, c. 108, s. 2; C.S., s. 4007.)  
12

13 **§ 80-37. Fees for registration.**

14 Any person having the name of his farm recorded as provided in this Article shall first pay  
15 to the register of deeds a fee of one dollar (\$1.00), which fee shall be paid to the county  
16 treasurer as other fees are to be paid to the county treasurer by such register of deeds: Provided,  
17 that in counties where the fee system obtains, the fees herein mentioned shall go to the register  
18 of deeds of such counties. (1915, c. 108, s. 3; C.S., s. 4008.)  
19

20 **§ 80-38. When transfer of farm carries name.**

21 When any owner of a farm, the name of which has been recorded as provided in this  
22 Article, transfers by deed or otherwise the whole of such farm, such transfer may include the  
23 registered name thereof; but if the owner shall transfer only a portion of such farm, then, in the  
24 event, the registered name thereof shall not be transferred to the purchaser unless so stated in  
25 the deed or conveyance. (1915, c. 108, s. 4; C.S., s. 4009.)  
26

27 **§ 80-39. Cancellation of registry; fee.**

28 When any owner of a registered farm desires to cancel the registered name thereof, he shall  
29 state on the margin of the record of the register of such name the following: "This name is  
30 canceled and I hereby release all rights thereunder," which shall be signed by the person  
31 canceling such name, and attested by the register of deeds. For such latter service the register of  
32 deeds shall charge a fee of twenty-five cents (25¢), which shall be paid to the county treasurer  
33 as other fees are paid to the county treasurer by him. (1915, c. 108, s. 5; C.S., s. 4010.)  
34

35 Article 5.

36 Stamping of Gold and Silver Articles.

37 **§ 80-40. Marking gold articles regulated.**

38 It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in  
39 possession with intent to sell or dispose of, any article of merchandise made in whole or in part  
40 of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or  
41 upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in  
42 which the article is enclosed, any mark indicating or designed to indicate that the gold, or alloy  
43 of gold, therein is of a greater degree of fineness than its actual fineness, unless the actual  
44 fineness, in the case of flatware and watchcases, is not less by more than three one-thousandths  
45 parts, and in the case of all other articles is not less by more than one-half karat than the  
46 fineness indicated, according to the standards and subject to the qualifications hereinafter set  
47 forth.

48 In any test for ascertaining the fineness of gold or alloy in the articles, according to the  
49 required standards, the part of the gold or alloy taken for the test, analysis or assay shall be a  
50 part not containing or having attached thereto any solder or alloy of inferior fineness used for  
51 brazing or uniting the parts of the articles. In addition to the foregoing tests and standards, the

1 actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned  
2 in this section (except watchcases), including all solder or alloy of inferior metal used for  
3 brazing or uniting the parts (all such gold, alloys, and solder being assayed as one piece), shall  
4 not be less by more than one karat than the fineness indicated by the mark used as above  
5 indicated. Violation of this section is a Class 1 misdemeanor. (1907, c. 331, s. 1; C.S., s. 4012;  
6 1993, c. 539, s. 587; 1994, Ex. Sess., c. 24, s. 14(c).)  
7

8 **§ 80-41. Marking silver articles regulated.**

9 It shall be unlawful to make for sale or sell or offer to sell or dispose of or have in  
10 possession with intent to sell or dispose of –

- 11 (1) Any article of merchandise made in whole or in part of silver of any alloy of  
12 silver, and having marked, stamped, branded or engraved or imprinted  
13 thereon, or upon any tag, card or label attached thereto, or upon any box,  
14 package, cover or wrapper in which the article is enclosed, the words  
15 "sterling silver" or "sterling" or any colorable imitation thereof, unless nine  
16 hundred and twenty-five one-thousandths of the component parts of the  
17 metal appearing or purporting to be silver, of which the article is  
18 manufactured, are pure silver, subject to the qualifications hereinafter set  
19 forth: Provided, that in the case of all such articles there shall be allowed a  
20 divergence in fineness of four one-thousandths parts from the foregoing  
21 standard.
- 22 (2) Any article of merchandise made in whole or in part of silver or of any alloy  
23 of silver, and having marked, stamped, branded, engraved or imprinted  
24 thereon, or upon any card, tag or label attached thereto, or upon any box,  
25 package, cover or wrapper in which the article is enclosed, the words "coin"  
26 or "coin silver," or any colorable imitation thereof, unless nine hundred  
27 one-thousandths of the component parts of the metal appearing or purporting  
28 to be silver, of which the article is manufactured, are pure silver, subject to  
29 the qualifications hereinafter set forth: Provided, that in the case of all such  
30 articles there shall be allowed a divergence in fineness of four  
31 one-thousandths parts from the foregoing standards.
- 32 (3) Any article of merchandise made in whole or in part of silver or of any alloy  
33 of silver, and having stamped, branded, engraved or imprinted thereon, or  
34 upon any tag, card or label attached thereto, or upon any box, package, cover  
35 or wrapper in which the article is enclosed, any mark or word (other than the  
36 word "sterling" or the word "coin") indicating, or designed to indicate, that  
37 the silver or alloy of silver in the article is of a greater degree of fineness  
38 than its actual fineness, unless the actual fineness is not less by more than  
39 four one-thousandths parts than the actual fineness indicated by the use of  
40 such mark or word, subject to the qualifications hereinafter set forth.

41 In any test for ascertaining the fineness of the articles mentioned in this section, according  
42 to the foregoing standards, the part taken for test, analysis or assays shall be a part not  
43 containing or having attached thereto any solder or alloy of inferior metal used for brazing or  
44 uniting the parts of such article. In addition to the foregoing test and standards, the actual  
45 fineness of the entire quantity of metal purporting to be silver contained in any article  
46 mentioned in this section, including all solder or alloy of inferior fineness used for brazing or  
47 uniting the parts (all such silver, alloy or solder being assayed as one piece), shall not be less by  
48 more than ten one-thousandths parts than the fineness indicated according to the foregoing  
49 standards, by the mark employed as above indicated. Violation of this section is a Class 1  
50 misdemeanor. (1907, c. 331, s. 2; C.S., s. 4013; 1993, c. 539, s. 588; 1994, Ex. Sess., c. 24, s.  
51 14(c).)

1  
2 **§ 80-42. Marking articles of gold plate regulated.**

3 It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in  
4 possession with intent to sell or dispose of, any article of merchandise made in whole or in part  
5 of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a  
6 plate, plating, covering or sheet of gold, or of any alloy of gold, which article is known in the  
7 market as "rolled gold plate," "gold plate," "gold-filled," or "gold electroplate," or by any  
8 similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any  
9 tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the  
10 article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless  
11 such word be accompanied by other words plainly indicating that such article or some part  
12 thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold-filled, as the  
13 case may be. Violation of this section is a Class 1 misdemeanor. (1907, c. 331, s. 3; C.S., s.  
14 4014; 1993, c. 539, s. 589; 1994, Ex. Sess., c. 24, s. 14(c).)  
15

16 **§ 80-43. Marking articles of silver plate regulated.**

17 It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in  
18 possession with intent to sell or dispose of, any article of merchandise made in whole or in part  
19 of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, a  
20 plate, plating, covering or sheet of silver or of any alloy of silver, which article is known in the  
21 market as "silver plate" or "silver electroplate," or by any similar designation, and having  
22 stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached  
23 thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the word  
24 "sterling" or the word "coin," either alone or in conjunction with any other words or marks.  
25 Violation of this section is a Class 1 misdemeanor. (1907, c. 331, s. 4; C.S., s. 4015; 1993, c.  
26 539, s. 590; 1994, Ex. Sess., c. 24, s. 14 (c))  
27

28 **§ 80-44. Violation of Article misdemeanor.**

29 Every person, firm, corporation or association guilty of a violation of any one of the  
30 preceding sections of this Article, and every officer, manager, director or managing agent of  
31 any such person, firm, corporation or association directly participating in such violation or  
32 consenting thereto, shall be guilty of a Class 1 misdemeanor: Provided, that if the person  
33 charged with violation of this Article shall prove that the article concerning which the charge  
34 was made was manufactured prior to June 13, 1907, then the charge shall be dismissed. (1907,  
35 c. 331, s. 5; C.S., s. 4016; 1993, c. 539, s. 591; 1994, Ex. Sess., c. 24, s. 14(c).)  
36

37 Article 6.

38 Cattle Brands.

39 **§ 80-45. Owners of stock to register brand or marks.**

40 Every person who has any horses, cattle, hogs or sheep may have an earmark or brand  
41 different from the earmark or brand of all other persons, which he shall record with the clerk of  
42 the board of commissioners of the county where his horses, cattle, hogs or sheep are; and he  
43 may brand all horses 18 months old and upwards with the said brand, and earmark all his hogs  
44 and sheep six months old and upwards with the said earmark; and earmark or brand all his  
45 cattle 12 months old and upwards; and if any dispute shall arise about any earmark or brand,  
46 the same shall be decided by the record thereof. (R.C., c. 17, s. 1; Code, s. 2317; Rev., s. 3028;  
47 C.S., s. 4017.)  
48

49 Article 7.

50 Recording of Cattle Brands and Marks with Commissioner of Agriculture.

51 **§§ 80-46 through 80-56: Repealed by Session Laws 1975, c. 261, s. 1.**

1  
2 Article 8.

3 Registration and Protection of Livestock Brands.

4 **§ 80-57. Purpose.**

5 The purpose of this Article is to discourage livestock theft by allowing for the voluntary  
6 individual registration of brand marks for certain livestock. (1975, c. 261, s. 1.)  
7

8 **§ 80-58. Definitions.**

9 (a) "Board". – The term "Board" means the North Carolina Board of Agriculture.

10 (b) "Brand". – The term "brand" means an identification mark permanently affixed into  
11 the hide of livestock by a hot iron or an extremely cold brand known as a "freeze brand."

12 (c) "Commissioner". – The term "Commissioner" means the Commissioner of  
13 Agriculture of the State of North Carolina.

14 (d) "Livestock". – The term "livestock" means cattle, horses, ponies, mules, and asses.

15 (e) "Person". – The term "person" means an individual, firm, company, association,  
16 partnership or corporation. (1935, c. 232, s. 1; 1975, c. 261, s. 1.)  
17

18 **§ 80-59. Responsibility and authority of Commissioner of Agriculture; application for**  
19 **registration; transfer of ownership of brand.**

20 The Commissioner shall record livestock brands and maintain a record of such brands  
21 pursuant to this Article. Such records shall be public and shall be prima facie evidence of  
22 ownership of livestock which is properly branded under this Article. The Commissioner shall  
23 authorize such agents within the North Carolina Department of Agriculture and Consumer  
24 Services as he deems necessary to implement this Article.

25 Any person desiring the exclusive use of a brand shall make application to the  
26 Commissioner on forms prescribed by the Board. The transfer of ownership of a brand  
27 registration may be done only at the written request of the brand registrant of record. The  
28 Commissioner shall receive a fee of ten dollars (\$10.00) for recording such transfer. (1935, c.  
29 232, ss. 3-5; 1975, c. 261, s. 1; 1997-261, s. 109.)  
30

31 **§ 80-60. No brands duplicated.**

32 No brand shall be registered that is a reasonable facsimile of another registered brand or  
33 that will likely be confused with another brand registered under this Article. (1975, c. 261, s. 1.)  
34

35 **§ 80-61. Rules and regulations.**

36 The Board shall have authority to promulgate reasonable rules and regulations for  
37 implementation of this Article which shall include, but not be limited to, the location of and the  
38 size of brand marks. (1975, c. 261, s. 1.)  
39

40 **§ 80-62. Fees for recording.**

41 The Commissioner is authorized to collect a fee of twenty-five dollars (\$25.00) for the  
42 recording of each new brand, or for rerecording of each brand, and shall issue one certified  
43 copy of each brand recording to the holder of said brand. Duplicate certificates of registration  
44 may be issued by the Commissioner upon payment of a fee of two dollars (\$2.00). Revenues  
45 collected pursuant to this Article shall be deposited with the State Treasurer to the account of  
46 the North Carolina Department of Agriculture and Consumer Services. (1935, c. 232, ss. 5, 6;  
47 1975, c. 261, s. 1; 1997-261, s. 109.)  
48

49 **§ 80-63. Records to be kept of sales and slaughter.**

50 Persons or agents selling or bartering or exchanging branded livestock in the State of North  
51 Carolina shall provide the purchaser or new owner with a bill of sale showing a reasonable

1 facsimile of the brand on any and all livestock having a brand as defined in this Article. Such  
2 bills of sale shall be prima facie evidence of transfer of ownership of branded livestock.  
3 Slaughter facilities in the State of North Carolina shall affix to their normal records of receipt  
4 of livestock a reasonable facsimile of the brand on any branded livestock received by them.  
5 Such records shall be maintained for at least 12 months. (1935, c. 232, ss. 8, 9; 1975, c. 261, s.  
6 1.)  
7

8 **§ 80-64. Defacing of brands prohibited.**

9 No person may change, conceal, deface, disfigure or obliterate any brand previously  
10 branded, impressed, or marked on any livestock, or put his or any other brand upon or over any  
11 part of any brand previously branded or marked upon any livestock, and no person shall make  
12 or use any counterfeit of any brand of any other person. (1935, c. 232, s. 10; 1975, c. 261, s. 1.)  
13

14 **§ 80-65. Rerecording.**

15 Every brand recorded under this Article, in order to remain effective, must be rerecorded  
16 with the Commissioner during the tenth year from its next previous recordation. Each person  
17 having a brand registered in the State of North Carolina shall be notified in writing by the  
18 Commissioner that said brand must be rerecorded to prohibit its disenrollment from the record  
19 of such brand maintained by the Commissioner. (1975, c. 261, s. 1.)  
20

21 **§ 80-66. Violation a misdemeanor.**

22 Any person who violates any provision of this Article or any rule or regulation of the Board  
23 promulgated hereunder shall be guilty of a Class 2 misdemeanor. (1935, c. 232, s. 11; 1975, c.  
24 261, s. 1; 1993, c. 539, s. 592; 1994, Ex. Sess., c. 24, s. 14(c).)