

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1439
SENATE BILL 1341

AN ACT TO AMEND THE NORTH CAROLINA JUNKYARD CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-143(1), as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding at the end thereof the following sentence:

"Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an 'automobile graveyard' within the meaning of this Article."

Sec. 2. G.S. 136-143(2), as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding at the end thereof the following sentence:

"As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purpose of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities."

Sec. 3. G.S. 136-143(4), as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding at the end thereof the following sentence:

"An establishment or place of business which stores or keeps for a period of 15 days or more materials within the meaning of 'junk' as defined by subsection 3 of Section 136-143 which had been derived or created as a result of industrial activity shall be deemed to be a junkyard within the meaning of this Article."

Sec. 4. G.S. 136-143(5), as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding at the end thereof the following sentence:

"As to highways under construction so designated as federal -aid primary highways pursuant to the above procedures, the highway shall be part of the federal-aid primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities."

Sec. 5. G.S. 136-143, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding at the end thereof the following additional provisions to read as follows:

(6) 'Visible' means capable of being seen without visual aid by a person of normal visual acuity.

(7) 'Unzoned area' shall mean an area where there is no zoning in effect."

Sec. 6. G.S. 136-145, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"Enforcement provisions. Any person, firm, corporation or association that establishes, operates or maintains a junkyard within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, after the effective date of this Article as determined by G.S.

136-155, that does not come within one or more of the exceptions contained in G. S. 136-144 hereof, shall be guilty of a misdemeanor, and each day that the junkyard remains within the prohibited distance shall constitute a separate offense. In addition thereto, said junkyard is declared to be a public nuisance and the Board of Transportation may seek injunctive relief in the Superior Court of the county in which the offense is committed to abate the said nuisance and to require the removal of all junk from the prohibited area."

Sec. 7. G.S. 136-146, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"Removal of junk from illegal junkyards. Any junkyard established after the effective date of this Article as determined by G.S. 136-155, in violation of the provisions of this Article or rules and regulations issued by the Board of Transportation pursuant to this Article, shall be illegal and shall constitute a public nuisance. The Board of Transportation or its agents shall give 30 days' notice to the owner of said junkyard to remove the junk or to make the junkyard to conform to the provisions of this Article or rules and regulations promulgated by the Board of Transportation hereunder. The Board of Transportation or its agents may remove the junk from the illegal junkyard at the expense of the owner if the said owner fails to act within 30 days after receipt of such notice. The Board of Transportation or its agents may enter upon private property for the purpose of removing junk from the junkyards prohibited by this Article without civil or criminal liability. Any person aggrieved by the decision declaring the junkyard illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Board of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal."

Sec. 8. G.S. 136-147, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by deleting the date "July 6, 1967," in the second line of that section and, in its place, by adding the following words:

"...the effective date of this Article as determined by G.S. 136-155...."

Sec. 9. G.S. 136-149, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"Permit required for junkyards. No person shall establish, operate or maintain a junkyard any portion of which is within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary system without obtaining a permit from the Board of Transportation or its agents pursuant to the procedures set out by the rules and regulations promulgated by the Board of Transportation. No permit shall be issued under the provisions of this section for the establishment, operation or maintenance of a junkyard within 1,000 feet to the nearest edge of the right-of-way of interstate or primary system except those junkyards which conform to one or more of the exceptions of Section 136-144. The permit shall be valid until revoked for the nonconformance of this Article or rules and regulations promulgated by the Board of Transportation thereunder. Any person aggrieved by the decision of the Board of Transportation or its agents in refusing to grant or revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Board of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision upon the agency appeal. The Board of Transportation shall have the authority to charge reasonable fees to defray the costs of administering the permit procedures under this Article."

Sec. 10. The Junkyard Control Act, Article 12 of Chapter 136, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding a new section, G.S. 136-149.1, immediately following G.S. 136-149 and immediately preceding G.S. 136-150, such new section to read as follows:

"Judicial Review. Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision

under this Article, the person seeking review must file a petition in the Superior Court of the county in which the junkyard is located within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.

The petition shall state explicitly what exceptions are taken to the decisions of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the Board of Transportation or the Secretary of Transportation. Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Secretary of Transportation shall transmit to the reviewing court a certified copy of the written decision.

At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter *de novo* pursuant to the rules of evidence as applied in the general court of justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:

1. In violation of constitutional provisions; or
2. Not made in accordance with this Article or rules or regulations promulgated by the Board of Transportation;
3. Affected by other error or law.

The party aggrieved shall have the burden of showing that the decision was violative of one of the above.

A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the Superior Court under the rules of procedure applicable in other civil cases. The appealing party may apply to the Superior Court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division."

Sec. 11. G.S. 136-151, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"Regulations of Junkyards. The Board of Transportation is authorized to promulgate rules and regulations in the form of ordinances governing:

- (1) The establishment, operation and maintenance of junkyards permitted in Section 136-144 which shall include, but not be limited to, rules and regulations for determining unzoned industrial areas for the purpose of this Article.
- (2) The specific requirements and procedures for obtaining a permit for junkyards as required in Section 136-149 and for the administrative procedures for appealing a decision at the agency level to refuse to grant or in revoking a permit previously issued.
- (3) The administrative procedures for appealing a decision at the agency level to declare any junkyard illegal and a nuisance as pursuant to Section 136-146.
- (4) The specific requirements governing the location, planting, construction and maintenance of material used in the screening or fencing required by this Article, all as may be necessary to carry out the policy of the State as declared in this Article.

The Board of Transportation, in its discretion, may delegate to the Secretary of Transportation the authority to promulgate such rules and regulations on its behalf."

Sec. 12. G.S. 136-155, as the same appears in the 1973 Cumulative Supplement to Volume 3B of the General Statutes, is amended by adding thereto the words "United States" after the words "an agreement with the" on the sixth line of that section.

Sec. 13. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 13th day of April, 1974.