Article 11.

Government in Business.

§ 66-58. Sale of merchandise or services by governmental units.

(a) Except as provided in this section, it is unlawful for any unit, department, or agency of the State government, or any division or subdivision of the unit, department, or agency, or any individual employee or employees of the unit, department, or agency in his, her, or their capacity as employee or employees thereof to engage directly or indirectly in the sale of goods, wares, or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to provide transportation services, or to contract with any person, firm, or corporation for the operation or rendering of the businesses or services on behalf of the unit, department, or agency, or to purchase for or sell to any person, firm, or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased, or operated by any unit, department, agency, division, or subdivision of the State for the purpose of operating or rendering of any of the businesses or services referred to in this section is prohibited.

(b) Subsection (a) of this section does not apply to any of the following:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The Division of Juvenile Justice of the Department of Public Safety.

(7) The North Carolina Schools for the Deaf.

(8) The University of North Carolina with regard to all of the following:

a. The University's utilities and other services operated by it prior to January 1, 2005.

b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.

c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.

d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.

e. The hospital and Medical School of the University of North Carolina.

e1. The University of North Carolina Health Care System.

f. The Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State.
g. The Centennial Campus of North Carolina State University at Raleigh.
h. The Horace Williams Campus of the University of North Carolina at Chapel Hill.
i. A Millennial Campus of a constituent institution of The University of North Carolina.
j. The comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.
k. Agreements by the University of North Carolina School of the Arts to the use of that school's facilities, equipment, and services of students, faculty, and staff for the creation of commercial materials and productions that may be unrelated to educational purposes, so long as the proceeds from those agreements are used for the benefit of the educational mission of the University of North Carolina School of the Arts.
l. Activities that further the mission of the University as stated in G.S. 116-1.
m. Activities that serve students or employees of the University or members of the immediate families or guests of students or employees.
n. Activities that provide University-related services or market University-related merchandise to alumni of the University and members of their immediate families.
o. Activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise. If the University proposes to engage in a new type of activity under this subdivision, then the University shall provide electronic notice of the proposal to the persons who have requested to be included in the registry created pursuant to subdivision (j)(2) of this section prior to engaging in the new type of activity.

(8a) The University of North Carolina with regard to the operation of gift shops, snack bars, and food service facilities physically connected to any of The University of North Carolina's public exhibition spaces, including the North Carolina Arboretum, provided that the resulting profits are used to support the operation of the public exhibition space.

(8b) North Carolina Center for the Advancement of Teaching (NCCAT) with regard to:

a. Agreements for the use of NCCAT's facilities, equipment, services, and staff, for meetings and educational programs provided by State agencies, the constituent institutions of The University of North Carolina and the North Carolina Community College System, public schools, units of local government, and nonprofit corporations.

b. The provision of housing and meals to participants in these meetings and programs.

(9) The North Carolina Wildlife Resources Commission for the sale of wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(9a) The North Carolina Forest Service.

(9b) The Department of Natural and Cultural Resources for the sale of food pursuant to G.S. 111-47.2 and the sale of books, crafts, gifts, and other tourism-related items and revenues from public and private special events, activities, and programming at State parks, State aquariums, historic sites and museums administered by the Department, provided that the resulting profits are used to support the operation of those sites. This exemption does not allow the Department to construct, maintain, operate, or lease a hotel or tourist inn in any site or facility over which it has jurisdiction, except for existing lodging facilities located at Haw River State Park, Hanging Rock State Park, and Pisgah View State Park and for a hotel and related facilities constructed and operated by a private entity on land leased from the North Carolina Zoological Park. Nothing in this subdivision is intended to exempt the Park from any other applicable laws pertaining to contracting or to leasing of State property. For purposes of this subdivision, a "hotel or tourist inn" does not include rentals of rustic cabins and recreational vehicle or tent sites in State parks.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) Repealed by Session Laws 2006-264, s. 8, effective August 27, 2006.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(13e) The Department of Agriculture and Consumer Services with regard to its Got to Be NC Agriculture promotion.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The Division of Prisons of the Department of Adult Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Division may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase

from, and to contract with, the Division of Prisons of the Department of Adult Correction for the State automobile license tag requirements from year to year. The price to be paid to the Division of Prisons of the Department of Adult Correction for the tags shall be fixed and agreed upon by the Governor, the Division of Prisons of the Department of Adult Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Division of Prisons of the Department of Adult Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Division of Prisons of the Department of Adult Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Division of Prisons of the Department of Adult Correction may be provided for VA Medical Centers of the United States Department of Veterans Affairs, the Governor Morehead School, and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Division of Prisons of the Department of Adult Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department.

(21) Repealed by Session Laws 2008-134, s. 73(b), effective July 28, 2008.

(22) The North Carolina State Highway Patrol.

(23) The North Carolina State Lottery Commission.

(24) The North Carolina National Guard, for the operation of post exchanges.

(25) The gift or sale of any craft items made by inmates in the custody of the Division of Prisons of the Department of Adult Correction as part of a program or initiative established by the Division of Prisons.

(26) The North Carolina Zoological Park.

(27) The North Carolina Office of Economic Recovery and Investment and State agencies in the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) funded projects.

(28) Samarcand Training Academy.

(c) The provisions of subsection (a) of this section shall not prohibit:

(1) The sale of products of experiment stations or test farms.

(1a) The sale of products raised or produced incident to the operation of a community college or college viticulture/enology program as authorized by G.S. 18B-1114.4 or the operation of a community college or college brewing, distillation, or fermentation program as authorized by G.S. 18B-1114.6.

(1b) The sale by North Carolina State University at University-owned facilities of dairy products, including ice cream, cheeses, milk-based beverages, and the by-products of heavy cream, produced by the Dairy and Process Applications Laboratory, so long as any profits are used to support the Department of Food Science and College of Agriculture and Life Sciences at North Carolina State University.

(1c) The sale by North Carolina Agricultural and Technical State University (NC A&T State University) at University-owned facilities of dairy products, including ice cream, cheeses, milk-based beverages, and the by-products of heavy cream, produced by the University Farm at NC A&T State University, so long as any profits are used to support the Agricultural Research Program and the College of Agriculture and Environmental Sciences at NC A&T State University.

(2) The sale of learned journals, works of art, books or publications of the Department of Natural and Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.

(3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by constituent institutions of The University of North Carolina of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of the stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that, notwithstanding this subsection, profits from a campus store operated by the endowment of the North Carolina School of Science and Mathematics are used exclusively for student activities, athletics, and other programs to enhance student life. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

(3a) The use of community college personnel or facilities, with the consent of the trustees of that college, in support of or by a private business enterprise located

on a community college campus or in the service area of a community college for one or more of the following specific services in support of economic development:

a. Small business incubators. – As used in this sub-subdivision, the term "small business incubators" means sites for new business ventures in the service area of the community college that are in need of the support and assistance provided by the college; and, without which, the likelihood of success of the business would be greatly diminished. The services of the small business incubator shall not extend to any such new business venture for a period of more than 48 months.

b. Product testing services.

c. Videoconferencing services provided to the public for occasional use.

(3b) The operation of a military business center by a community college. For the purposes of this subdivision, the term "military business center" means a facility that serves to coordinate and facilitate interactions between the Armed Forces of the United States; military personnel, veterans, and their families; and private businesses.

(3c) The use of the personnel and facilities of Western Piedmont Community College, with the consent of the trustees of the college, in support of economic development through the operation of the East Campus and its companion facilities as an event venue.

(3d) The use of community college facilities by a private business enterprise that has loaned or donated instructional equipment to the college to demonstrate that equipment to customers. This use of college facilities shall be in accordance with policies adopted by the board of trustees of the college.

(3e) The use of personnel, equipment, and facilities relating to Interactive Three Dimensional (Advanced Visualization) technology and Tele-presence technology at Fayetteville Technical Community College. Proceeds generated must be used either to continue the function of this program or to support the educational mission of the school.

(4) The operation of lunch counters by the Department of Health and Human Services as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.

(5) The operation of a snack bar and cafeteria in the State Legislative Building, and a snack bar in the Legislative Office Building.

(6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.

(7) The operation by penal or correctional facilities or facilities operated by the Department of Health and Human Services, the Division of Juvenile Justice of the Department of Public Safety, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of

the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors.

(8) The sale by the Department of Agriculture and Consumer Services of livestock, poultry and publications in keeping with its present livestock and farm program.

(9) The operation by the public schools of school cafeterias.

(9a) The use of a public school bus or public school activity bus for a purpose allowed under G.S. 115C-242 or the use of a public school activity bus for a purpose authorized by G.S. 115C-247.

(9b) The use of a public school activity bus by a nonprofit corporation or a unit of local government to provide transportation services for school-aged and preschool-aged children, their caretakers, and their instructors to or from activities being held on the property of a nonprofit corporation or a unit of local government. The local board of education that owns the bus shall ensure that the person driving the bus is licensed to operate the bus and that the lessee has adequate liability insurance to cover the use and operation of the leased bus.

(10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.

(11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.

(12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.

(13) The operation by the Division of Prisons of the Department of Adult Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of the management program.

(14) The operation by the Division of Prisons of the Department of Adult Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.

(15) The operation by the Division of Prisons of the Department of Adult Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.

(16) The performance by the Department of Transportation of dredging services for a unit of local government.

(17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that Article.

(18) Repealed by Session Laws 2009-329, s. 2.2, effective July 24, 2009.

(19) The use of the North Carolina Museum of Art's conservation lab by the Regional Conservation Services Program of the North Carolina Museum of Art Foundation for the provision of conservation treatment services on privately owned works of art. However, when providing this service, the Regional Conservation Services Program shall give priority to publicly owned works of art.

(20) The sale by the State Board of Education of NCVPS courses to home schools, private schools, and out-of-state educational entities.

(21) Any activity conducted or contracted for by the Department of Transportation that is authorized by G.S. 136-18(44a) or G.S. 136-82(f).

(22) The operation by the Division of Motor Vehicles of digital advertising and automated teller machines in offices of the Division or contract license plate agencies.

(d) A department, agency or educational unit named in subsection (b) shall not perform any of the prohibited acts for or on behalf of any other department, agency or educational unit.

(e) Any person, whether employee of the State of North Carolina or not, who shall violate, or participate in the violation of this section, shall be guilty of a Class 1 misdemeanor.

(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Division of Prisons of the Department of Adult Correction of facilities for the manufacture of any product or the providing of any service pursuant to Article 14 of Chapter 148 of the General Statutes not regulated by the provisions of subsection (c) of this section shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year commencing after October 1, 1975. The Division of Prisons of the Department of Adult Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Director of the Budget.

(g) Repealed by Session Laws 2006-66, s. 9.11(x), effective July 1, 2007.

(h) Repealed by Session Laws 2021-80, s. 2.5, effective July 8, 2021.

(i) The Board of Governors of The University of North Carolina shall establish a panel to determine whether The University of North Carolina is authorized pursuant to sub-subdivisions m., n., and o. of subdivision (8) of subsection (b) of this section to undertake an activity in competition with an existing or proposed nongovernmental entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions. The University of North Carolina shall be responsible for staffing and paying the expenses of the panel. The panel shall consist of nine members as follows:

(1) Two members who are familiar with the interests of the business community of the State appointed by the Governor.

(2) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.

(3) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

(4) Three members who are not employees of The University of North Carolina appointed by the Board of Governors.

The panel may make the determination whether a proposed or ongoing activity undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this section is unauthorized competition. The panel may also make a determination whether a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8) of subsection (b) of this section is either unauthorized or unfair competition. The University will be bound by a decision of the panel that a proposed or ongoing activity is not justified by the exceptions set out in sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section.

The panel established by this subsection shall report to the Joint Legislative Economic Development Oversight Committee. The panel shall report to the Committee by May 1 of each year on the number and types of determinations made during the preceding year.

(j) The Board of Governors shall establish and publish procedures to be used by the panel created under subsection (i) of this section in making determinations. The procedures shall:

(1) Include that a determination may be initiated based on a request from any nongovernmental entity in the State that is in or proposes to be in the same or a similar or competing business or based on a request from the constituent institution or other university system entity engaging in or proposing to engage in the activity.

(2) Require the panel to maintain a registry of all parties that request to receive notification of the panel's proceedings. The notification may be electronic and shall be given to all parties that have requested to be notified at least seven days prior to the panel's meeting. The notice shall include the name of the constituent institution or other university system entity engaging in or proposing to engage in the activity and the nature of the activity. The panel shall provide the documents relating to any agenda item to anyone requesting them in advance of the panel's proceedings.

(3) Provide that the agendas for the panel's meetings, the minutes of the meetings, and the determinations of the panel shall be posted on The University of North Carolina website.

(k) The University of North Carolina and its employees may rely on a determination made by the panel created under subsection (i) of this section as to whether an activity violates this section, and a determination that an activity is authorized shall be an absolute defense in any prosecution for any activity undertaken before a contrary determination is made by a court or by an opinion of the Attorney General. The panel shall not have the power to overrule a prior determination of the Attorney General.

(*l*) The proceeds of any activity undertaken under sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that generated the proceeds or to further the mission of the constituent institution or other University entity engaging in the activity.

(m) Any person, firm, or corporation who or which is injured or suffers damages as a result of a violation of this section may maintain an action in the Wake County Superior Court for injunctive relief against any unit, department or agency of the State government, or any division or subdivision of the unit, department or agency, or any individual employee or employees of the unit, department or agency, in his or her, or their capacity as employee or employees, who or which has committed a violation. In a proceeding under this subsection, the court shall determine whether a violation has been committed and enter any judgment or decree necessary to remove the effects of any violation it finds and to prevent continuation or renewal of the violation in the future. Upon a judicial finding that any contract or contractual obligation is in violation of this section, such contract or contractual obligation shall be null and void. Any person, firm, or corporation who or which believes that a proposed activity will be in violation of this section may request a declaratory judgment under G.S. 1-253 or injunctive relief or both, notwithstanding the fact that such activity has not been commenced. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1939, c. 122; 1941, c. 36; 1951, c. 1090, s. 1; 1957, c. 349, ss. 6, 10; 1967, c. 996, s. 13; 1973, c. 476, ss. 48, 128, 143; c. 671, s. 1; c.

965; c. 1262, s. 86; c. 1294; c. 1457, s. 7; 1975, c. 730, ss. 2-5; c. 840; c. 879, s. 46; 1977, cc. 355, 715; c. 771, s. 4; 1979, c. 830, s. 4; 1981, c. 635, s. 3; 1983, c. 8; c. 476; c. 717, s. 13; c. 761, s. 168; 1985, c. 589, s. 28; c. 757, s. 206(d); 1989, c. 727, s. 218(9); 1989 (Reg. Sess., 1990), c. 1004, s. 1; 1991, c. 749, s. 7; 1991 (Reg. Sess., 1992), c. 902, s. 3; 1993, c. 539, s. 513; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 769, s. 17.15; c. 777, s. 4(e); 1995, c. 247, s. 2; c. 507, s. 13.1(a); 1997-258, s. 1; 1997-261, ss. 4-6; 1997-315, s. 1; 1997-443, s. 11A.21; 1997-456, s. 55.2A; 1997-527, s. 1; 1998-202, s. 4(d), (e); 1998-212, ss. 9.9, 13.3; 1999-234, s. 9; 1999-237, ss. 19.7, 27.23A; 2000-137, ss. 4(f), 4(g); 2000-148, s. 6; 2000-177, s. 10; 2001-41, s. 2; 2001-127, s. 1; 2001-368, s. 1; 2002-102, s. 3; 2002-109, s. 1; 2002-126, ss. 9.15(a), 18.5; 2004-124, ss. 8.17(b), 9.13; 2005-20, s. 1; 2005-63, s. 1; 2005-247, s. 1; 2005-344, s. 5; 2005-397, ss. 1, 2, 4; 2006-66, ss. 9.11(w), (x); 2006-264, s. 8; 2007-60, s. 1; 2007-280, ss. 4.1, 5; 2007-398, s. 5; 2008-134, s. 73(b); 2008-192, s. 12; 2009-207, s. 1; 2009-281, s. 1; 2009-329, ss. 2.1, 2.2; 2009-475, s. 9; 2011-145, ss. 7.22(l), 19.1(h), (j), (l); 2011-183, s. 50; 2011-331, s. 1; 2011-398, s. 61.3; 2012-83, s. 33; 2012-194, s. 60; 2013-360, s. 19.3(c); 2014-58, s. 11(b); 2014-100, s. 19.9; 2014-115, s. 39.4; 2014-120, s. 17(d); 2015-241, ss. 14.30(jj), 29.22(b), 29.33; 2016-87, s. 6; 2016-94, s. 16.3; 2017-6, s. 3; 2017-186, s. 2(ssss); 2018-113, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2019-177, s. 5.1; 2020-26, s. 3; 2021-80, s. 2.5; 2021-180, ss. 19C.9(p), (r), (z), 37.6(a); 2023-70, s. 6; 2023-134, s. 4.10(c); 2025-25, s. 29(5).)