

Article 78A.

Office of the State Fire Marshal.

§ 58-78A-1. Office of the State Fire Marshal.

(a) The Office of the State Fire Marshal is created within the Department of Insurance and the Office shall exercise its powers and duties independently of the Department. The Department of Insurance shall provide clerical and professional services to the Office of the State Fire Marshal for the purpose of carrying out its powers and duties under this Article and the laws of this State. For purposes of this section, the phrase "clerical and professional services" includes, but is not limited to, budgetary, human resources, information technology, and legal.

(b) The Office of the State Fire Marshal shall be responsible for all of the following:

- (1) State Fire and Rescue Commission, Article 78 of this Chapter.
- (2) Investigation of Fires and Inspection of Premises, Article 79 of this Chapter.
- (3) State Volunteer Fire Department, Article 80 of this Chapter.
- (4) Pyrotechnics Training and Permitting, Article 82A of this Chapter.
- (5) Management of Aqueous Film-Forming Foams, Article 82B of this Chapter.
- (6) Local Firefighters' Relief Funds, Article 84 of this Chapter.
- (7) Statewide Firefighters' Relief Fund, Article 85 of this Chapter.
- (8) State Fire Protection Grant Fund, Article 85A of this Chapter.
- (9) North Carolina Firefighters' and Rescue Squad Workers' Pension Fund, Article 86 of this Chapter.
- (10) Volunteer Safety Workers Assistance, Article 87 of this Chapter.
- (11) Rescue Squad Workers' Relief Fund, Article 88 of this Chapter.
- (12) Building Code Council and Building Code, Article 9 of Chapter 143 of the General Statutes.
- (13) North Carolina Manufactured Housing Board-Manufactured Home Warranties, [Article 9A of Chapter 143 of the General Statutes].
- (14) Uniform Standards Code for Manufactured Homes, Article 9B of this Chapter [Article 9B of Chapter 143 of the General Statutes].
- (15) North Carolina Code Officials Qualification Board, Article 9C of this Chapter [Article 9C of Chapter 143 of the General Statutes].
- (16) North Carolina Home Inspector Licensure Board, Article 9F of this Chapter [Article 9F of Chapter 143 of the General Statutes].
- (17) Engineering and Building Codes Division in the Department of Insurance.
- (18) Risk Management Division in the Department of Insurance.
- (19) Community Risk Reduction Division in the Department of Insurance.

(c) The "State Fire Marshal," as that term is used in this Article and elsewhere in the General Statutes, shall be the head of the Office of the State Fire Marshal and shall be a person appointed by the Commissioner of Insurance subject to confirmation by the General Assembly by joint resolution. The State Fire Marshal shall be a person other than the Commissioner of Insurance and shall serve a three-year term. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, the Commissioner of Insurance may appoint a State Fire Marshal to serve on an interim basis pending confirmation by the General Assembly. For the purposes of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

(d) The salary of the State Fire Marshal shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, the State Fire Marshal shall receive as longevity pay in an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. For purposes of this subsection, the term "service" means service as the State Fire Marshal. (2023-134, s. 30.8(a); 2023-151, s. 10.1(a).)

§ 58-78A-2. Execution of laws; adopt rules to enforce laws.

The State Fire Marshal shall see that all laws he is responsible for administering are faithfully executed and, to that end, the State Fire Marshal is authorized to adopt rules in accordance with Chapter 150B of the General Statutes in order to enforce, carry out, and make effective the provisions of those laws. The State Fire Marshal is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the State Fire Marshal's regulatory authority from engaging in practices injurious to the public. (2023-151, s. 10.1(a).)

§ 58-78A-3. Public office; inspection of records.

The Office of the State Fire Marshal shall be a public office and the records, reports, books, and papers thereof on file therein shall be accessible to the inspection of the public, except that the records compiled as a part of an investigation for the crime of arson, that of unlawful burning, or of fraud, shall not be considered as public records and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that such records shall upon request be made available to the district attorney of any district if the same concerns persons or investigations in his district. (2023-151, s. 10.1(a).)

§ 58-78A-4. Hearings and investigations.

All hearings and investigations undertaken by the Office of the State Fire Marshal as required by this Article may be conducted by the State Fire Marshal personally or by one or more employees in the Office of the State Fire Marshal or, if requested by the State Fire Marshal, one or more employees in the Department of Insurance. If the State Fire Marshal or any investigator appointed to conduct the investigations is of the opinion that there is evidence to charge any person or persons with a criminal violation, the State Fire Marshal may arrest with warrant or cause the person or persons to be arrested. All hearings shall, unless otherwise specially provided, be held in accordance with this Article and Article 3A of Chapter 150B of the General Statutes and at a time and place designated in a written notice given by the State Fire Marshal to the person cited to appear. The notice shall state the subject of inquiry and the specific charges, if any. (2023-151, s. 10.1(a).)

§ 58-78A-5. Designated hearing officers.

In any contested case involving the Office of the State Fire Marshal, the State Fire Marshal may designate a member of his staff to serve as a hearing officer. When the State Fire Marshal is unable or elects not to hear a contested case and elects not to designate a hearing officer to hear a contested case, the State Fire Marshal shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case. (2023-151, s. 10.1(a).)

§ 58-78A-6. Civil penalties or restitution for violations; administrative procedure.

(a) This section applies to any person who is subject to licensure by the Office of the State Fire Marshal.

(b) Whenever the State Fire Marshal finds a violation of any of the provisions of this Article, the State Fire Marshal may, in addition to or instead of suspending or revoking the license issued by the State Fire Marshal, order the payment of a monetary penalty as provided in subsection (c) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (d) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(c) If the State Fire Marshal orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the State Fire Marshal shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(d) Upon petition of the State Fire Marshal, the court may order the person who committed a violation of this Article to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time and also in any appeal of the State Fire Marshal's order. Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(e) Nothing in this section shall prevent the State Fire Marshal from negotiating a mutually acceptable agreement with any person as to the status of the person's license or as to any civil penalty or restitution.

(f) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the State Fire Marshal's orders under this section shall be governed by G.S. 58-78A-7. (2023-151, s. 10.1(a).)

§ 58-78A-7. Court review of orders and decisions.

(a) Any order or decision made, issued, or executed by the State Fire Marshal is subject to review in the Superior Court of Wake County on petition by any person aggrieved filed within 30 days from the date of the delivery of a copy of the order or decision made by the State Fire Marshal upon the person. A copy of the petition for review as filed with and certified by the clerk of the Superior Court of Wake County shall be served upon the State Fire Marshal within five days after the filing thereof. If the petition for review is not filed within 30 days, the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed and there shall be no trial of the merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of the same.

(b) The State Fire Marshal shall within 30 days, unless the time is extended by order of court, after the service of the copy of the petition for review as provided in subsection (a) of this section, prepare and file with the clerk of the Superior Court of Wake County a complete transcript

of the record of the hearing, if any, had before him, and a true copy of the order or decision duly certified. The order or decision of the State Fire Marshal if supported by substantial evidence shall be presumed to be correct and proper. The court may change the place of hearing (i) upon consent of the parties, (ii) when the convenience of witnesses and the ends of justice would be promoted by the change, or (iii) when the judge has at any time been interested as a party or counsel. The cause shall be heard by the trial judge as a civil case upon transcript of the record for review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear and determine the petition with all convenient speed and, to this end, the cause shall be placed on the calendar for the next succeeding term for hearing ahead of all other cases except those already given priority by law. If, on the hearing before the trial judge, it shall appear that the record filed by the State Fire Marshal is incomplete, the trial judge may, by appropriate order, direct the State Fire Marshal to certify any or all parts of the record omitted. The trial judge shall have jurisdiction to affirm or to set aside the order or decision of the State Fire Marshal and to restrain the enforcement thereof.

(c) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the State Fire Marshal may be taken to the appellate division of the General Court of Justice by any party to the action as in other civil cases.

(d) The commencement of proceedings under this section shall not operate as a stay of the State Fire Marshal's order or decision, unless otherwise ordered by the court. (2023-151, s. 10.1(a).)

§ 58-78A-8. Original documents and certified copies as evidence.

Every document executed by the State Fire Marshal, in pursuance of any authority conferred on him by law and sealed with his seal of office, may be used as evidence and may be recorded in the proper recording offices, in the same manner and with like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the probate of deeds, and all copies of papers in the Office of the State Fire Marshal certified by him and authenticated by his official seal shall be evidence as the original. (2023-151, s. 10.1(a).)

§ 58-78A-9. Court appearances.

Whenever the State Fire Marshal or any employee of the Office of the State Fire Marshal is requested or subpoenaed to testify as an expert witness in any civil or administrative action, the party making the request or filing the subpoena and on whose behalf the testimony is given shall, upon receiving a statement of the cost from the State Fire Marshal, reimburse the Office of the State Fire Marshal for the actual time and expenses incurred by the Office of the State Fire Marshal in connection with the testimony. (2023-151, s. 10.1(a).)

§ 58-78A-10. Seal.

The State Fire Marshal, with the approval of the Governor, shall devise a seal, with suitable inscription, for his office, a description of which, with the certificate of approval by the Governor, shall be filed in the Office of the Secretary of State, with an impression thereof, which seal shall thereupon become the seal of the Office of the State Fire Marshal. The seal may be renewed whenever necessary. (2023-151, s. 10.1(a).)

§ 58-78A-11. Oaths.

The State Fire Marshal or his designee in the Office of the State Fire Marshal shall administer all oaths required in the discharge of the State Fire Marshal's official duty. (2023-151, s. 10.1(a).)

§ 58-78A-12. Manufactured housing; restraining orders; criminal convictions; license surrenders.

(a) Restraining Order. – Whenever it appears to the State Fire Marshal that any person has violated, is violating, or threatens to violate any provision of Article 9A of Chapter 143 of the General Statutes (North Carolina Manufactured Housing Board – Manufactured Home Warranties), the State Fire Marshal may apply to the superior court of any county in which the violation has occurred, is occurring, or may occur for a restraining order and injunction to restrain such violation. If upon application the court finds that any provision of Article 9A of Chapter 143 of the General Statutes has been violated, is being violated, or a violation thereof is threatened, the court shall issue an order restraining and enjoining such violations and relief may be granted regardless of whether criminal prosecution is instituted under any provision of law.

(b) Criminal Conviction. – The conviction in any court of competent jurisdiction of any licensee for any criminal violation of Article 9A of Chapter 143 of the General Statutes automatically has the effect of suspending the license of that person until such time that the license is reinstated by the North Carolina Manufactured Housing Board. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere.

(c) License Surrenders. – When a person or entity licensed under Article 9A of Chapter 143 of the General Statutes is accused of any act, omission, or misconduct that would subject the license to suspension or revocation, the licensee, with the consent and approval of the State Fire Marshal, may surrender the license for a period of time established by the State Fire Marshal. A person or entity who surrenders a license shall not thereafter be eligible for or submit any application for licensure during the period of license surrender. (2023-151, s. 10.1(a).)

§ 58-78A-13. Notification of criminal convictions and changes of address; service of notice.

(a) Every applicant for a license issued by the State Fire Marshal shall inform the State Fire Marshal of the applicant's residential address and provide the applicant's email address to which the State Fire Marshal can send electronic notifications and other messages. Every licensee shall give written notification to the State Fire Marshal of any change of the licensee's residential or email address within 10 business days after the licensee moves into the licensee's new residence or obtains a different email address. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location, in which case the licensee shall notify the State Fire Marshal within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the State Fire Marshal, though a licensee who violates this subsection shall pay an administrative fee of fifty dollars (\$50.00) to the State Fire Marshal. Notification under this subsection may be accomplished by submitting written notification directly to the State Fire Marshal or by using any online services approved by the State Fire Marshal for this purpose.

(b) If a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the State Fire Marshal in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(c) Notwithstanding any other provision of law, whenever the State Fire Marshal is authorized or required to give any notice under this Article, the notice may be given personally or by sending the notice by first-class mail to the licensee at the address that the licensee has provided

to the State Fire Marshal under subsection (a) of this section. The giving of notice by mail under this subsection is complete upon the expiration of four days after the deposit of the notice in the post office. Proof of the giving of notice by mail may be made by the certificate of any employee of the Department of Insurance. (2023-151, s. 10.1(a).)

§ 58-78A-14. Advisory committees.

The State Fire Marshal may create and appoint committees, each of which shall consist of no more than 13 members unless otherwise provided by law. The members of any committee shall serve at the pleasure of the State Fire Marshal and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations made by the General Assembly and in accordance with G.S. 138-5. Per diem, travel, and subsistence payments to members of committees that are created in connection with federal programs shall be paid from federal funds unless otherwise provided by law. For purposes of this section, the term "committee" means a collective body that consults with and advises the State Fire Marshal or his designee in detailed technical areas or as representative of citizen advice in specific areas of interest. (2023-151, s. 10.1(a).)

§ 58-78A-15. State Fire Marshal to supervise local inspectors.

The State Fire Marshal shall exercise general supervision over local investigators of fires and fire prevention inspectors. Whenever the State Fire Marshal has reason to believe that the local inspectors are not doing their duty, the State Fire Marshal or the State Fire Marshal's deputy shall make special trips of inspection and take proper steps to have all the provisions of the law relative to the investigation of fires and the prevention of fire waste enforced. (1905, c. 506, s. 6; Rev., s. 4690; C.S., s. 6270; 1925, c. 89; 1969, c. 1063, s. 2; 2023-151, s. 10.1(b), (c).)

§ 58-78A-16. State Fire Marshal to inspect State property.

(a) The State Fire Marshal shall, as often as is required in the fire code adopted by the North Carolina Building Code Council or more often if the State Fire Marshal considers it necessary, visit, inspect, and thoroughly examine every State property to analyze and determine its protection from fire, including the property's occupants or contents. The State Fire Marshal shall notify in writing the agency or official in charge of the property of any defect noted by the State Fire Marshal or any improvement considered by the State Fire Marshal to be necessary, and a copy of that notice shall be forwarded by the State Fire Marshal to the Department of Administration.

(b) No agency or person authorized or directed by law to select a plan or erect a building comprising 20,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the State Fire Marshal as to the safety of the proposed building from fire, including the property's occupants or contents.

(c) Repealed by Session Laws 2009-474, s. 1, effective October 1, 2009. (1901, c. 710, ss. 1, 2; 1903, c. 771, s. 3; Rev., s. 4829; 1909, c. 880; 1919, c. 186, s. 3; C.S., s. 6453; 2000-122, s. 10; 2001-487, s. 19; 2001-496, s. 11.1; 2007-303, s. 1; 2009-474, s. 1; 2012-161, s. 2; 2023-151, s. 10.1(d), (e).)

§ 58-78A-17. Report to General Assembly committees on various relief funds.

Beginning on April 1, 2016, and each year thereafter, the Office of the State Fire Marshal shall report to the House Appropriations Subcommittee on General Government, the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal

Research Division the following information about each local firefighters' relief fund board, the North Carolina State Firefighters' Association, and the North Carolina Association of Rescue and Emergency Medical Services, Inc.:

- (1) The total amount of money disbursed from the relief funds controlled by each of the entities.
- (2) The amount of money spent by each entity for each of the statutorily permissible uses.
- (3) Each entity's ending fund balance.

The report also should describe any problems with data collection and quality and, if applicable, make recommendations on actions the General Assembly could take to resolve any data issues. (2014-64, s. 1(h); 2016-51, s. 6; 2023-151, s. 10.1(f), (g).)