

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 429
PROPOSED HOUSE COMMITTEE SUBSTITUTE S429-PCS35304-TC-54

Short Title: Labor/2015 Technical & Conforming Changes.

(Public)

Sponsors:

Referred to:

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE
3 LABOR LAWS OF NORTH CAROLINA.
4 The General Assembly of North Carolina enacts:

5
6 **PART I. TECHNICAL AND CONFORMING CHANGES**

7 **SECTION 1.1.** G.S. 95-3 reads as rewritten:

8 "**§ 95-3. Divisions of Department; Commissioner; administrative officers.**

9 The Department of Labor shall consist of the following officers, divisions and sections:

10 A Commissioner of Labor.

11 A Division of Standards and Inspections.

12 A Division of ~~Statistics~~ Occupational Safety and Health.

13 Each division shall be in the charge of a chief administrative officer and shall be organized
14 under such rules and regulations as the Commissioner of Labor and the head of the division
15 ~~concerned, with the approval of the Governor, concerned~~ shall prescribe and promulgate. The
16 Commissioner of ~~Labor, with the approval of the Governor, Labor~~ may make provision for one
17 person to act as chief administrative officer of two or more divisions, when such is deemed
18 advisable. The chief administrative officers of the several divisions shall be appointed by the
19 Commissioner of ~~Labor with the approval of the Governor, Labor.~~ The Commissioner of
20 ~~Labor, with the approval of the Governor Labor~~ may combine or consolidate the activities of
21 two or more of the divisions of the Department, or provide for the setting up of other divisions
22 when such action shall be deemed advisable for the more efficient and economical
23 administration of the work and duties of the Department."

24 **SECTION 1.2.** G.S. 95-4 reads as rewritten:

25 "**§ 95-4. Authority, powers and duties of Commissioner.**

26 The Commissioner of Labor shall be the executive and administrative head of the
27 Department of Labor. In addition to the other powers and duties conferred upon the
28 Commissioner of Labor by this Article, the said Commissioner shall have authority and be
29 charged with the duty:

- 30 (1) To appoint and assign to duty such clerks, stenographers, and other
31 employees in the various divisions of the Department, ~~with approval of said~~
32 ~~director of division,~~ as may be necessary to perform the work of the
33 Department, and fix their compensation, subject to the approval of the
34 Department of Administration. The Commissioner of Labor may assign or
35 transfer stenographers, or clerks, from one division to another, or inspectors
36 from one division to another, or combine the clerical force of two or more



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1 divisions, or require from one division assistance in the work of another
2 division, as he may consider necessary and advisable: Provided, however,
3 the provisions of this subdivision shall not apply to the Industrial
4 Commission, or the Division of Workers' Compensation.

5 (2) To make such rules and regulations with reference to the work of the
6 Department and of the several divisions thereof as shall be necessary to
7 properly carry out the duties imposed upon the said Commissioner and the
8 work of the ~~Department; such rules and regulations to be made subject to the~~
9 ~~approval of the Governor.~~Department.

10 (3) To take and preserve testimony, examine witnesses, administer oaths, and
11 under proper restriction enter any public institution of the State, any factory,
12 store, workshop, laundry, public eating house or mine, and interrogate any
13 person employed therein or connected therewith, or the proper officer of a
14 corporation, or file a written or printed list of interrogatories and require full
15 and complete answers to the same, to be returned under oath within 30 days
16 of the receipt of said list of questions.

17 (4) To secure the enforcement of all laws relating to the inspection of factories,
18 mercantile establishments, mills, workshops, public eating places, and
19 commercial institutions in the State. To aid him in the work, he shall have
20 power to appoint factory inspectors and other assistants. The duties of such
21 inspectors and other assistants shall be prescribed by the Commissioner of
22 Labor.

23 (5) To visit and inspect, personally or through his assistants and factory
24 inspectors, at reasonable hours, as often as practicable, the factories,
25 mercantile establishments, mills, workshops, public eating places, and
26 commercial institutions in the State, where goods, wares, or merchandise are
27 manufactured, purchased, or sold, at wholesale or retail.

28 (6) To enforce the provisions of this section and to prosecute all violations of
29 laws relating to the inspection of factories, mercantile establishments, mills,
30 workshops, public eating houses, and commercial institutions in this State
31 before any court of competent jurisdiction. It shall be the duty of the district
32 attorney of the proper district upon the request of the Commissioner of
33 Labor, or any of his assistants or deputies, to prosecute any violation of a
34 law, which it is made the duty of the said Commissioner of Labor to
35 enforce."

36 **SECTION 1.3.** G.S. 95-69.11 reads as rewritten:

37 **"§ 95-69.11. Powers and duties of Commissioner.**

38 The Commissioner of Labor is hereby charged, directed, and empowered:

39 (1) To adopt, modify, or revoke rules governing the construction, operation, and
40 use of boilers and pressure vessels, including, where necessary, requirements
41 for fencing to prevent unauthorized persons from coming in contact with
42 boilers and pressure vessels or the systems they are connected to.

43 (2) To delegate to the Chief Inspector any powers, duties, and responsibilities
44 that the Commissioner determines will best serve the public interest in the
45 safe operation of boilers and pressure vessels, and to supervise the Chief
46 Inspector in the performance of those duties.

47 (3) To enforce rules adopted under authority of this Article.

48 (4) To inspect boilers and pressure vessels covered under this Article.

49 (5) To issue inspection certificates to those boilers and pressure vessels found in
50 compliance with this Article.

- 1 (6) To enjoin violations of this Article in the civil and criminal courts of this
2 State.
- 3 (7) To keep adequate records of the type, dimensions, age, conditions, pressure
4 allowed upon, location, and date of the last inspection of all boilers and
5 pressure vessels to which this Article applies.
- 6 (8) To require such periodic reports from inspectors, owners, and operators of
7 boilers and pressure vessels as he deems appropriate in carrying out the
8 purposes of this Article.
- 9 (9) To have free access, without notice, to any location in this State, during
10 reasonable hours, where a boiler or pressure vessel is being built, installed,
11 or operated for the purpose of ascertaining whether such boiler or pressure
12 vessel is built, installed, or operated in accordance with the provisions of this
13 Article.
- 14 (10) To investigate serious accidents involving boilers and pressure vessels to
15 determine the causes of the accidents, and to have full subpoena powers in
16 conducting the investigation.
- 17 (11) To establish reasonable fees for the inspection and issuance of inspection
18 certificates for boilers and pressure vessels that are in use.
- 19 (12) To establish reasonable fees for the examination and certification of
20 inspectors.
- 21 ~~(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel~~
22 ~~Rules.~~
- 23 (14) To perform inspections and audits relating to the construction and repair of
24 boilers and pressure vessels and to establish and collect fees for these
25 activities.
- 26 (15) To order the payment of civil penalties provided by this section.
- 27 (16) To require that before any boiler or pressure vessel that is subject to this
28 Article is transferred into the State, or is moved from one location to another
29 within the State, the owner or the owner's authorized agent shall file with the
30 Commissioner a written notice of intent to do so and the type of device
31 involved and provide a copy of the specifications, previous inspection
32 documents, or other information that the Commissioner deems necessary to
33 determine whether the boiler or pressure vessel is in compliance with the
34 provisions of this Article and the rules adopted under this Article.
- 35 (17) To grant exceptions from the requirements of the rules and regulations
36 adopted under authority of this Article and to permit the use of other devices
37 when such exceptions and uses will not expose the public to an unsafe
38 condition likely to result in serious personal injury or property damage.
- 39 (18) To devise and proctor examinations covering this Article and the rules
40 adopted under this Article to applicants seeking a commission as inspectors
41 of boilers and pressure vessels in this State.
- 42 (19) To act as proctors during the administration of the National Board
43 commissioning examination.
- 44 (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers
45 and pressure vessels within this State. Whenever action is taken under this
46 section to suspend or revoke a commission, the affected party shall be given
47 notice of the availability of an administrative hearing and of judicial review
48 in accordance with Chapter 150B of the General Statutes, the Administrative
49 Procedure Act."

50 **SECTION 1.4.** G.S. 95-69.17(c) reads as rewritten:

1 "~~(c) Whenever action is taken under this section, the affected party shall be given notice~~
2 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
3 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
4 under this section by the Commissioner shall be final, unless within 15 days after receipt of
5 notice thereof by certified mail with return receipt, by signature confirmation as provided by
6 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
7 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
8 taken takes exception to the determination, in which event the final determination of the action
9 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
10 150B of the General Statutes, the Administrative Procedure Act."

11 **SECTION 1.5.** G.S. 95-110.6(c) reads as rewritten:

12 "~~(c) Whenever action is taken under this section, the affected party shall be given notice~~
13 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
14 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
15 under this section by the Commissioner shall be final, unless within 15 days after receipt of
16 notice thereof by certified mail with return receipt, by signature confirmation as provided by
17 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
18 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
19 taken takes exception to the determination, in which event the final determination of the action
20 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
21 150B of the General Statutes, the Administrative Procedure Act."

22 **SECTION 1.6.** G.S. 95-111.6(c) reads as rewritten:

23 "~~(c) Whenever action is taken under this section, the affected party shall be given notice~~
24 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
25 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
26 under this section by the Commissioner shall be final, unless within 15 days after receipt of
27 notice thereof by certified mail with return receipt, by signature confirmation as provided by
28 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
29 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
30 taken takes exception to the determination, in which event the final determination of the action
31 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
32 150B of the General Statutes, the Administrative Procedure Act."

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34 **PART II. STATUTORY UPDATING/REPEALS**

35 **SECTION 2.1.** G.S. 95-5 is repealed.

36 **SECTION 2.2.** G.S. 95-6 is repealed.

37 **SECTION 2.3** G.S. 95-7 reads as rewritten:

38 "**§ 95-7. Power of Commissioner to compel the giving of ~~such~~ information; refusal as**
39 **contempt.**

40 The Commissioner of Labor, or his authorized representative, ~~for the purpose of securing~~
41 ~~the statistical details referred to in G.S. 95-6,~~ shall have power to examine witnesses on oath, to
42 compel the attendance of witnesses and the giving of such testimony and production of such
43 papers as shall be necessary to enable him to gain the necessary information. Upon the refusal
44 of any witness to comply with the requirements of the Commissioner of Labor or his
45 representative in this respect, it shall be the duty of any judge of the superior court, upon the
46 application of the Commissioner of Labor, or his representative, to order the witness to show
47 cause why he should not comply with the requirements of the said Commissioner, or his
48 representative, if in the discretion of the judge such requirement is reasonable and proper.
49 Refusal to comply with the order of the judge of the superior court shall be dealt with as for
50 contempt of court."

51 **SECTION 2.4.** G.S. 95-11 is repealed.

1 **SECTION 2.5.** G.S. 95-12 is repealed.

2 **SECTION 2.6.** G.S. 95-69.13 is repealed.

3 **SECTION 2.7.** G.S. 95-69.9(a) is repealed.

4 **SECTION 2.8.** G.S. 95-69.14 reads as rewritten:

5 "**§ 95-69.14. Rules and regulations governing the construction, operation and use of**
6 **boilers and pressure vessels.**

7 The ~~Commissioner, after consultation with the Board,~~ Commissioner may adopt, modify, or
8 revoke any rules and regulations governing the construction, installation, repair, alteration,
9 inspection, use, and operation of boilers and pressure vessels as the Commissioner deems
10 appropriate to insure the safe operation and avoidance of injury to person or property from
11 boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the
12 standards of the American Society of Mechanical Engineers and the amendments and
13 interpretations of those engineering standards.

14 The procedure for the adoption, modification, or revocation of the rules and regulations
15 shall be in accordance with Chapter 150B of the General Statutes, the Administrative Procedure
16 Act."

17 **SECTION 2.9.** G.S. 95-69.16 reads as rewritten:

18 "**§ 95-69.16. Inspection certificate required.**

19 All boilers and pressure vessels subject to the provisions of this Article shall be inspected
20 by a commissioned inspector. The Commissioner may determine both the frequency and the
21 method of inspection. In determining the frequency of inspection, the Commissioner shall give
22 due consideration to the hazard involved and the need for the protection of the public. The
23 method of inspection must provide an adequate procedure to insure the safety of individuals
24 likely to be injured by an explosion or accident involving a boiler or pressure vessel.

25 No boiler or pressure vessel may be operated without an inspection certificate, except
26 pressure vessels being operated under an owner-user provision where administrative procedures
27 of equal safety and competency have been approved by the ~~Board and~~ Commissioner. No more
28 than 60 days grace period may be granted beyond the certificate expiration date."

29
30 **PART III. YOUTH EMPLOYMENT EXCEPTION FOR POINT OF SALE FOR**
31 **OFF-PREMISES CONSUMPTION**

32 **SECTION 3.1** G.S. 95-25.5(j) reads as rewritten:

33 "(j) No person who holds any ABC permit issued pursuant to the provisions of Chapter
34 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages,
35 including any mixed beverages, shall employ a youth:

- 36 (1) Under 16 years of age on the premises for any purpose, unless the youth is at
37 least 14 years of age and each of the following conditions is met:
38 a. The person obtains the written consent of a parent or guardian of the
39 youth.
40 b. The youth is employed to work on the outside grounds of the
41 premises for a purpose that does not involve the preparation, serving,
42 dispensing, or sale of alcoholic beverages.
43 (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic
44 beverages, including mixed ~~beverages~~ beverages, except for sale of alcoholic
45 beverages at the point-of-sale for only off-premises consumption."

46
47 **PART IV. EFFECTIVE DATE**

48 **SECTION 4.1.** This act is effective when it becomes law.