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SENATE BILL DRS35210-LR-73 (03/10)

Short Title: 2017 DOL Technical Changes.

(Public)

Sponsors: Senators Wade and Brock (Primary Sponsors).

Referred to:

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 SECTION 1. G.S. 95-25.5(a) reads as rewritten:

6 "(a) No youth under 18 years of age shall be employed by any employer in any
7 occupation without a youth employment certificate unless specifically exempted. The
8 Commissioner of Labor shall prescribe regulations for youths and employers concerning the
9 issuance, maintenance and revocation of certificates. Certificates will be issued, subject to
10 review by the Department of Labor, by county directors of social services and such of their
11 designees as are approved by the Commissioner; provided, the Commissioner may also issue
12 certificates, issued by the Commissioner, both directly and electronically."

13 SECTION 2. G.S. 95-117(4) reads as rewritten:

14 "(4) ~~"Passenger tramway" means a~~Passenger tramway. – A device used to
15 transport passengers uphill on skis, or in cars on tracks, or suspended in the
16 air by the use of steel cables, chains or belts, or by ropes, and usually
17 supported by trestles or towers with one or more spans. ~~"Passenger~~
18 ~~tramway" shall include~~The term includes any of the following devices:

19 a. ~~"Chairlift," a~~Chairlift. – A type of transportation on which
20 passengers are carried on chairs suspended in the air and attached to
21 a moving cable, chain or link belt supported by trestles or towers
22 with one or more spans, or similar ~~devices;~~devices.

23 a1. ~~"Conveyor," a~~Conveyor. – A type of transportation on which
24 passengers are transported uphill on a flexible moving element
25 (conveyor belt) that travels uphill on one path and generally returns
26 underneath the uphill portion.

27 a2. Funicular. – A system in which passengers are transported in or on
28 carriers that are supported and guided by a level or inclined
29 guideway and propelled by means of a haul rope or other flexible
30 element that is driven by a power unit remaining essentially at a
31 single location.

32 a3. Gondola. – An enclosed cabin attached to a cable that mechanically
33 transports people or cargo.

34 b. ~~"J bar, T bar or platter pull,"~~J bar, T bar, or platter pull. – so called
35 and similar types of devices or means of transportation ~~Devices~~
36 which pull skiers riding on skis by means of an attachment to a main



overhead cable supported by trestles or towers with one or more spans;spans.

- c. ~~"Multicar aerial passenger tramway,"~~ a Multicar aerial passenger tramway. – A device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar ~~device;~~device.
- d. ~~"Rope tow,"~~ a Rope tow. – A type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar ~~devices;~~device.
- e. ~~"Skimobile,"~~ a Skimobile. – A device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar ~~device;~~device.
- f. ~~"Two-car aerial passenger tramway,"~~ a Two-car aerial passenger tramway. – A device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device."

SECTION 3. G.S. 95-120(1) reads as rewritten:

"(1) To adopt, modify, or revoke the rules necessary for carrying out the provisions of this Article, including those governing the design, construction, installation, operation, use, and maintenance of devices subject to the provisions of this Article. ~~The rules adopted under this section shall conform as nearly as possible to the standards contained in the B77.1—American National Standards Safety Requirements for Aerial Passenger Tramways and with good engineering and safety standards, formulas, and practices.~~Rules adopted under this subdivision shall conform with good engineering and safety standards, formulas, and practices."

SECTION 4. Article 15 of Chapter 95 of the General Statutes is amended by adding the following new sections to read:

"§ 95-125.1. Operation of unsafe device.

No person shall operate, permit to be operated, or use any device subject to the provisions of this Article if the person knows or reasonably should know that the operation or use of the device will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

"§ 95-125.2. Reports required.

(a) The owner of any device regulated under the provisions of this Article, or the owner's authorized agent, shall, within 24 hours, notify the Commissioner of each and every occurrence involving the device when either of the following occurs:

- (1) Death or injury requiring medical treatment, other than first aid, by a physician. For the purposes of this section, "first aid" means (i) the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters, or contusions or (ii) performing a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel.

- (2) Damage to the device indicating a substantial defect in design, mechanics, structure, or equipment that affects the future safe operation of the device.

No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) of this section has occurred, shall make a complete and thorough investigation of the occurrence. The report of the

1 investigation shall be placed on file in the office of the division and shall give in detail all facts
2 and information available. The owner may submit for inclusion in the file results of
3 investigations independent of the department's investigation.

4 (c) No person, after an occurrence specified in subsection (a) of this section, shall do
5 either of the following:

6 (1) Operate, attempt to operate, use, or move or attempt to move such device or
7 part thereof, without the approval of the Commissioner, unless so as to
8 prevent injury to any person or persons.

9 (2) Remove or attempt to remove from the premises any damaged or
10 undamaged part of such device or repair or attempt to repair any damaged
11 part necessary to a complete and thorough investigation. The Department
12 must initiate its investigation within 24 hours of being notified.

13 **"§ 95-125.3. Violations; civil penalties; appeal, criminal penalties.**

14 (a) Any person who violates G.S. 95-118 (Registration required; application
15 procedures) is subject to a civil penalty not to exceed one thousand two hundred fifty dollars
16 (\$1,250) for each day each device is so operated or used.

17 (b) Any person who violates G.S. 95-120.1 (Liability insurance) or G.S. 95-125.2
18 (Reports required) is subject to a civil penalty not to exceed two thousand five hundred dollars
19 (\$2,500) for each day each device is so operated and used.

20 (c) Any person who violates G.S. 95-125.1 (Operation of unsafe device) is subject to a
21 civil penalty not to exceed five thousand dollars (\$5,000) for each day each device is so
22 operated and used.

23 (d) In determining the amount of any penalty ordered under authority of this section, the
24 Commissioner shall give due consideration to the appropriateness of the penalty with respect to
25 the annual gross volume of the person being charged, the gravity of the violation, the good faith
26 of the person, and the record of previous violations.

27 (e) The Commissioner's determination of the amount of the penalty is final, unless,
28 within 15 days after receipt of notice thereof, by certified mail with return receipt, by signature
29 confirmation as provided by the U.S. Postal Service, by a designated delivery service
30 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the
31 person charged with the violation takes exception to the determination, in which event final
32 determination of the penalty shall be made in an administrative proceeding pursuant to Chapter
33 150B of the General Statutes, the Administrative Procedures Act.

34 (f) The Commissioner may file in the office of the clerk of the superior court of the
35 county wherein the person, against whom a civil penalty has been ordered, resides, or, if a
36 corporation is involved, in the county wherein the violation occurred, a certified copy of a final
37 order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed
38 upon appeal. Upon such filing, the clerk of said court shall enter judgment in accordance with
39 the final order and notify the parties. The judgment shall have the same effect, and all
40 proceedings in relation to the judgment shall thereafter be the same, as though the judgment
41 had been rendered in a suit duly heard and determined by the superior court of the General
42 Court of Justice.

43 (g) Except as provided under subsection (h) of this section, any person who willfully
44 violates any provision of this Article is guilty of a Class 2 misdemeanor, which may include a
45 fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a
46 violation committed after a first conviction of the person, the person shall be guilty of a Class 1
47 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000).

48 (h) Any person who willfully violates any provision of this Article, and that violation
49 causes the serious injury or death of any person, is guilty of a Class E felony, which shall
50 include a fine.

1 (i) Nothing in this section prevents any prosecuting officer of the State of North
2 Carolina from proceeding against a person who violates this Article on a prosecution charging
3 any degree of willful or culpable homicide."

4 **SECTION 5.** G.S. 95-174 reads as rewritten:

5 **"§ 95-174. Definitions.**

6 (a) "Chemical manufacturer" ~~shall mean~~ means a manufacturing facility classified in
7 ~~Standard Industrial Classification (SIC) Codes 20 through 39~~ North American Industry
8 Classification System (NAICS) Codes 31 through 33 where chemicals are produced for use or
9 distribution in North Carolina.

10 (b) "Chemical name" ~~shall mean~~ means the scientific designation of a chemical in
11 accordance with the nomenclature system developed by the International Union of Pure and
12 Applied Chemistry (IUPAC), or the Chemical Abstracts Service (CAS) rules of nomenclature
13 or a name which will clearly identify the chemical for the purpose of conducting a hazard
14 evaluation.

15 (c) "Common name" ~~shall mean~~ means any designation or identification such as a code
16 name, code number, trade name, brand name or generic name used to identify a chemical other
17 than by its chemical name.

18 (d) "Distributor" ~~shall mean~~ means any business, other than a chemical manufacturer or
19 importer, which supplies hazardous chemicals to other distributors or to purchasers.

20 (e) "Employee" ~~shall mean~~ means any person who is employed by an employer under
21 normal operating conditions.

22 (f) "Employer" means a person engaged in business who has employees, including the
23 State and its political subdivisions but excluding an individual whose only employees are
24 domestic workers or casual laborers who are hired to work at the individual's residence.

25 (g) "Facility" ~~shall mean~~ means one or more establishments, factories, or buildings
26 located at one contiguous site in North Carolina.

27 (h) "Fire Chief" ~~shall mean~~ means Fire Chief or Fire Marshall, or Emergency Response
28 Coordinator in the absence of a Fire Chief or Fire Marshall for the appropriate local fire
29 department.

30 (i) Repealed by Session Laws 1987, c. 489, s. 1.

31 (j) "Fire Department" ~~shall mean~~ means the fire department having jurisdiction over the
32 facility.

33 (k) "Hazardous chemical" ~~shall mean~~ means any element, chemical compound or
34 mixture of elements and/or compounds which is a physical hazard or health hazard as defined
35 in subsection (c) of the OSHNC Standard or a hazardous substance as defined in standards
36 adopted by the Occupational Safety and Health Division of the North Carolina Department of
37 Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

38 (l) "Hazardous Substance List" ~~shall mean~~ means the list required by G.S. 95-191.

39 (m) "Hazardous substance trade secret" means any formula, plan, pattern, device,
40 process, production information, or compilation of information, which is not patented, which is
41 known only to the employer, the employer's licensees, the employer's employees, and certain
42 other individuals, and which is used or developed for use in the employer's business, and which
43 gives the employer possessing it the opportunity to obtain a competitive advantage over
44 businesses who do not possess it, or the secrecy of which is certified by an appropriate official
45 of the federal government as necessary for national defense purposes. The chemical name and
46 Chemical Abstracts Service number of a substance shall be considered a trade secret only if the
47 employer can establish that the identity or composition of the substance cannot be readily
48 ascertained without undue expense by analytical techniques, laboratory procedures, or other
49 lawful means available to a competitor.

50 (n) "Label" ~~shall mean~~ means any written, printed, or graphic material displayed on or
51 affixed to containers of hazardous chemicals.

1 (o) "Manufacturing facility" ~~shall mean~~ means a facility classified in ~~SIC Codes 20~~
2 ~~through 39~~ NAICS Codes 31 through 33 which manufactures or uses a hazardous chemical or
3 chemicals in North Carolina.

4 (p) ~~"Material Safety"~~ Safety Data Sheets or ~~"MSDS"~~ "SDS" ~~shall mean~~ means chemical
5 information sheets adopted by the Occupational Safety and Health Division of the North
6 Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina Administrative
7 Code (13 NCAC 7).

8 (q) "Nonmanufacturing facility" ~~shall mean~~ means any facility in North Carolina other
9 than a facility in ~~SIC Code 20 through 39~~, NAICS Codes 31 through 33, the State of North
10 Carolina (and its political subdivisions) and volunteer emergency service organizations whose
11 members may be exposed to chemical hazards during emergency situations.

12 (r) "OSHNC Standard" ~~shall mean~~ means the current Hazard Communication Standard
13 adopted by the Occupational Safety and Health Division of North Carolina Department of
14 Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

15 (s) "Storage and Container" ~~shall have~~ has the ordinary meaning however it does not
16 include pipes used in the transfer of substances or the fuel tanks of ~~self-propelled~~ self-propelled
17 internal combustion vehicles."

18 **SECTION 6.** G.S. 95-191(a) reads as rewritten:

19 "(a) All employers who manufacture, process, use, store, or produce hazardous
20 chemicals, shall compile and maintain a Hazardous Substance List which shall contain all of
21 the following information for each hazardous chemical stored in the facility in quantities of 55
22 gallons or 500 pounds, whichever is greater:

23 (1) The chemical name or the common name used on the ~~MSDS~~ SDS or
24 container ~~label;~~ label.

25 (2) The maximum amount of the chemical stored at the facility at any time
26 during a year, using the following ranges:

27 Class A, which ~~shall include~~ includes quantities of less than 55 gallons or
28 500 ~~pounds;~~ pounds.

29 Class B, which ~~shall include~~ includes quantities of between 55 gallons to
30 550 gallons, and quantities of between 500 pounds and 5,000 ~~pounds;~~
31 ~~and~~ pounds.

32 Class C, which ~~shall include~~ includes quantities of between 550 gallons and
33 5500 gallons, and quantities between 5,000 pounds and 50,000 ~~pounds;~~
34 ~~and~~ pounds.

35 Class D, which ~~shall include~~ includes quantities of greater than 5500 gallons
36 or 50,000 ~~pounds;~~ ~~and~~ pounds.

37 (3) The area in the facility in which the hazardous chemical is normally stored
38 and to what extent the chemical may be stored at altered temperature or
39 pressure."

40 **SECTION 7.** G.S. 95-192 reads as rewritten:

41 "**§ 95-192. ~~Material safety~~ Safety data sheets.**

42 (a) Chemical manufacturers and distributors shall provide ~~material~~ safety data sheets
43 ~~(MSDS's)~~ (SDS's) to manufacturing and nonmanufacturing purchasers of hazardous chemicals
44 in North Carolina for each hazardous chemical purchased.

45 (b) Employers shall maintain the most current ~~MSDS~~ SDS received from manufacturers
46 or distributors for each hazardous chemical purchased. If an ~~MSDS~~ SDS has not been provided
47 by the manufacturer or distributor for chemicals on the Hazardous Substance List at the time
48 the chemicals are received at the facility, the employer shall request one in writing from the
49 manufacturer or distributor within 30 days after receipt of the chemical. If the employer does
50 not receive an ~~MSDS~~ SDS within 30 days after his written request, he shall notify the

1 Commissioner of Labor of the failure by manufacturer or distributor to provide the
2 ~~MSDS;SDS.~~"

3 **SECTION 8.** G.S. 95-194 reads as rewritten:

4 "**§ 95-194. Emergency information.**

5 ...

6 (d) Employers shall provide to the Fire Chief, upon written request of the Fire Chief, a
7 copy of the ~~MSDS;SDS~~ for any chemical on the Hazardous Substance List.

8 ...

9 (f) The Fire Chief shall make information from the Hazardous Substance List, the
10 emergency response plan, and ~~MSDS's~~SDS's available to members of the Fire Department
11 having jurisdiction over the facility and to personnel responsible for preplanning emergency
12 response, police, medical or fire activities, but shall not otherwise distribute or disclose (or
13 allow the disclosure of) information not available to the public under G.S. 95-208. Such
14 persons receiving such information shall not disclose the information received and shall use
15 such information only for the purpose of preplanning emergency response, police, medical or
16 fire activities.

17"

18 **SECTION 9.** G.S. 95-208 reads as rewritten:

19 "**§ 95-208. Community information on hazardous chemicals.**

20 (a) Any person in North Carolina may request in writing from the employer a list of
21 chemicals used or stored at the facility. The request shall include the name and address of the
22 person making the request and a statement of the purpose for the request. If the person is
23 requesting the list on behalf of or for the use of an organization, partnership, or corporation, he
24 shall also disclose the name and business address of such organization, partnership, or
25 corporation. The request may include, at the option of the employer, a statement to the effect
26 that the information will be used only for the purpose stated. The employer shall furnish to the
27 person making the request a list containing, at a minimum, all chemicals included on the
28 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an
29 ~~MSDS;SDS~~ for each chemical for which an ~~MSDS-SDS~~ is available and is requested. Whenever
30 an employer has withheld a chemical under the provisions of G.S. 95-197 from the information
31 provided under G.S. 95-208, the employer must state that the information is being withheld
32 and, upon request, must provide the ~~MSDS-SDS~~ for the chemical. Additional information may
33 be furnished to the person making the request at the option of the employer. The employer shall
34 provide, at a fee not to exceed the cost of reproducing the materials, the materials requested
35 within 10 working days of the date the employer receives the written request for information.

36 (b) If the employer fails or refuses to provide the information required under subsection
37 (a) of this section, the person requesting the information may request in writing that the
38 Commissioner of Labor review the request. The Commissioner of Labor may conduct an
39 investigation in the same manner as provided in G.S. 95-195(b). Following the investigation,
40 the Commissioner shall make appropriate findings. Either the employer or the person making
41 the initial request may request an administrative hearing pursuant to Chapter 150B of the
42 General Statutes. This request for an administrative hearing shall be submitted to the
43 Commissioner of Labor within 30 days following the Commissioner making his findings. The
44 Commissioner of Labor shall within 30 days of receiving the request hold an administrative
45 hearing to consider the request for information under subsection (a) of this section. This
46 hearing shall be held as provided for in G.S. Chapter 150B, Article 3. If the Commissioner of
47 Labor finds that the request complies with the requirements of subsection (a) of this section, the
48 Commissioner of Labor shall direct that the employer provide to the person making the request
49 a list containing, at a minimum, all chemicals used or stored at the facility included on the
50 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an
51 ~~MSDS;SDS~~ for each chemical for which an ~~MSDS-SDS~~ is available and is requested and may

1 in his discretion assess civil penalties as provided in G.S. 95-195(c); provided that it shall be a
2 defense to such disclosure if the employer proves that the information has been requested
3 directly or indirectly by, or in behalf of, a competitor of the employer, or that such information
4 is a Hazardous Substance Trade Secret, or that the request did not comply with the
5 requirements of subsection (a) of this section.

6 (c) Any order by the Commissioner of Labor under subsection (b) of this section shall
7 be subject to judicial review as provided under G.S. Chapter 150B, Article 4."

8 **SECTION 10.** G.S. 95-216 reads as rewritten:

9 "**§ 95-216. Exemptions.**

10 Notwithstanding any language to the contrary, the provisions of this Article shall not apply
11 to chemicals in or on any of the following:

- 12 (1) Hazardous substances while being transported in interstate commerce into or
13 through this ~~State~~; State.
- 14 (2) Products intended for personal consumption by employees in the
15 ~~facilities~~; facilities.
- 16 (3) Retail food sale establishments and all other retail trade establishments in
17 ~~Standard Industrial Classification Codes 53 through 59, North American~~
18 Industry Classification System Codes 44 through 45, exclusive of processing
19 and repair areas, except that the employer must comply with the provisions
20 of G.S. 95-194(a)(i); G.S. 95-194(a)(i).
- 21 (4) Any food, food additive, color additive, drug or cosmetic as such terms are
22 defined in the Federal Food, Drug and Cosmetic Act (~~21 U.S.C. 301 et~~
23 ~~seq.~~); (21 U.S.C. 301, et seq.).
- 24 (5) A laboratory under the direct supervision or guidance of a technically
25 qualified individual provided that:
 - 26 a. Labels on containers of incoming chemicals shall not be removed or
27 defaced;
 - 28 b. ~~MSDS's~~ SDS's received by the laboratory shall be maintained and
29 made accessible to employees and students;
 - 30 c. The laboratory is not used primarily to produce hazardous chemicals
31 in bulk for commercial purposes; and
 - 32 d. The laboratory operator complies with the provisions of
33 ~~G.S. 95-194(a)(i); and~~ G.S. 95-194(a)(i).
- 34 (6) Any farming operation which employs 10 or fewer full-time employees,
35 except that if any hazardous chemical in an amount in excess of 55 gallons
36 or 500 pounds, whichever is greater, is normally stored at the farming
37 operation, the employer must comply with the provisions of
38 ~~G.S. 95-194(a)(i); and~~ G.S. 95-194(a)(i).
- 39 (7) Any distilled spirits, tobacco, and untreated wood ~~products~~; and products.
- 40 (8) Medicines used directly in patient care in health care facilities and health
41 care facility laboratories."

42 **SECTION 11.** G.S. 95-255(c) reads as rewritten:

43 "~~(e) The Commissioner shall notify an employer when his experience rate modifier falls~~
44 ~~below 1.5. An employer subject to the provisions of G.S. 95-252 shall notify the Commissioner~~
45 ~~if he no longer employs 11 or more employees and has discontinued or will discontinue the~~
46 ~~safety and health committee."~~

47 **SECTION 12.** This act becomes effective July 1, 2017.