

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 429
RATIFIED BILL

AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE
LABOR LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL AND CONFORMING CHANGES

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

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

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

A Commissioner of Labor.

A Division of Standards and Inspections.

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

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

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

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

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

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, ~~with approval of said director of division,~~ as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Department of Administration. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workers' Compensation.
- (2) To make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said Commissioner and the work of the Department; ~~such rules and regulations to be made subject to the approval of the Governor, Department.~~
- (3) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating house or mine, and interrogate any



person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within 30 days of the receipt of said list of questions.

- (4) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the Commissioner of Labor.
- (5) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.
- (6) To enforce the provisions of this section and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating houses, and commercial institutions in this State before any court of competent jurisdiction. It shall be the duty of the district attorney of the proper district upon the request of the Commissioner of Labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said Commissioner of Labor to enforce."

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

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

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

- (1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.
- (2) To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.
- (3) To enforce rules adopted under authority of this Article.
- (4) To inspect boilers and pressure vessels covered under this Article.
- (5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.
- (6) To enjoin violations of this Article in the civil and criminal courts of this State.
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.
- (12) To establish reasonable fees for the examination and certification of inspectors.

- (13) ~~To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.~~
- (14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.
- (15) To order the payment of civil penalties provided by this section.
- (16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article.
- (17) To grant exceptions from the requirements of the rules and regulations adopted under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
- (18) To devise and proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a commission as inspectors of boilers and pressure vessels in this State.
- (19) To act as proctors during the administration of the National Board commissioning examination.
- (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

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

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

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

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

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

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

taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

PART II. STATUTORY UPDATING/REPEALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 95-69.16. Inspection certificate required.

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

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

PART III. YOUTH EMPLOYMENT EXCEPTION FOR POINT OF SALE FOR OFF-PREMISES CONSUMPTION

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

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

(1) Under 16 years of age on the premises for any purpose, unless the youth is at least 14 years of age and each of the following conditions is met:

- a. The person obtains the written consent of a parent or guardian of the youth.
 - b. The youth is employed to work on the outside grounds of the premises for a purpose that does not involve the preparation, serving, dispensing, or sale of alcoholic beverages.
- (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages, including mixed beverages, except for sale of alcoholic beverages at the point-of-sale for only off-premises consumption."

PART IV. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 12th day of August, 2015.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____, m. this _____ day of _____, 2015