

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 123
SENATE BILL 506

AN ACT TO MAKE CLARIFYING, TECHNICAL CHANGES TO VARIOUS
PUBLIC HEALTH LAWS, AND TO ESTABLISH A MINIMUM BURIAL
DEPTH FOR HUMAN INTERMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 143 of the General Statutes is repealed.

Sec. 2. G.S. 130A-4(b) reads as rewritten:

"(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules. ~~However, the preceding sentence is inapplicable to the exercise of enforcement and permit authority under G.S. 130A-277.~~"

Sec. 3. G.S. 130A-277 reads as rewritten:

"§ 130A-277. Duties of the Department.

The Department shall enforce the rules of the Commission governing Grade 'A' milk by making sanitary inspections of Grade 'A' dairy farms, Grade 'A' processing plants, Grade 'A' milk haulers and Grade 'A' distributors; by determining the quality of Grade 'A' milk; and by evaluating methods of handling Grade 'A' milk to insure compliance with the provisions of the rules of the Commission. The Department shall issue permits for the operation of Grade 'A' dairy farms, processing plants and haulers in accordance with the provisions of the rules of the Commission and shall suspend or revoke permits for violations in accordance with the rules. ~~Upon request by a local board of health the Department shall delegate enforcement and permit authority to the local health department."~~

Sec. 4. G.S. 113A-105(b) reads as rewritten:

"(b) The Coastal Resources Advisory Council shall consist of not more than 47 members appointed or designated as follows:

- (1) Two individuals designated by the Secretary from among the employees of his Department;
- (1a) The Secretary of the Department of Commerce or his designee;
- (2) The Secretary of the Department of Administration or his designee;
- (3) The Secretary of the Department of Transportation and Highway Safety or his designee, and one additional member selected by him from his Department;
- (4) The State Health ~~Director~~, Director or the designee thereof;
- (5) The Commissioner of Agriculture or his designee;

- (6) The Secretary of the Department of Cultural Resources or his designee;
- (7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;
- (8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;
- (9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;
- (10) Three members selected by the Commission who are marine scientists or technologists;
- (11) One member who is a local health director selected by the Commission upon the recommendation of the Secretary."

Sec. 5. G.S. 130A-33.31(a) reads as rewritten:

"(a) The Commission of Anatomy shall consist of five members, one representative from the field of mortuary science, ~~from the membership of the State Board of Mortuary Science~~, and one each from The University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, and Bowman Gray School of Medicine. The dean of each school shall make recommendations and the Secretary of Environment, Health, and Natural Resources shall appoint from such recommendations a member to the Commission. The president of the State Board of Mortuary Science shall appoint the representative from the field of mortuary science ~~one member from that Board~~ to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four years. The Secretary shall determine the terms of the original members."

Sec. 6. G.S. 130A-452 reads as rewritten:

"§ 130A-452. Local air pollution control programs.

(a) The Department may authorize any local air pollution control program to adopt and enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation if the local air pollution control ~~that~~ program is certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112. The Department shall authorize any local air pollution control program to adopt and enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation if the local air pollution control program was certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local air pollution control program shall continue to be authorized by the Department to enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation so long as the local air pollution control program maintains its certification under G.S. 143-215.112 and complies with any rules adopted by the Commission for Health Services pursuant to subsection (b) of this section. Any local air pollution control program authorized to adopt and enforce the asbestos NESHAP for demolition and renovation shall have the authority to enforce the asbestos NESHAP for demolition and

renovation under G.S. 130A-18, 130A-22(b1), 130A-22(b2), and 130A-25. Judicial review of an administrative penalty assessed under G.S. 130-22(b1) and G.S. 130A-22(b2) shall be as provided in G.S. 143-215.112(d2)(1) and Article 4 of Chapter 150B of the General Statutes.

(b) The Commission for Health Services shall adopt rules regarding the authorization of local air pollution control programs to enforce the asbestos NESHAP ~~for renovations and demolitions.~~ demolition and renovation."

Sec. 7. G.S. 130A-444 reads as rewritten:

"§ 130A-444. Definitions.

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

- (1) 'AHERA' means Title II, Asbestos Hazard Emergency Response Act of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 ('ASHARA').
- (2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.
- (3) 'Asbestos containing material' means material which contains more than one percent (1%) asbestos, including friable asbestos containing material and nonfriable asbestos containing material.
- (3a) ~~'Asbestos NESHAP for renovations and demolitions' means Title II, National Emission Standards for Hazardous Air Pollutants, specifically those regulations pertaining to regulation of asbestos in renovations and demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as amended.~~ 'demolition and renovation' means that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 CFR §§ 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).
- (4) 'Abatement' means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing material. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.
- (5) 'Friable' means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.
- (6) 'Management' means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.

- (6a) 'Person' means an individual, a corporation, a company, an association, a partnership, a unit of local government, a State or federal agency, or any other legal entity.
- (7) 'Public area' means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590 ~~(codified as amended in scattered sections of U.S.C.)~~ 1590, 29 U.S.C. § 651, et seq., as amended.
- (8) 'Removal' means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.
- (9) 'Residence' means any single family dwelling or any multi-family dwelling of fewer than 10 units."

Sec. 8. G.S. 130A-447(c) reads as rewritten:

"(c) The following persons are exempt from the accreditation requirements:

- (1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C ~~(1993)-(1994)~~.
- (2) A person performing asbestos containing material management activities in his personal residence.
- (3) Governmental regulatory personnel performing inspections of asbestos containing material management activities solely for the purpose of determining compliance with applicable statutes or regulations.
- (4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C ~~(1993)-(1994)~~."

Sec. 9. G.S. 143-215.107(a) reads as rewritten:

"(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission. This subdivision does not apply to ~~asbestos NESHAP for renovations and demolitions, defined in G.S. 130A-444, that are subject to regulation by the Commission for Health Services under Article 19 of Chapter 130A of the General Statutes.~~ that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. §§ 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).
- (6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.
- (8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.
- (9) To regulate the oxygen content of gasoline, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules adopted under this subdivision may specify standards for a particular area of the State that differ from standards specified for other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality Standards, or to meet other federal requirements.

Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

- (10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency."

Sec. 10. G.S. 130A-440(a) reads as rewritten:

"(a) Every child in this State entering kindergarten in the public schools shall receive a health assessment. The health assessment shall be made ~~between the first of January prior to school entry and no more than 12 months prior to~~ the date of school entry. No child shall attend kindergarten unless a health assessment transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the health assessment required by this section, is presented to the school principal. The medical provider, or the parent, guardian, or person in loco parentis, must present a completed health assessment transmittal form to the principal of the school on or before the child's first day of attendance. If a health assessment transmittal form is not presented on or before the first day, the principal shall present a notice of deficiency to the parent, guardian, or responsible person. The parent, guardian, or responsible person shall have 30 calendar days from the first day of attendance to present the required health assessment transmittal form for the child. Upon termination of 30 calendar days, the principal shall not permit the child to attend the school until the required health assessment transmittal form has been presented."

Sec. 11. Part 2 of Article 8 of Chapter 130A is repealed.

Sec. 12. G.S. 130A-247 reads as rewritten:

"§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

- (1) 'Establishment' means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, ~~or~~ (iv) a bed and breakfast ~~inn~~, inn, or (v) an establishment that prepares and sells meat food products as defined in G.S. 106-549.15(14) or poultry products as defined in G.S. 106-549.51(26).
- (1a) 'Permanent house guest' means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.
- (2) 'Private club' means an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1).
- (3) 'Regular boarder' means a person who receives food for periods of a week or longer.

- (4) 'Establishment that prepares or serves drink' means a business or other entity that puts together, portions, sets out, or hands out drinks in unpackaged portions using containers that are reused on the premises rather than single-service containers.
- (5) 'Establishment that prepares or serves food' means a business or other entity that cooks, puts together, portions, sets out, or hands out food in unpackaged portions for human consumption.
- (6) 'Bed and breakfast inn' means a business of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine but not more than 23 persons per night for a period of less than one week, and that:
 - a. Does not serve food or drink to the general public for pay;
 - b. Serves only the breakfast meal, and that meal is served only to overnight guests of the business;
 - c. Includes the price of breakfast in the room rate; and
 - d. Is the permanent residence of the owner or the manager of the business."

Sec. 13. (a) The catch line to G.S. 130A-248 reads as rewritten:

"§ 130A-248. Regulation of ~~restaurants and hotels.~~ food and lodging establishments.

(b) G.S. 130A-248(a) reads as rewritten:

"(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of ~~restaurants, school cafeterias, summer camps, food or drink stands, mobile food units, pushcarts, and other establishments that prepare or serve food or drink for pay.~~ establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private club as provided in G.S. 130A-247(2)."

(c) G.S. 130A-248(a3) reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

- (1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;
- (2) ~~The adequacy of.~~ Requirements for:
 - a. Lighting and water supply;
 - b. Wastewater collection, treatment, and disposal facilities; and
 - c. ~~Lavatories,~~ Lavatory and toilet facilities, food protection, and waste disposal;
- (3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;

- (3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
- (4) The methods of food preparation, transportation, catering, storage, and serving;
- (5) The health of employees;
- (6) Animal and vermin control; and
- (7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, 'food samples' means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading facilities, such as Grade A, Grade B, and Grade C."

(d) G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Human ~~Resources-Resources~~, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of twenty-five dollars (\$25.00). The Department shall charge an additional twenty-five dollar (\$25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local public health programs and activities. No more than thirty-three and one-third percent (33-1/3%) of the fees collected may be used to support State health programs and activities."

Sec. 14. G.S. 130A-250 reads as rewritten:

"§ 130A-250. Exemptions.

The following shall be exempt from this Part:

- (1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units;
- (2) Condominiums;
- (3) Establishments that prepare or serve food or provide lodging to regular boarders or permanent house guests only;

- (4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided these homes are not bed and breakfast homes or bed and breakfast inns;
- (5) Private clubs;
- (6) Curb markets operated by the State Agricultural Extension Service;
- (7) Establishments that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days; ~~and~~
- (8) Establishments that put together, portion, set out, or hand out only drinks using single service containers that are not reused on the ~~premises. premises; and~~
- (9) Markets where meat food products or poultry products are prepared and sold and which are under the continuous inspection by the North Carolina Department of Agriculture or the United States Department of Agriculture."

Sec. 15. G.S. 130A-23(d) reads as rewritten:

"(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to ~~G.S. 130A-228 or G.S. 130A-248~~ shall be revoked immediately for failure of ~~a market or a facility~~ an establishment to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or ~~revocation and shall immediately file a petition for a contested case in accordance with~~ revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23."

Sec. 16. Article 13A of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-210.25A. Minimum burial depth.

When final disposition of a human body entails interment, the top of the uppermost part of the burial vault or other encasement shall be a minimum of 18 inches below the ground surface. This section does not apply to burials where no part of the burial vault or other encasement containing the body is touching the ground."

Sec. 17. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives