

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

SESSION LAW 2005-453  
HOUSE BILL 768

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM  
BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE  
WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 95-69.9 reads as rewritten:

**"§ 95-69.9. Definitions.**

(a) The term "board" shall mean the North Carolina Board of Boiler and Pressure Vessel ~~Rules;~~Rules.

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum ~~for use externally to itself by the direct or indirect application of heat from the combustion of fuels, or from electricity or nuclear energy. This heat. The~~ term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units ~~are separate from processing systems and~~ are complete within ~~themselves;~~themselves.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of ~~Labor;~~Labor.

(d) ~~The term "Director" shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;~~

(e) The term "inspection certificate" or "certificate of inspection" shall mean certification by the ~~Director~~Chief Inspector that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this ~~Article;~~Article.

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure ~~vessels;~~vessels.

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler".

(h) The term "Chief Inspector" shall mean the individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

(i) The term "Deputy Inspector" shall mean any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(j) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

(k) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision of the State or any unit of local government."

**SECTION 2.** G.S. 95-69.10 reads as rewritten:

**"§ 95-69.10. Application of Article; exemptions.**

(a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, other public buildings, and water supplies. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned ~~and/or or~~ operated by the federal ~~government~~government, unless the agency in question has asked for coverage by this Article.
- (2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.
- (3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.
- (5) Pressure vessels used for transportation or storage of liquified petroleum gas.
- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.
- (8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one half cubic feet in volume and 600 PSIG~~

~~pressure; or an inside diameter of six inches with no limitations on pressure.~~ Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:

- a. Five cubic feet in volume and 250 psig.
  - b. Three cubic feet in volume and 350 psig.
  - c. One and one-half cubic feet in volume and 600 psig.
  - d. An inside diameter of six inches with no limitation on pressure.
- (9) ~~Pressure vessels operating at a working pressure not exceeding 15 PSIG pressure-psig.~~
- (10) ~~Pressure vessels with a nominal water capacity of not exceeding 120 gallons or less and containing water under pressure at ambient temperature, temperatures not exceeding 120°F, including those containing air, the compression of which serves as a cushion.~~
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.
- (12) Repealed by Session Laws 1985, c. 620, s. 2.
- (13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:
- a. There is no drum, header, or other steam space.
  - b. No steam is generated within the coil.
  - c. Maximum 1 inch tube size.
  - d. Maximum 3/4 inch nominal pipe size.
  - e. Maximum 6 gallon nominal water storage capacity.
  - f. ~~Water temperature of 350 degrees fahrenheit.~~ 350°F.
- (14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.
- (15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.
- (16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.
- (17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:
- a. There is no drum, header, or other steam space.
  - b. No steam is generated within the coil.
  - c. Maximum one-inch tube size.
  - d. Maximum three-quarter-inch nominal pipe size.
  - e. Maximum six-gallon nominal water storage capacity.

- f. Water temperature not to exceed 250°F.
- g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
- h. Maximum pressure of 260 psig.
- (18) Toy boilers, if all of the following apply:
  - a. The water containing volume of the boiler is less than one quart.
  - b. The operating pressure does not exceed 15 psig.
  - c. The maximum outside diameter of the shell is no greater than six inches.
  - d. The boiler is manually fired by solid fuels.
- (19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper pressure relief devices.
- (20) Carbon dioxide tanks used in beverage dispensing service.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 ~~BTU-HR;~~Btu/hr or 58.6 kW.
- (2) ~~Water temperature of 200 degrees F;~~
- (3) Nominal water capacity of 120 ~~gallons;~~gallons.

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(d) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1981, that:

- (1) Are of one-piece, ~~forged construction and have no weldments;~~unwelded, forged construction;
- (2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;
- (3) Are transferred into this State without a change of ownership; and
- (4) Are determined by the ~~Director~~Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

- (1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;
- (2) Are constructed before December 31, 1967, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Boiler and Pressure Vessel Code;

- (3) Are transferred into this State without a change of ownership; and
- (4) Are determined by the ~~Director~~Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

**SECTION 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 supervise the office of the Director of Boiler and Pressure Vessel Division.~~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."

**SECTION 4.** G.S. 95-69.12 reads as rewritten:

**~~"§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created; powers and duties. Boiler Safety Bureau established.~~**

~~There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day to day basis.~~

~~The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses of the Division.~~

There is established a Boiler Safety Bureau within the Department of Labor. The Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other employees that the Commissioner deems necessary to assist the Chief Inspector in administering the provisions of this Article and the rules adopted under this Article."

**SECTION 5.** G.S. 95-69.13 reads as rewritten:

**~~"§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.~~**

~~(a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the Commissioner, of which three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for~~

~~terms of five years each.~~ Commissioner for a term of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of ~~a~~ boiler inspection and insurance ~~company~~ companies authorized to insure boilers and pressure vessels within the State, one a representative of the ~~operating steam engineers~~ antique boiler owners and operators in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall serve as ~~chairman~~ chair. The Chief Inspector shall serve on the Board and in the absence of the Commissioner shall serve as chair.

(b) The Board shall meet at least twice annually and shall be responsible for:

(1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the standards of the American Society of Mechanical ~~Engineers and amendments and interpretations thereto made and approved by the council of the Society.~~ Engineers.

(2) Devise and ~~administer~~ proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a ~~certificate of competency as~~ commission as inspectors of boilers and pressure vessels in this State.

(2a) Act as proctors during the administration of the National Board commissioning examination.

(3) Issue, suspend, or revoke inspector's ~~commission to~~ 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.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established in accordance with Chapter 138 of the General Statutes."

**SECTION 6.** 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, may adopt, ~~modify~~ modify, or revoke ~~such~~ any rules and regulations governing the construction, installation, repair,

alteration, inspection, ~~use~~ use, and operation of boilers and pressure vessels as ~~he~~ 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 thereto, but to avoid unnecessary hardships that would result from requiring replacement of existing non-code tanks that meet minimum safety requirements where there is no danger to persons, such rules and regulations shall vary for hydropneumatic pressure vessels installed or operated by a community water system prior to January 1, 1986. of those engineering standards.

The procedure for the adoption, ~~modification~~ modification, or revocation of ~~such~~ the rules and regulations shall be ~~the same as that contained within~~ in accordance with the Administrative Procedure Act of North Carolina as the same appears in Chapter 150B of the General Statutes. Statutes, the Administrative Procedure Act."

**SECTION 7.** G.S. 95-69.15 reads as rewritten:

**"§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.**

(a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the ~~Director~~ Chief Inspector under this Article:

- (1) Boiler and Pressure Vessel ~~Inspector~~ Inspector or Deputy Inspector. – Shall be a qualified ~~individual~~ individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so ~~inspected;~~ inspected.
- (2) Special ~~Inspector~~ Inspector or Insurance Inspector. – Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person ~~and/or~~ or property or both from explosions and accidents involving boilers and pressure ~~vessels;~~ vessels. Special Inspectors shall not include employees of private contract inspection agencies.
- (3) Owner-User Inspectors. – Shall be a qualified individual employed on a full-time basis by a company operating ~~boilers or~~ pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of ~~boilers and~~ pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. – Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating ~~boilers and~~ pressure vessels or both for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a ~~certificate of competency~~ commission from the National Board.

A North Carolina commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to

~~the Director.~~ Chief Inspector. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

A person seeking a commission from this State to conduct in-service inspections of boilers and pressure vessels must take and pass an examination on this Article and the rules adopted pursuant to this Article prior to receiving the commission. Any person who has had a commission in this State but who has been inactive for more than one year must take or retake and pass the State examination before conducting further in-service inspections of boilers and pressure vessels.

(c) ~~Qualifications for~~ Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board. To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:

- ~~(1) Have passed an examination provided and administered by the Board;~~  
or
- ~~(2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or~~
- ~~(3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and~~
- ~~(4) Continue in the employ of the company requesting the certificate of competency from the Board."~~

**SECTION 8.** 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 ~~an authorized~~ 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~~ 90 days grace period may be granted beyond the certificate expiration date."

**SECTION 9.** G.S. 95-69.17 reads as rewritten:

**"§ 95-69.17. ~~Administrative and judicial review of decisions.~~ Noncomplying devices; appeal.**

(a) ~~A final decision to suspend or revoke an inspector's commission or inspection certificate shall be made in accordance with Chapter 150B of the General Statutes.~~

(b) ~~A final decision to deny an application for a certificate of competency or to refuse to issue or renew an inspection certificate shall be made in accordance with~~

~~Chapter 150B of the General Statutes. In a contested case under this subsection, the decision of the Director shall not be stayed pending administrative review.~~

~~(e) Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision in a contested case.~~

~~(a) If the Commissioner determines that a boiler or pressure vessel is subject to the provisions of this Article and that the operation of the boiler or pressure vessel is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the Commissioner may immediately order in writing that the use of the boiler or pressure vessel be stopped or limited until the Commissioner determines that the boiler or pressure vessel has been made safe for operation.~~

~~(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.~~

~~(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."~~

SECTION 10. G.S. 95-69.18 reads as rewritten:

"§ 95-69.18. ~~Inspection certificates required; misrepresentation as inspector.~~ **Operation without inspection certificate; operation not in compliance with this Article; operation after nonissuance or revocation of certificate.**

~~It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars (\$1,000).~~

~~Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a Class 2 misdemeanor.~~

~~(a) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article without a valid inspection certificate unless the absence of a valid inspection certificate is the result of the Commissioner's failure to inspect the device.~~

~~(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.~~

~~(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."~~

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

**"§ 95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any such boiler or pressure vessel is so operated or used.

(c) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

**SECTION 12.** Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

**"§ 95-69.20. Violations; criminal penalties.**

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

**SECTION 13.** G.S. 95-107 reads as rewritten:

**"§ 95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the

equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

**SECTION 14.** G.S. 95-108 reads as rewritten:

**"§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

**SECTION 15.** G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

- (1) The certificate requirements of subsection (a) of this section.
- (2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.
- (3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

**SECTION 16.** G.S. 95-25.8 reads as rewritten:

**"§ 95-25.8. Withholding of wages.**

(a) An employer may withhold or divert any portion of an employee's wages when:

- (1) The employer is required or empowered to do so by State or federal ~~law, or law;~~
- (2) ~~The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~
  - a. When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the ~~authorization;~~ authorization; or
  - (3)~~b.~~ When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the deduction. Prior to any deductions being made under

this section, the employee must (i) receive advance written notice of the actual amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing. the authorization need not specify a dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made.

(b) The withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

- (1) In nonovertime workweeks, an employer may reduce wages to the minimum wage level.
- (2) In overtime workweeks, employers may reduce wages to the minimum wage level for nonovertime hours.
- (3) No reductions may be made to overtime wages owed.

(c) In addition to complying with the requirements in subsections (a) and (b) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required.

(d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an employee as a result of a miscalculation or other bona fide error, advances of wages to an employee or to a third party at the employee's request, and the principal amount of loans made by an employer to an employee are considered prepayment of wages and may be withheld or deducted from an employee's wages. Deductions for interest and other charges related to loans by an employer to an employee shall require written authorization in accordance with subsection (a), above.

(e) Notwithstanding subsections (a) and (c), above, if criminal process has issued against an employee, an employee has been indicted, or an employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property, an employer may withhold or divert a portion of the employee's wages in order to recoup the amount of the cash shortage, inventory shortage, or damage to the employer's property, without the written authorization required by this section, but the amount of such withholdings shall comply with the provisions of subsection (b) of this section. If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.

(f) For purposes of this section, a written authorization or written notice may be in the form of an electronic record in compliance with Article 40 of Chapter 66 (the Uniform Electronic Transactions Act).

(g) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

**SECTION 17.** G.S. 95-25.9 is repealed.

**SECTION 18.** G.S. 95-25.10 is repealed.

**SECTION 19.** G.S. 95-25.11 reads as rewritten:

**"§ 95-25.11. Employers' remedies preserved.**

(a) ~~The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply if criminal process has issued against the employee, if the employee has been indicted, or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property.~~

~~If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.~~

(b) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

**SECTION 20.** G.S. 95-25.12 reads as rewritten:

**"§ 95-25.12. Vacation pay plans.**

No employer is required to provide vacation pay plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture."

**SECTION 21.** G.S. 95-25.13(3) reads as rewritten:

"(3) Notify ~~its~~ employees, in writing or through a posted notice maintained in a place accessible to its employees, ~~of at least 24 hours prior to any changes in promised wages prior to the time of such changes except that wages~~ wages. Wages may be retroactively increased without the prior notice required by this subsection; and".

**SECTION 22.** G.S. 95-25.15(a) reads as rewritten:

"(a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or ~~his~~ the Commissioner's designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this

subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered ~~establishment~~, ~~establishment~~, and then shall investigate that specific complaint only."

**SECTION 23.** G.S. 95-25.17 reads as rewritten:

**"§ 95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article. The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article.~~"

**SECTION 24.** This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24<sup>th</sup> day of August, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 5:40 p.m. this 29<sup>th</sup> day of September, 2005