

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 768
Committee Substitute Favorable 5/9/05
Committee Substitute #2 Favorable 5/18/05

Short Title: 2005 Omnibus Labor Law Changes.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM
3 BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE
4 WAGE AND HOUR ACT OF NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

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

7 "§ 95-69.9. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

17 **"§ 95-69.10. Application of Article; exemptions.**

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

27 (b) This Article shall not apply to:

28 (1) Boilers and pressure vessels owned ~~and/or~~ or operated by the federal
29 ~~government.~~ government, unless the agency in question has asked for
30 coverage by this Article.

31 (2) Pressure vessels used for transportation or storage of compressed gases
32 when constructed in compliance with the specifications of the United
33 States Department of Transportation and when charged with gas
34 marked, maintained, and periodically requalified for use, as required
35 by appropriate regulations of the United States Department of
36 Transportation.

37 (3) Portable pressure vessels used for agricultural purposes only or for
38 pumping or drilling in an open field for water, gas or coal, gold, talc,
39 or other minerals and metals.

40 (4) Boilers and pressure vessels which are located in private residences or
41 in apartment houses of less than six families.

42 (5) Pressure vessels used for transportation or storage of liquified
43 petroleum gas.

- 1 (6) Air tanks located on vehicles licensed under the rules and regulations
2 of other state authorities operating under rules and regulations
3 substantially similar to those of this State and used for carrying
4 passengers or freight within interstate commerce.
- 5 (7) Air tanks installed on right-of-way of railroads and used directly in the
6 operation of trains.
- 7 (8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250~~
8 ~~PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG~~
9 ~~pressure; or an inside diameter of six inches with no limitations on~~
10 ~~pressure.~~ Any of the following pressure vessels that do not exceed the
11 listed limitations if the vessel is not equipped with a quick actuating
12 closure:
- 13 a. Five cubic feet in volume and 250 psig.
14 b. Three cubic feet in volume and 350 psig.
15 c. One and one-half cubic feet in volume and 600 psig.
16 d. An inside diameter of six inches with no limitation on pressure.
- 17 (9) Pressure vessels operating at a working pressure not exceeding 15
18 ~~PSIG pressure.~~ psig.
- 19 (10) Pressure vessels with a nominal water capacity ~~of not exceeding 120~~
20 ~~gallons or less~~ and containing water under pressure at ~~ambient~~
21 ~~temperature,~~ temperatures not exceeding 120°F, including those
22 containing air, the compression of which serves as a cushion.
- 23 (11) Boilers and pressure vessels on railroad steam locomotives that are
24 subject to federal safety regulations.
- 25 (12) Repealed by Session Laws 1985, c. 620, s. 2.
- 26 (13) Coil-type hot water supply boilers, generally referred to as steam
27 jennies, where the water can flash into steam when released directly to
28 the atmosphere through a manually operated nozzle and where
29 adequate safety relief valves and controls are installed on them,
30 provided none of the following limitations are exceeded:
- 31 a. There is no drum, header, or other steam space.
32 b. No steam is generated within the coil.
33 c. Maximum 1 inch tube size.
34 d. Maximum 3/4 inch nominal pipe size.
35 e. Maximum 6 gallon nominal water storage capacity.
36 f. ~~Water temperature of 350 degrees fahrenheit.~~ 350°F.
- 37 (14) Pressure vessels containing water at a temperature not exceeding 110
38 degrees fahrenheit except that this provision shall not exclude
39 hydropneumatic pressure vessels from regulation.
- 40 (15) An air tank that does not exceed eight cubic feet in volume that is
41 installed on a service vehicle.
- 42 (16) Autoclaves in medical offices and hospitals that are less than five
43 cubic feet in volume, even if they are equipped with a quick actuating
44 closure.

1 (17) Coil-type hot water supply boilers of the instantaneous type where
2 adequate safety relief valves and controls are installed if none of the
3 following limitations are exceeded:

4 a. There is no drum, header, or other steam space.

5 b. No steam is generated within the coil.

6 c. Maximum one-inch tube size.

7 d. Maximum three-quarter-inch nominal pipe size.

8 e. Maximum six-gallon nominal water storage capacity.

9 f. Water temperature not to exceed 250°F.

10 g. Maximum heat input does not exceed 400,000 Btu/hr or 110
11 kW.

12 h. Maximum pressure of 260 psig.

13 (18) Toy boilers, if all of the following apply:

14 a. The water containing volume of the boiler is less than one
15 quart.

16 b. The operating pressure does not exceed 15 psig.

17 c. The maximum outside diameter of the shell is no greater than
18 six inches.

19 d. The boiler is manually fired by solid fuels.

20 (19) Pressure vessels associated with electrical apparatus in electrical
21 switchyards if the pressure vessels have proper pressure relief devices.

22 (20) Carbon dioxide tanks used in beverage dispensing service.

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

27 (1) Heat input of 200,000 ~~BTU-HR;~~ Btu/hr or 58.6 kW.

28 (2) ~~Water temperature of 200 degrees F;~~

29 (3) Nominal water capacity of 120 ~~gallons;~~ gallons.

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

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

34 (1) Are of one-piece, ~~forged construction and have no~~
35 ~~weldments;~~ unwelded, forged construction;

36 (2) Are constructed before January 1, 1981, and operating or could be
37 operated, under the laws of any state or Canadian Province that has
38 adopted one or more sections of the ASME Code;

39 (3) Are transferred into this State without a change of ownership; and

40 (4) Are determined by the ~~Director~~ Chief Inspector to be constructed
41 under standards substantially equivalent to those established by the
42 department at the time of transfer;

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

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

- 3 (1) Are manufactured from gray iron casting material, as specified by the
4 American Society for Testing and Materials, (ASTM) 48-60T/30;
5 (2) Are constructed before December 31, 1967, and operating or could be
6 operated, under the laws of any state or Canadian Province that has
7 adopted one or more sections of the ASME Boiler and Pressure Vessel
8 Code;
9 (3) Are transferred into this State without a change of ownership; and
10 (4) Are determined by the ~~Director~~ Chief Inspector to be constructed
11 under standards substantially equivalent to those established by the
12 department at the time of transfer;

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

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

18 **SECTION 3.** G.S. 95-69.11 reads as rewritten:

19 "**§ 95-69.11. Powers and duties of Commissioner.**

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

- 21 (1) To adopt, modify, or revoke rules governing the construction,
22 operation, and use of boilers and pressure vessels, including, where
23 necessary, requirements for fencing to prevent unauthorized persons
24 from coming in contact with boilers and pressure vessels or the
25 systems they are connected to.
26 (2) ~~To supervise the office of the Director of Boiler and Pressure Vessel~~
27 ~~Division.~~ To delegate to the Chief Inspector any powers, duties, and
28 responsibilities that the Commissioner determines will best serve the
29 public interest in the safe operation of boilers and pressure vessels, and
30 to supervise the Chief Inspector in the performance of those duties.
31 (3) To enforce rules adopted under authority of this Article.
32 (4) To inspect boilers and pressure vessels covered under this Article.
33 (5) To issue inspection certificates to those boilers and pressure vessels
34 found in compliance with this Article.
35 (6) To enjoin violations of this Article in the civil and criminal courts of
36 this State.
37 (7) To keep adequate records of the type, dimensions, age, conditions,
38 pressure allowed upon, location, and date of the last inspection of all
39 boilers and pressure vessels to which this Article applies.
40 (8) To require such periodic reports from inspectors, owners, and
41 operators of boilers and pressure vessels as he deems appropriate in
42 carrying out the purposes of this Article.
43 (9) To have free access, without notice, to any location in this State,
44 during reasonable hours, where a boiler or pressure vessel is being

1 built, installed, or operated for the purpose of ascertaining whether
2 such boiler or pressure vessel is built, installed, or operated in
3 accordance with the provisions of this Article.

4 (10) To investigate serious accidents involving boilers and pressure vessels
5 to determine the causes of the accidents, and to have full subpoena
6 powers in conducting the investigation.

7 (11) To establish reasonable fees for the inspection and issuance of
8 inspection certificates for boilers and pressure vessels that are in use.

9 (12) To establish reasonable fees for the examination and certification of
10 inspectors.

11 (13) To appoint qualified individuals to the Board of Boiler and Pressure
12 Vessel Rules.

13 (14) To perform inspections and audits relating to the construction and
14 repair of boilers and pressure vessels and to establish and collect fees
15 for these activities.

16 (15) To order the payment of civil penalties provided by this section.

17 (16) To require that before any boiler or pressure vessel that is subject to
18 this Article is transferred into the State, or is moved from one location
19 to another within the State, the owner or the owner's authorized agent
20 shall file with the Commissioner a written notice of intent to do so and
21 the type of device involved and provide a copy of the specifications,
22 previous inspection documents, or other information that the
23 Commissioner deems necessary to determine whether the boiler or
24 pressure vessel is in compliance with the provisions of this Article and
25 the rules adopted under this Article."

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

27 ~~"§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created;~~
28 ~~powers and duties.~~ **Boiler Safety Bureau established.**

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

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

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

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

2 "**§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment,**
3 **terms, compensation and duties.**

4 (a) There is hereby created the North Carolina Board of Boiler and Pressure
5 Vessels Rules consisting of nine members appointed by the ~~Commissioner, of which~~
6 ~~three shall be appointed for a term of one year, three for a term of two years, one for a~~
7 ~~term of three years, one for a term of four years, and one for a term of five years. At the~~
8 ~~expiration of their respective terms of office, their successors shall be appointed for~~
9 ~~terms of five years each.~~ Commissioner for a term of five years each. Of these nine
10 appointed members, one shall be a representative of the owners and users of steam
11 boilers within this State, one a representative of boiler manufacturers within this State,
12 one a representative of boilermakers within this State who has had not less than five
13 years' practical experience as a boilermaker, one shall be a representative of the owners
14 or users of pressure vessels within the State, one shall be a representative of the pressure
15 vessel manufacturers within the State, one a representative of a boiler inspection and
16 insurance ~~company~~ companies authorized to insure boilers and pressure vessels within
17 the State, one a representative of the ~~operating steam engineers~~ antique boiler owners
18 and operators in this State, one a contractor holding a Group I North Carolina Heating
19 License, and one a mechanical engineer on the faculty of a recognized engineering
20 college or a licensed professional engineer having boiler and pressure vessel experience.
21 The Commissioner of Labor shall serve as ~~chairman~~ chair. The Chief Inspector shall
22 serve on the Board and in the absence of the Commissioner shall serve as chair.

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

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

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

36 (2a) Act as proctors during the administration of the National Board
37 commissioning examination.

38 (3) Issue, suspend, or revoke inspector's ~~commission to~~ commissions as
39 inspectors of boilers and pressure vessels within this State. Whenever
40 action is taken under this section to suspend or revoke a commission,
41 the affected party shall be given notice of the availability of an
42 administrative hearing and of judicial review in accordance with
43 Chapter 150B of the General Statutes, the Administrative Procedure
44 Act.

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

4 **SECTION 6.** G.S. 95-69.14 reads as rewritten:

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

7 The Commissioner, after consultation with the Board, may adopt, ~~modify~~modify, or
8 revoke ~~such~~any rules and regulations governing the construction, installation, repair,
9 alteration, inspection, ~~use~~use, and operation of boilers and pressure vessels as ~~he~~the
10 Commissioner deems appropriate to insure the safe operation and avoidance of injury to
11 person or property from boilers and pressure vessels. The rules and regulations will
12 conform as nearly as possible to the standards of the American Society of Mechanical
13 Engineers and the amendments and interpretations thereto, but to avoid unnecessary
14 hardships that would result from requiring replacement of existing non-code tanks that
15 meet minimum safety requirements where there is no danger to persons, such rules and
16 regulations shall vary for hydropneumatic pressure vessels installed or operated by a
17 community water system prior to January 1, 1986, of those engineering standards.

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

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

23 "**§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates**
24 **of competency; inspector's commission.**

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

27 (1) Boiler and Pressure Vessel ~~Inspector~~Inspector or Deputy Inspector. –
28 Shall be a qualified ~~individual~~individual, employed by the
29 Department of Labor and appointed by the Commissioner, to assist in
30 conducting inspections under this Article and report on the suitability
31 of boilers and pressure vessels so inspected; inspected.

32 (2) Special ~~Inspector~~Inspector or Insurance Inspector. – Shall be a
33 qualified individual regularly employed by an insurance company
34 authorized to insure in this State against injury to person ~~and/or~~or
35 property or both from explosions and accidents involving boilers and
36 pressure ~~vessels; vessels~~. Special Inspectors shall not include
37 employees of private contract inspection agencies.

38 (3) Owner-User Inspectors. – Shall be a qualified individual employed on
39 a full-time basis by a company operating ~~boilers or~~ pressure vessels for
40 its own use and not for resale, and maintains an established inspection
41 program for periodic inspection of ~~boilers and~~ pressure vessels owned
42 or used by that company and where such inspection program is under
43 the supervision of one or more engineers having qualifications
44 satisfactory to the Commissioner.

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

7 A North Carolina commission authorizes an inspector to make inspections on boilers
8 and pressure vessels and report on the suitability of said boilers and pressure vessels to
9 the ~~Director~~ Chief Inspector. Those inspectors holding commissions as special
10 inspectors shall be limited to making inspections on boilers and pressure vessels insured
11 by their employer. Owner-user inspectors shall be limited to conducting inspections on
12 boilers and pressure vessels operated by their respective employers.

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

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

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

32 **SECTION 8.** G.S. 95-69.16 reads as rewritten:

33 **"§ 95-69.16. Inspection certificate required.**

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

41 No boiler or pressure vessel may be operated without an inspection certificate,
42 except pressure vessels being operated under an owner-user provision where
43 administrative procedures of equal safety and competency have been approved by the

1 Board and Commissioner. No more than ~~60~~90 days grace period may be granted
2 beyond the certificate expiration date."

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

4 "**§ 95-69.17. Administrative and judicial review of decisions. Noncomplying**
5 **devices; appeal.**

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

8 (b) ~~A final decision to deny an application for a certificate of competency or to~~
9 ~~refuse to issue or renew an inspection certificate shall be made in accordance with~~
10 ~~Chapter 150B of the General Statutes. In a contested case under this subsection, the~~
11 ~~decision of the Director shall not be stayed pending administrative review.~~

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

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

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

23 (c) Whenever action is taken under this section, the affected party shall be given
24 notice of the availability of an administrative hearing and of judicial review in
25 accordance with Chapter 150B of the General Statutes, the Administrative Procedure
26 Act."

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

28 "**§ 95-69.18. Inspection certificates required; misrepresentation as**
29 **inspector. Operation without inspection certificate; operation not in**
30 **compliance with this Article; operation after nonissuance or revocation**
31 **of certificate.**

32 ~~It shall be unlawful for any person, firm, partnership, association or corporation to~~
33 ~~operate or use any boiler or pressure vessel in this State, and to which this Article~~
34 ~~applies, without a valid inspection certificate issued by the North Carolina Department~~
35 ~~of Labor. Any person, firm, partnership, association or corporation found to be~~
36 ~~operating or using a boiler or pressure vessel without a valid inspection certificate shall~~
37 ~~be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars~~
38 ~~(\$1,000).~~

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

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

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

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

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

9 "**§ 95-69.19. Violations; civil penalties; appeals.**

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

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

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

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

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

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

39 "**§ 95-69.20. Violations; criminal penalties.**

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

43 (b) Any person knowingly making a material and false statement, representation,
44 or certification in any application, record, report, plan, or any other document filed or

1 required to be maintained pursuant to this Article or the rules adopted pursuant to this
2 Article shall be guilty of a Class 2 misdemeanor."

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

4 "**§ 95-107. Assessment and collection of fees; certificates of safe operation.**

5 The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5~~
6 ~~and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the
7 owner or operator of the equipment and may be collected at the time of inspection. If
8 the fees are not collected at the time of inspection, the Department must bill the owner
9 or operator of the equipment for the amount of the fee assessed for the inspection of the
10 equipment and the amount assessed is payable by the owner or operator of the
11 equipment upon receipt of the bill. Certificates of safe operation may be withheld by the
12 Department of Labor until such time as the assessed fees are collected."

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

14 "**§ 95-108. Disposition of fees.**

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

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

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

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

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

29 "**§ 95-25.8. Withholding of wages.**

30 ~~An employer may withhold or divert any portion of an employee's wages when:~~

- 31 (1) ~~The employer is required or empowered to do so by State or federal~~
32 ~~law, or~~
- 33 (2) ~~The employer has a written authorization from the employee which is~~
34 ~~signed on or before the payday for the pay period from which the~~
35 ~~deduction is to be made indicating the reason for the deduction. Two~~
36 ~~types of authorization are permitted:~~
 - 37 a. ~~When the amount or rate of the proposed deduction is known~~
38 ~~and agreed upon in advance, the authorization shall specify the~~
39 ~~dollar amount or percentage of wages which shall be deducted~~
40 ~~from one or more paychecks, provided that if the deduction is~~
41 ~~for the convenience of the employee, the employee shall be~~
42 ~~given a reasonable opportunity to withdraw the authorization;~~
 - 43 b. ~~When the amount of the proposed deduction is not known and~~
44 ~~agreed upon in advance, 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.

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

(1) The employer is required or empowered by State or federal law; or

(2) The employer has a written authorization from the employee which is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made indicating the reason for the deduction, and the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. The employee shall have the right to withhold such authorization. Provided, such authorization cannot be granted prior to the occurrence of the event for which the deduction is to be made. If the withholding or diversion of wages owed is made for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization before the deduction is made.

(b) In addition to complying with the requirements in subsection (a) 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 only 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. Any withholdings or diversions of an employee's wages pursuant to this subsection are considered to be for the employer's benefit and thus are subject to the limitations provided in subsection (c) of this section.

(c) In addition to the requirements of subsections (a) and (b) of this section, 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 during overtime work hours.

(d) Withholding or diversion of wages owed, for the convenience of employees, must be made pursuant to this section but are not limited in the amounts to be withheld."

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~~

1 of the General Statutes for a charge incident to a cash shortage, inventory shortage, or
2 damage to an employer's property.

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

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

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

9 "**§ 95-25.12. Vacation ~~pay~~ plans.**

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

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

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

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

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

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

32 With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as
33 those provisions apply to persons covered by the Fair Labor Standards Act, the
34 Commissioner or his designated representative shall have no authority under this
35 subsection unless the Commissioner or his designated representative has received a
36 complaint from an employee of the covered establishment. ~~establishment, and then shall~~
37 ~~investigate that specific complaint only."~~

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

39 "**§ 95-25.17. Wage and Hour Division established.**

40 ~~The State Employment Standards Division within the North Carolina Department of~~
41 ~~Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the~~
42 ~~Director of the State Employment Standards Division as the Director of the Wage and~~
43 ~~Hour Division and shall reappoint such other employees as he deems necessary to assist~~
44 ~~him in administering the provisions of this Article. The Commissioner of Labor is~~

1 charged with enforcement of this Article. The Commissioner shall appoint a Wage and
2 Hour Director and any other employees the Commissioner deems necessary for
3 enforcement of this Article. The Commissioner shall continue to prescribe the powers,
4 duties, and responsibilities of the Director and employees engaged in the administration
5 of this Article."

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