

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH80158-LR-92 (03/06)

Short Title: Omnibus Labor Law Changes.-AB

(Public)

Sponsors: Representative Howard.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM
BOILER AND PRESSURE VESSEL ACT AND TO REVISE SERVICE
REQUIREMENTS TO CONFORM WITH RULE 4 OF THE NORTH CAROLINA
RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. 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 or operated by the federal 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.

- 1 (3) Portable pressure vessels used for agricultural purposes only or for
2 pumping or drilling in an open field for water, gas or coal, gold, talc,
3 or other minerals and metals.
- 4 (4) Boilers and pressure vessels which are located in private residences or
5 in apartment houses of less than six families.
- 6 (5) ~~Pressure vessels used for transportation or storage of liquified~~
7 ~~petroleum gas.~~
- 8 (6) Air tanks located on vehicles licensed under the rules and regulations
9 of other state authorities operating under rules and regulations
10 substantially similar to those of this State and used for carrying
11 passengers or freight within interstate commerce.
- 12 (7) Air tanks installed on right-of-way of railroads and used directly in the
13 operation of trains.
- 14 (8) Any of the following pressure vessels that do not exceed the listed
15 limitations if the vessel is not equipped with a quick actuating closure:
16 a. Five cubic feet in volume and 250 psig.
17 b. Three cubic feet in volume and 350 psig.
18 c. One and one-half cubic feet in volume and 600 psig.
19 d. An inside diameter of six inches with no limitation on pressure.
- 20 (9) Pressure vessels operating at a working pressure not exceeding 15
21 psig.
- 22 (10) Pressure vessels with a nominal water capacity not exceeding 120
23 gallons and containing water under pressure at temperatures not
24 exceeding 120° F, including those containing air, the compression of
25 which serves as a cushion.
- 26 (11) Boilers and pressure vessels on railroad steam locomotives that are
27 subject to federal ~~safety regulations~~ railway safety regulations pursuant
28 to 49 C.F.R. § 230.
- 29 (12) Repealed by Session Laws 1985, c. 620, s. 2.
- 30 (13) Coil-type hot water supply boilers, generally referred to as steam
31 jennies, where the water can flash into steam when released directly to
32 the atmosphere through a manually operated nozzle and where
33 adequate safety relief valves and controls are installed on them,
34 provided none of the following limitations are exceeded:
35 a. There is no drum, header, or other steam space.
36 b. No steam is generated within the coil.
37 c. Maximum 1 inch tube size.
38 d. Maximum ¾ inch nominal pipe size.
39 e. Maximum 6 gallon nominal water storage capacity.
40 f. Water temperature of 350°F.
- 41 (14) Pressure vessels containing water at a temperature not exceeding 110
42 degrees fahrenheit except that this provision shall not exclude
43 hydropneumatic pressure vessels from regulation.

- 1 (15) An air tank that does not exceed eight cubic feet in volume that is
2 installed on a service vehicle.
- 3 (16) Autoclaves in medical offices and hospitals that are less than five
4 cubic feet in volume, even if they are equipped with a quick actuating
5 closure.
- 6 (17) Coil-type hot water supply boilers of the instantaneous type where
7 adequate safety relief valves and controls are installed if none of the
8 following limitations are exceeded:
- 9 a. There is no drum, header, or other steam space.
10 b. No steam is generated within the coil.
11 c. Maximum one-inch tube size.
12 d. Maximum three-quarter-inch nominal pipe size.
13 e. Maximum six-gallon nominal water storage capacity.
14 f. Water temperature not to exceed 250°F.
15 g. Maximum heat input does not exceed 400,000 Btu/hr or 110
16 kW.
17 h. Maximum pressure of 260 psig.
- 18 (18) Toy boilers, if all of the following apply:
- 19 a. The water containing volume of the boiler is less than one
20 quart.
21 b. The operating pressure does not exceed 15 psig.
22 c. The maximum outside diameter of the shell is no greater than
23 six inches.
24 d. The boiler is manually fired by solid fuels.
- 25 (19) Pressure vessels associated with electrical apparatus in electrical
26 switchyards if the pressure vessels have proper pressure relief devices.
- 27 (20) Carbon dioxide tanks used in beverage dispensing service.
- 28 (c) The construction and inspection requirements established by the Department
29 of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas
30 or electricity, or hot water supply tanks heated by steam or any other indirect means,
31 which do not exceed any of the following limitations:
- 32 (1) Heat input of 200,000 Btu/hr or 58.6 kW.
33 (2) Repealed by Session Laws 2005-453, s. 2.
34 (3) Nominal water capacity of 120 gallons.
- 35 provided that they are equipped with ASME Code and National Board certified safety
36 relief valves.
- 37 (d) The construction requirements established by the Department of Labor shall
38 not apply to pressure vessels installed in this State prior to December 31, 1981, that:
- 39 (1) Are of one-piece, unwelded, forged construction;
40 (2) Are constructed before January 1, 1981, and operating or could be
41 operated, under the laws of any state or Canadian Province that has
42 adopted one or more sections of the ASME Code;
43 (3) Are transferred into this State without a change of ownership; and

1 (4) Are determined by the Chief Inspector to be constructed under
2 standards substantially equivalent to those established by the
3 department at the time of transfer;
4 provided that they are equipped with ASME Code and National Board certified safety
5 relief valves.

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

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

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

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

23 (g) The inspection requirements established by the Department of Labor shall not
24 apply to pressure vessels used for transportation or storage of liquefied petroleum gas
25 that are subject to inspection in accordance with the requirements established by the
26 Department of Agriculture and Consumer Services."

27 **SECTION 2.** G.S. 95-69.15 reads as rewritten:

28 "**§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates**
29 **of competency; inspector's commission.**

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

- 32 (1) Boiler and Pressure Vessel Inspector or Deputy Inspector. – Shall be a
33 qualified individual, employed by the Department of Labor and
34 appointed by the Commissioner, to assist in conducting inspections
35 under this Article and report on the suitability of boilers and pressure
36 vessels so inspected.
37 (2) Special Inspector or Insurance Inspector. – Shall be a qualified
38 individual regularly employed by an insurance company authorized to
39 insure in this State against injury to person or property or both from
40 explosions and accidents involving boilers and pressure vessels.
41 Special Inspectors shall not include employees of private contract
42 inspection agencies.
43 (3) Owner-User Inspectors. – Shall be a qualified individual employed on
44 a full-time basis by a company operating pressure vessels for its own

1 use and not for resale, and maintains an established inspection program
2 for periodic inspection of pressure vessels owned or used by that
3 company and where such inspection program is under the supervision
4 of one or more engineers having qualifications satisfactory to the
5 Commissioner.

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

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

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

23 ~~(e) Certificates of Competency.—Certificates of competency may be issued by~~
24 ~~the Chief Inspector to those persons who take and pass a National Board commissioning~~
25 ~~examination administered by the Board."~~

26 **SECTION 3.** G.S. 95-69.16 reads as rewritten:

27 "**§ 95-69.16. Inspection certificate required.**

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

35 No boiler or pressure vessel may be operated without an inspection certificate,
36 except pressure vessels being operated under an owner-user provision where
37 administrative procedures of equal safety and competency have been approved by the
38 Board and Commissioner. No more than ~~90~~60 days grace period may be granted beyond
39 the certificate expiration date."

40 **SECTION 4.** G.S. 95-25.23(a) reads as rewritten:

41 "(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth
42 Employment) or any regulation issued thereunder, shall be subject to a civil penalty not
43 to exceed two hundred fifty dollars (\$250.00) for each violation. In determining the
44 amount of such penalty, the appropriateness of such penalty to the size of the business

1 of the person charged and the gravity of the violation shall be considered. The
2 determination by the Commissioner shall be final, unless within 15 days after receipt of
3 notice thereof by certified mail ~~or with return receipt, by signature confirmation as~~
4 provided by the U.S. Postal Service, by a designated delivery service authorized
5 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the
6 person charged with the violation takes exception to the determination, in which event
7 final determination of the penalty shall be made in an administrative proceeding
8 pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4
9 of Chapter 150B."

10 **SECTION 5.** G.S. 95-25.23A(a) reads as rewritten:

11 "(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any
12 regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up
13 to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed
14 one thousand dollars (\$1,000) per investigation by the Commissioner or his authorized
15 representative. In determining the amount of the penalty, the Commissioner shall
16 consider:

- 17 (1) The appropriateness of the penalty for the size of the business of the
18 employer charged; and
- 19 (2) The gravity of the violation.

20 The determination by the Commissioner shall be final, unless within 15 days after
21 receipt of notice thereof by certified mail ~~or with return receipt, by signature~~
22 confirmation as provided by the U.S. Postal Service, by a designated delivery service
23 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand
24 delivery, the person charged with the violation takes exception to the determination, in
25 which event final determination of the penalty shall be made in an administrative
26 proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant
27 to Article 4 of Chapter 150B."

28 **SECTION 6.** G.S. 95-69.19(d) reads as rewritten:

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

37 **SECTION 7.** G.S. 95-110.10(e) reads as rewritten:

38 "(e) The determination of the amount of the penalty by the Commissioner shall be
39 final, unless within 15 days after receipt of notice thereof by certified mail ~~or with~~
40 return receipt, by signature confirmation as provided by the U.S. Postal Service, by a
41 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery
42 receipt, or via hand delivery, the person charged with the violation takes exception to
43 the determination in which event the final determination of the penalty shall be made in

1 an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of
2 the General Statutes, the Administrative Procedure Act."

3 **SECTION 8.** G.S. 95-111.13(g) reads as rewritten:

4 "(g) The determination of the amount of the penalty by the Commissioner shall be
5 final, unless within 15 days after receipt of notice thereof by certified mail ~~or with~~
6 return receipt, by signature confirmation as provided by the U.S. Postal Service, by a
7 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery
8 receipt, or via hand delivery, the person charged with the violation takes exception to
9 the determination, in which event final determination of the penalty shall be made in an
10 administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the
11 General Statutes, the Administrative Procedure Act."

12 **SECTION 9.** G.S. 95-123 reads as rewritten:

13 **"§ 95-123. Orders.**

14 If, after investigation, the Commissioner finds that a violation of any of his rules and
15 regulations exists, or that there is a condition in passenger tramway construction,
16 operation, or maintenance which endangers the safety of the public, the Commissioner
17 shall forthwith issue his written order setting forth his findings, the corrective action to
18 be taken, and fixing a reasonable time for compliance therewith. The order shall be sent
19 to the affected operator by certified mail ~~or with return receipt, by signature~~
20 confirmation as provided by the U.S. Postal Service, by a designated delivery service
21 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand
22 delivery, and shall become final unless the operator contests the order by filing a
23 petition for a contested case under G.S. 150B-23 within 20 days after receiving the
24 order. The Commissioner shall have the power to institute injunctive proceedings in any
25 court of competent jurisdiction of the district court district as defined in G.S. 7A-133 or
26 superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be,
27 in which the passenger tramway is located for the purpose of restraining the operation of
28 said tramway or for compelling compliance with any lawful order of the Commissioner.
29 Judicial review of a final decision under this section may be obtained under Article 4 of
30 Chapter 150B of the General Statutes."

31 **SECTION 10.** G.S. 95-137(b) reads as rewritten:

32 "(b) Procedure for Enforcement. –

33 (1) If, after an inspection or investigation, the Director issues a citation
34 under any provisions of this Article, the Director shall, within a
35 reasonable time after the termination of such inspection or
36 investigation, notify the employer by certified ~~mail, mail with return~~
37 receipt, by signature confirmation as provided by the U.S. Postal
38 Service, by a designated delivery service authorized pursuant to 26
39 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of any
40 penalty, if any, the Director has recommended to the Commissioner to
41 be proposed under the provisions of this Article and that the employer
42 has 15 working days within which to notify the Director that the
43 employer wishes to:

44 a. Contest the citation or proposed assessment of penalty; or

1 b. Request an informal conference.

2 Following an informal conference, unless the employer and
3 Department have entered into a settlement agreement, the Director
4 shall send the employer an amended citation or notice of no change.
5 The employer has 15 working days from the receipt of the amended
6 citation or notice of no change to notify the Director that the employer
7 wishes to contest the citation or proposed assessment of penalty,
8 whether or not amended. If, within 15 working days from the receipt
9 of the notice issued by the Director, the employer fails to notify the
10 Director that the employer requires an informal conference to be held
11 or intends to contest the citation or proposed assessment of penalty,
12 and no notice is filed by any employee or representative of employees
13 under the provisions of this Article within such time, the citation and
14 the assessment as proposed to the Commissioner shall be deemed final
15 and not subject to review by any court.

16 (2) If the Director has reason to believe that an employer has failed to
17 correct a violation for which a citation has been issued within the
18 period permitted for its correction (which period shall not begin to run
19 until the entry of a final order by the Commission in case of any
20 review proceedings under this Article initiated by the employer in
21 good faith and not solely for a delay or avoidance of penalties), the
22 Director shall notify the employer by certified ~~mail~~, mail with return
23 receipt, by signature confirmation as provided by the U.S. Postal
24 Service, by a designated delivery service authorized pursuant to 26
25 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of such
26 failure and of the penalty proposed to be assessed under this Article by
27 reason of such failure and that the employer has 15 working days
28 within which to notify the Director that the employer wishes to contest
29 the Director's notification of the proposed assessment of penalty. If,
30 within 15 working days from the receipt of notification issued by the
31 Director, an employer fails to notify the Director that the employer
32 intends to contest the notification or proposed recommendation of
33 penalty, the notification and the proposed assessment made by the
34 Director shall be final and not subject to review by any court.

35 (3) No citation may be issued under this section after the expiration of six
36 months following the occurrence of any violation.

37 (4) If an employer notifies the Director that the employer intends to
38 contest a citation issued under the provisions of this Article or
39 notification issued under the provisions of this Article, or if, within 15
40 working days of the receipt of a citation under this Article, any
41 employee or representative thereof files a notice with the Director
42 alleging that the period of time fixed in the citation for the abatement
43 of the violation is unreasonable, the Director shall immediately advise
44 the Commission of such notification, and the Commission shall afford

1 an opportunity for a hearing. The Commission shall thereafter issue an
2 order, based on findings of fact, affirming, modifying, or vacating the
3 Director's citation or the proposed penalty fixed by the Commissioner,
4 or directing other appropriate relief, and such order shall become final
5 30 days after its issuance. Upon showing by an employer of a good
6 faith effort to comply with the abatement requirements of a citation,
7 and that an abatement has not been completed because of factors
8 beyond the employer's reasonable control, the Director, after an
9 opportunity for a hearing as provided in this Article, shall issue an
10 order affirming or modifying the abatement requirements in such
11 citation. The rules of procedure prescribed by the chairman of the
12 Commission shall provide affected employees or representatives of
13 affected employees an opportunity to participate as parties to hearings
14 under this section.

15 (5) Repealed by Session Laws 1993, c. 300, s. 2.

16 (6) Each local unit of government shall report each violation for which it
17 is issued a citation to its local governing board at its next public
18 meeting and to its workers compensation insurance carrier or to the
19 risk pool of which it is a member pursuant to Article 23 of Chapter 58
20 of the General Statutes."

21 **SECTION 11.** G.S. 95-234(a) reads as rewritten:

22 "(a) Any examiner who violates the provisions of this Article shall be subject to a
23 civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the
24 maximum not to exceed one thousand dollars (\$1,000) per investigation by the
25 Commissioner of Labor or his authorized representative. In determining the amount of
26 the penalty, the Commissioner shall consider:

27 (1) The appropriateness of the penalty for the size of the business of the
28 employer charged; and

29 (2) The gravity of the violation.

30 The determination by the Commissioner shall be final, unless within 15 days after
31 receipt of notice thereof by certified mail ~~or~~ with return receipt, by signature
32 confirmation as provided by the U.S. Postal Service, by a designated delivery service
33 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand
34 delivery, the person charged with the violation takes exception to the determination, in
35 which event final determination of the penalty shall be made in an administrative
36 proceeding pursuant to Article 3 of Chapter 150B and which final determination shall
37 be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter
38 150B."

39 **SECTION 12.** This act is effective when it becomes law.