GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

HOUSE BILL 400
Committee Substitute Favorable 4/30/19

Short Title: Omnibus Labor Law Changes. (Public)

Sponsors:

Referred to:

March 21, 2019

A BILL TO BE ENTITLED
AN ACT MAKING VARIOUS CHANGES TO THE LABOR LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-69.18.1. Investigation reports and records.
   (a) The Commissioner may compile, analyze, and publish, in summary or detailed form, the reports or information obtained under this Article.
   (b) Files and other records relating to investigations and enforcement proceedings pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the investigations and proceedings are pending, except that a person cited under the provisions of this Article is entitled to receive a copy of the official inspection report, which is the basis for citations received by the person following the issuance of citations."

SECTION 1.2. G.S. 95-110.9 reads as rewritten:

"§ 95-110.9. Reports, investigations; reports required.
   (a) The owner of any device or equipment regulated under the provisions of this Article, or his authorized agent, shall within 24 hours notify the Commissioner of each and every occurrence involving such device or equipment when:
      (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
      (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.
   (b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.
(b1) Files and other records relating to investigations and enforcement proceedings pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the investigations and proceedings are pending, except that a person cited under the provisions of this Article is entitled to receive a copy of the official inspection report, which is the basis for citations received by the person following the issuance of citations.

c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or equipment or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified.

SECTION 1.3. G.S. 95-111.10 reads as rewritten:

"§ 95-111.10. Reports investigations; reports required.

(a) The owner of any device regulated under the provisions of this Article, or his the owner's authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:

(1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or

(2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(b1) Files and other records relating to investigations and enforcement proceedings pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the investigations and proceedings are pending, except that a person cited under the provisions of this Article is entitled to receive a copy of the official inspection report, which is the basis for citations received by the person following the issuance of citations.

c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified.

SECTION 1.4. G.S. 95-125.2 reads as rewritten:

"§ 95-125.2. Reports investigations; reports required.

(a) The owner of any device regulated under the provisions of this Article, or the owner's authorized agent, shall, within 24 hours, notify the Commissioner of each and every occurrence involving the device when either of the following occurs:
(1) Death or injury requiring medical treatment, other than first aid, by a physician. For the purposes of this section, "first aid" means (i) the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters, or contusions or (ii) performing a diagnostic procedure, including examination and X rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel.

(2) Damage to the device indicating a substantial defect in design, mechanics, structure, or equipment that affects the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) of this section has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(b1) Files and other records relating to investigations and enforcement proceedings pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the investigations and proceedings are pending, except that a person cited under the provisions of this Article is entitled to receive a copy of the official inspection report, which is the basis for citations received by the person following the issuance of citations.

(c) No person, after an occurrence specified in subsection (a) of this section, shall do either of the following:

(1) Operate, attempt to operate, use, or move or attempt to move such device or part thereof without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

(2) Remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The Department must initiate its investigation within 24 hours of being notified."

SECTION 2. G.S. 95-111.3(a) reads as rewritten:

"(a) The term "amusement device" shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. This term shall not include any of the following:

(1) Devices operated on a river, lake, or any other natural body of water.

(2) Wavepools.

(3) Roller skating rinks.

(4) Ice skating rinks.

(5) Skateboard ramps or courses.

(6) Mechanical bulls.

(7) Buildings or concourses used in laser games.

(8) All-terrain vehicles.

(9) Motorcycles.

(10) Bicycles.

(11) Mopeds.

(12) Rock walls that are in a fixed, permanent location.

(13) Zip-lines.

(14) Funhouses, haunted houses, and similar walk-through devices that are erected temporarily on a seasonal basis and do not have mechanical components."
Playground equipment, including but not limited to soft contained play equipment, swings, seesaws, slides, stationary spring-mounted animal features, jungle gyms, rider-propelled merry-go-rounds, and trampolines.

A locomotive, train, series of railroad cars, or other mechanical devices that operate on any United States standard railroad gauge of four feet, eight and one-half inches."

SECTION 3. G.S. 95-133(b) is amended by adding a new subdivision to read:

"(b) Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the Division to administer and enforce. The Director shall have the power, jurisdiction and authority to:

…

(13) Obtain medical records compiled and maintained by the Department of Health and Human Services, by hospitals participating in the statewide trauma system, or by emergency management services providers in connection with the dispatch, response, treatment, or transport of individual patients relating to investigations and enforcement proceedings under this Article. The medical records obtained by the Department shall be strictly confidential, are not public records within the meaning of G.S. 132-1, and shall not be released or made public."

SECTION 4. Article 16 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-153. Third-party litigation.

Employees of the Department who are charged with compliance duties, including the Deputy Commissioner, shall not be compelled to appear at any deposition, hearing, trial, or other legal or administrative proceeding concerning a division inspection or investigation performed by the Department unless the appearance is required for a hearing held pursuant to the enforcement of this Article."

SECTION 5. G.S. 95-136 is amended by adding a new subsection to read:

"(e2) Except as provided in subsection (e1) of this section, information and reports developed pursuant to any inspection or investigation performed pursuant to this Article by the Department shall not be admissible in any court or before any administrative body except pursuant to the enforcement of this Article."

SECTION 6. This act is effective when it becomes law.