Article 16.

Occupational Safety and Health Act of North Carolina.

§ 95-126. Short title and legislative purpose.

(a) This Article shall be known as the "Occupational Safety and Health Act of North Carolina" and also may be referred to by abbreviations as "OSHANC."

(b) Legislative findings and purpose:

(1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the federal and State governments, employers and employees.

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:

a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review commission for carrying out adjudicatory functions under this Article;

d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;

h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;

i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;
j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
l. By authorizing the Commissioner to enter into contracts with the Department of Health and Human Services, or any other State or local units, to the end the Commissioner and the Department of Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.
m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina. (1973, c. 295, s. 1; c. 476, s. 128; 1989, c. 727, s. 219(13); 1997-443, s. 11A.33; 2005-133, s. 2.)

§ 95-127. Definitions.

As used in this Article, the following definitions apply:

(1) Advisory Council. – The Advisory Council or body established under this Article.
(2) Antineoplastic agent. – A chemotherapy drug or cytotoxic drug used to treat cancer patients and some non-cancer patients.
(2a) Carolina Star Program. – A voluntary program designed to recognize work sites that implement effective safety and health management systems and that meet standards adopted by the Commissioner pursuant to G.S. 95-157. The Carolina Star Program is inclusive of four distinct programs, which includes the following: Carolina Star, Rising Star, Building Star, and Public Sector Star.
(3) Classified service. – A position included in the State Merit System of Human Resources subject to the laws, rules and regulations of the State Human Resources Commission as administered by the Director of the Office of State Human Resources and as set forth in Chapter 126A of the General Statutes.
(4) Commission. – North Carolina Occupational Safety and Health Review Commission established under this Article.
(5) Commissioner. – The Commissioner of Labor of North Carolina.
(6) Day. – A calendar day unless otherwise noted.
(7) Department. – The North Carolina Department of Labor of North Carolina.
(8) Deputy Commissioner. – The Deputy Commissioner of the North Carolina Department of Labor, who is appointed by the Commissioner to aid and assist the Commissioner in the performance of his duties. The Deputy Commissioner shall exercise such power and authority as delegated to him or her by the Commissioner.

(9) Director. – The officer or agent appointed by the Commissioner of Labor for the purpose of assisting in the administration of the Occupational Safety and Health Act of North Carolina.

(10) Employee. – An employee of an employer who is employed in a business or other capacity of his or her employer, including any and all business units and agencies owned and/or controlled by the employer.

(11) Employer. – A person engaged in a business who has employees, including any state or political subdivision of a state, but does not include the employment of domestic workers employed in the place of residence of his or her employer.

(12) Established federal standard. – Any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any act of Congress in force on the date of enactment of this Article, and adopted by the Secretary of Labor under the Occupational Safety and Health Act of 1970.

(13) Federal Act. – The Occupational Safety and Health Act of 1970 (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950).

(14) Imminent danger. – Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article.

(15) Issue. – An industrial, occupational or hazard grouping.

(16) Occupational safety and health standard. – A standard which requires conditions, or the adoption or use of one or more practices, means, methods, safety devices, operations or processes reasonably necessary and appropriate to provide safe and healthful employment and places of employment, and shall include all occupational safety and health standards adopted and promulgated by the Secretary which also may be and are adopted by the State of North Carolina under the provisions of this Article. This term includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the Secretary, promulgated as provided by the Occupational Safety and Health Act of 1970, and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the federal act or any appropriate federal agencies.

(17) Person. – One or more individuals, partnerships, associations, corporations, business trusts, legal representatives.

(18) Secretary. – The United States Secretary of Labor.

(19) Serious violation. – A violation that shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.

(20) State. – The State of North Carolina. (1973, c. 295, s. 2; 1987, c. 282, s. 14; 2005-133, s. 3; 2013-382, s. 9.1(c); 2014-76, s. 2; 2017-211, s. 15(a); 2026-40, s. 4.18.)

§ 95-128. Coverage.

The provisions of this Article or any standard or regulation promulgated pursuant to this Article shall apply to all employers and employees except:

(1) The federal government, including its departments, agencies and instrumentalities;
(2) Employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, as amended;
(3) Employees whose safety and health are subject to protection under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725), or Subtitle V of Title 49 of the United States Code;
(4) Railroad employees whose safety and health are subject to protection under Subtitle V of Title 49 of the United States Code;
(5) Employees engaged in all maritime operations;
(6) Employees whose employer is within that class and type of employment which does not permit federal funding, on a matching basis, to the State in return of State enforcement of all occupational safety and health issues. (1973, c. 295, s. 3; 1998-217, s. 27.)

§ 95-129. Rights and duties of employers.

Rights and duties of employers shall include but are not limited to the following provisions:

(1) Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees;
(2) Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this Article;
(3) Each employer shall refrain from any unreasonable restraint on the right of the Commissioner or Director, or their lawfully appointed agents, to inspect the employer's place of business. Each employer shall assist the Commissioner, the Director or the lawful agents of either or both of them, in the performance of their inspection duties by supplying or by making available information, any necessary personnel or necessary inspection aides;
(4) Any employer, or association of employers, is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131;
(5) Any employer is entitled, under G.S. 95-137, to review of any citation issued because of his alleged violation of any standard promulgated under this Article, or the length of the abatement period allowed for the correction of an alleged violation;

(6) Any employer is entitled, under G.S. 95-137, to a review of any penalty in the form of civil damages assessed against him because of his alleged violation of this Article;
(7) Any employer is entitled, under G.S. 95-132, to seek an order granting a variance from any occupational safety or health standard;
(8) Any employer is entitled, under G.S. 95-152, to protection of his trade secrets and other legally privileged communications. (1973, c. 295, s. 4.)

§ 95-130. Rights and duties of employees.

Rights and duties of employees shall include but are not limited to the following provisions:

(1) Employees shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Article which are applicable to their own actions and conduct.
(2) Employees and representatives of employees are entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131.
(3) Employees shall be notified by their employer of any application for a temporary order granting the employer a variance from any provision of this Article or standard or regulation promulgated pursuant to this Article.
(4) Employees shall be given the opportunity to participate in any hearing which concerns an application by their employer for a variance from a standard promulgated under this Article.
(5) Any employee who may be adversely affected by a standard or variance issued pursuant to this Article may file a petition for review with the Commissioner who shall review the matters set forth and alleged in the petition.
(6) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall have a right to file a petition for review with the Commissioner who shall investigate and pass upon same.
(7) Subject to regulations issued pursuant to this Article any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Commissioner, Director, or their agents, at the time of the physical inspection of any work place as provided by the inspection provision of this Article.
(8) to (10) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1021, s. 2.
(11) Any employee or representative of employees who believes that any period of time fixed in the citation given to his employer for correction of a violation is unreasonable has the right to contest such time for correction by filing a written and signed notice within 15 working days from the date the citation is posted within the establishment.
(12) Nothing in this or any other provision of this Article shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. (1973, c. 295, s. 5; 1991 (Reg. Sess., 1992), c. 1021, s. 2; 2011-366, s. 8.)

§ 95-131. Development and promulgation of standards; adoption of federal standards and regulations.

(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

(b), (c) Repealed by Session Laws 1991, c. 418, s. 8.

(d) Rules adopted under this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards established in a rule shall be expressed in terms of objective criteria and of the performance desired. In establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of Health and Human Services, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

(e) The Commissioner may not adopt State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the adoption of such State standard, or standards, is required by compelling local conditions and does not unduly burden interstate commerce.

(f) Repealed by Session Laws 1991, c. 418, s. 8.

(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes. (1973, c. 295, s. 6; c. 476, s. 128; 1975, 2nd Sess., c. 983, s. 81; 1987, c. 285, s. 17; 1987 (Reg. Sess., 1988), c. 1111, ss. 7, 8; 1989, c. 727, s. 219(14); 1991, c. 418, s. 8; 1997-443, s. 11A.34.)

§ 95-132. Variances.

(a) Temporary Variances. –

(1) The Commissioner may upon written application by an employer issue an order granting such employer a temporary variance from standards adopted by this Article or promulgated by the Commissioner under this Article. Any such order shall prescribe the practices, means, methods, operations and processes which the employer must adopt or use while the variance is in effect and state in detail a program for coming into compliance with the standard.

(2) An application for a temporary variance shall contain all information required as enumerated in 29 C.F.R. 1905.10(b) which is hereby incorporated by reference, as if herein fully set out.

(3) Upon receipt of an application for an order granting a temporary variance, the Commissioner to whom such application is addressed may issue an interim order granting such a temporary variance, for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than 180 days.

(4) Such a temporary variance may be granted only after notice to employees and interested parties and opportunity for hearing. The temporary variance may be for a period of no longer than required to achieve compliance or one year, whichever is shorter, and may be renewed only once. Application for renewal of a variance must be filed in accordance with provisions in the initial grant of the temporary variance.

(5) An order granting a temporary variance shall be issued only if the employer establishes

a. (i) That he is unable to comply with the standard by the effective date because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology, (ii) that all available steps have been taken to safeguard his employees against the hazards covered by the standard, and (iii) that he has an effective program for coming into compliance with the standard as quickly as practicable, or

b. That he is engaged in an experimental program as described in subsection (c) of this section as hereinafter stated.

(b) Permanent Variances. –

(1) Any affected employer may apply to the Commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard.

(2) The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question.

(3) Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(c) Experimental Variances. – The Commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers. (1973, c. 295, s. 7; 1997-456, s. 27.)

§ 95-133. Office of Director of Occupational Safety and Health; powers and duties of the Director.

(a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the Occupational Safety and Health Division. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this Article, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments, or revisions in rules, as the Commissioner may deem advisable for the administration of the office. The Commissioner shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his or her duties of office and shall not hold any other office. The Director, subject to the approval of the Commissioner, shall select a professional staff of qualified and competent employees to assist in the statewide administration of the Article. All of the employees referred to herein shall be under the classified service.

(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:

(1) Uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;

(2) Make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the office has the duty, power and authority to enforce are promptly and effectively carried out;

(3) Make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this Article and all lawful regulations issued thereunder;

(4) Report to the Federal Occupational Safety and Health Administration any information which it may require;

(5) Recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;

(6) Recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this Article;

(7) Employ experts, consultants or organizations for work related to the occupational safety and health program of the Division and compensate same with the approval of the Commissioner;

(8) Institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this Article;

(9) The Commissioner shall have the power and authority to issue all types of notices, citations, cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this Article as hereinafter set forth. The Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this Article or not in compliance with this Article and to apply for mandatory injunctions to compel enforcement of the Article, and the Commissioner is authorized, and further authorized by and through his agents, to institute criminal actions or proceedings for such violations of the Article as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this Article, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the Commission as hereinafter set forth.

(10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.

(11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this Article and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.

(12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject to review by the Commission as hereinafter provided, including all assessments for civil penalties.

(13) Obtain relevant medical records. The Occupational Safety and Health Division is a health oversight agency as defined in 45 C.F.R. § 164.501, Standards for Privacy of Individually Identifiable Health Information. A covered entity, as defined by the Health Insurance Portability and Accountability Act, may disclose protected health information to health oversight agencies, including the Occupational Safety and Health Division, as necessary for law enforcement, judicial, and administrative purposes. The Commissioner or the Director, or their authorized agents, may obtain medical records of injured or deceased employees that are both directly related to the investigation being conducted and are necessary to conduct investigations and enforcement proceedings under this Article. The medical records to be obtained shall be restricted to the

evaluation, diagnosis, or treatment of an employee injury or fatality. Such records shall only consist of those compiled and maintained by the Department of Health and Human Services, by hospitals participating in the statewide trauma system, or by emergency medical services providers in connection with the dispatch, response, treatment, or transport of individual patients. The medical records obtained by the Department shall be kept separate from any investigative file, shall be strictly confidential, are not public records within the meaning of G.S. 132-1, and shall not be released to any employer under investigation except as necessary to support the issuance of a citation in an OSHANC enforcement proceeding. (1973, c. 295, s. 8; 2005-133, s. 4; 2014-76, s. 3; 2015-264, s. 29; 2021-82, s. 3.)

§ 95-134. Advisory Council.

(a) There is hereby established a State Advisory Council on Occupational Safety and Health consisting of 11 members, appointed by the Commissioner, composed of three representatives from management, three representatives from labor, four representatives of the public sector with knowledge of occupational safety and occupational health professions and one representative of the public sector with knowledge of migrant labor. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Council shall advise, consult with, and make recommendations to the Commissioner on matters relating to the administration of this Article. The Council shall hold no fewer than two meetings during each calendar year. All meetings of the Advisory Council shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The Director shall furnish to the Advisory Council such secretarial, clerical and other services as he deems necessary to conduct the business of the Advisory Council. The members of the Advisory Council shall be compensated for reasonable expenses incurred, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials. The members of the Advisory Council shall be compensated in accordance with Chapter 138 of the General Statutes.

(d) In addition to its other duties, the Advisory Council shall assist the Commissioner in formulating and setting standards under the provisions of this Article. For this purpose the Commissioner may appoint persons qualified by experience and affiliation to present the viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the workers involved, and some persons to represent the health and safety agencies of the State. The Commissioner for this purpose may include representatives or professional organizations of technicians or professionals specializing in occupational safety or health. Such persons appointed for temporary purposes may be paid such per diem and expenses of attending meetings as provided in Chapter 138 of the General Statutes. (1973, c. 295, s. 9; 1977, c. 806; 1983, c. 717, ss. 17, 18.)

§ 95-135. North Carolina Occupational Safety and Health Review Commission.

(a) The North Carolina Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the Commission under this Article. The Governor shall appoint the members of the Commission and

name one of the members as chairman of the Commission. The terms of the members of the Commission shall be six years except that the members of the Commission first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and the member of the Commission designated as chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled by the Governor for the remainder of the unexpired term. The Governor shall fill all vacancies occurring by reason of the expiration of the term of any members of the Commission.

(b) The Commission shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the Commission until after full and adequate hearing. The Commission in the discharge of its duties under this Article is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any appeal or proceeding for review before the Commission.

(c) The Commission shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days' notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the Commission, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct, incompetency, the commission of any crime, or for any other good and adequate reason as found by the Commission. The Commission shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the Commission, and its decision shall be final. The compensation of the members of the Commission shall be on a per diem basis and shall be fixed by the Governor. The chairman of the Commission may be paid a higher rate of compensation than the other two members of the Commission. For the purpose of carrying out its duties and functions under this Article, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members of the Commission. On matters properly before the Commission the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the Commission. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review.

(d) Every official act of the Commission shall be entered of record and its hearings and records shall be open to the public. The Commission is authorized and empowered to make such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the Commission adopts a different rule, the proceedings, as nearly as possible, shall be in accordance with the Rules of Civil Procedure, G.S. 1A-1. The Commission may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to appear and testify and produce like documentary evidence before the Commission. Only upon motion of a respondent, the

Commission shall permit the complainant and respondent to obtain prehearing discovery in accordance with the methods provided in Rule 26(a) of the Rules of Civil Procedure, including, but not limited to, testimony taken by deposition, production of documents, and compelling persons to appear. Witnesses whose depositions are taken under this section, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the State.

(e) The rules of procedure prescribed or adopted by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(f) Any member of the Commission may be removed by the Governor for inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such removal the Governor shall give notice of hearing and state the allegations against the member of the Commission, and the same shall be heard by the Governor, and his decision shall be final. The principal office of the Commission shall be in Raleigh, North Carolina, but whenever it deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, the Commission may hold hearings or conduct other proceedings at any place in the State.

(g) In case of a contumacy, failure or refusal of any person to testify before the Commission, give any type of evidence, or to produce any books, records, papers, correspondence, memoranda or other records, such person upon such failure to obey the orders of the Commission may be punished for contempt or any other matter involving contempt as set forth and described by the general laws of the State. The Commission shall issue no order for contempt without first finding the facts involved in the proceeding. Witnesses appearing before the Commission shall be entitled to the same fees as those paid for the services of said witnesses in the courts of the State, and all such fees shall be taxed against the interested parties according to the judgment and discretion of the Commission.

(h) The Director shall consult with the chairman of the Commission with respect to the preparation and presentation to the Commission for adoption of all necessary forms or citations, notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms of notices or applications for review by the Commission, and any and all other procedural papers and documents necessary for the administration of the Article as applied to employers and employees and for all procedures and proceedings brought before the Commission for review.

(i) A hearing examiner appointed by the chairman of the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and may hear any motion in connection therewith, assigned to the hearing examiner, and shall make a report of the determination which constitutes the hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for the hearing examiner's determination. The report of the hearing examiner shall become the final order of the Commission 30 days from the date of the report as determined by the hearing examiner, unless within the 30-day period any member of the Commission had directed that the report shall be reviewed by the entire Commission as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the Commission shall schedule the matter for hearing, on the record, except the Commission may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of the hearing and shall be allowed to appear in person or by attorney at the hearing. Upon review of the report and determination by the hearing examiner the Commission may adopt, modify or vacate

the report of the hearing examiner and notify the interested parties. The report of the hearing examiner, and the report, decision, or determination of the Commission upon review shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The report, decision or determination of the Commission upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain Administrative Agencies."

(j) Repealed by Session Laws 1993, c. 300, s. 1. (1973, c. 295, s. 10; c. 1331, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 6, 7; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1111, s. 10; 1993, c. 300, s. 1; c. 474, s. 1; 2005-133, ss. 1, 5; 2006-203, s. 21; 2025-28, s. 1.3(a).)

§ 95-136. Inspections.

(a) In order to carry out the purposes of this Article, the Commissioner or Director, or their duly authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(1) To enter without delay, and at any reasonable time, any factory, plant, establishment, construction site, or other area, work place or environment where work is being performed by an employee of an employer; and

(2) To inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(3) The Commissioner or Director, or their duly authorized agents, shall reinspect any place of employment where a willful serious violation was found to exist during the previous inspection and a final Order has been entered.

(b) In making his inspections and investigations under this Article, the Commissioner may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel regulations of the State. In case of a failure or refusal of any person to obey a subpoena under this section, the district judge or superior court judge of the county in which the inspection or investigation is conducted shall have jurisdiction upon the application of the Commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(c) Subject to regulations issued by the Commissioner a representative of the employer and an employee authorized by the employees shall be given an opportunity to consult with or to accompany the Commissioner, Director, or their authorized agents, during the physical inspection of any work place described under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner, Director, or their authorized agents, shall consult with a reasonable number of employees concerning matters of health and safety in the work place.

(d) (1) Any employees or an employee representative of the employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice of such violation or danger to the Commissioner or Director. Any such notice shall

be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or the employee representatives of the employees, and a copy shall be provided the employer or his agent no later than at the time of inspection. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy of any record published, released or made available pursuant to subsection (e) of this section. If upon receipt of such notification the Commissioner or Director determines there are reasonable grounds to believe that such violation or danger exists, the Commissioner or Director or their authorized agents shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the Commissioner or Director determines there are not reasonable grounds to believe that a violation or danger exists he shall notify the employees or representatives of the employees, in writing, of such determination.

(2) Prior to, during and after any inspection of a work place, any employees or representative of employees employed in such work place may notify the inspecting Commissioner, Director, or their agents, in writing, of any violation of this Article which they have reason to believe exists in such work place. The Commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the Commissioner or Director to issue a citation with respect to any such alleged violation and shall furnish the employees or representatives of employees requesting such review a written statement of the reason for the Commissioner's or Director's final disposition of the case.

(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending, except that, subject to the provisions of subsection (e1) of this section, an employer 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 employer following the issuance of citations.

(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement

of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer 10 days prior to a scheduled enforcement hearing unredacted copies of: (i) the witness statements the Commissioner intends to use at the enforcement hearing, (ii) the statements of witnesses the Commissioner intends to call to testify, or (iii) the statements of witnesses whom the Commissioner does not intend to use that might support an employer's affirmative defense or otherwise exonerate the employer; provided a written request for the statement or statements is received by the Commissioner no later than 12 days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than 12 days before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties.

(f) (1) Inspections conducted under this section shall be accomplished without advance notice, subject to the exception in subdivision (2) below this subsection.

(2) The Commissioner or Director may authorize the giving to any employer or employee advance notice of an inspection only when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with regulations issued by the Commissioner.

(g) The Commissioner shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Article, including rules and regulations dealing with the inspection of an employer's establishment. (1973, c. 295, s. 11; 1993, c. 317, ss. 1, 2; 1999-364, ss. 1, 2; 2003-174, s. 1.)

§ 95-136.1. Special emphasis inspection program.

(a) As used in this section, a "special emphasis inspection" is an inspection by the Department's occupational safety and health division that is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

(b) The Department shall develop and implement a special emphasis inspection program that targets for special emphasis inspection employers who:

(1) Have a high rate of serious or willful violations of any standard, rule, order, or other requirement under this Article, or of regulations prescribed pursuant to the Federal Occupational Safety and Health Act of 1970, in a one-year period;

(2) Have a high rate of work-related deaths, or a high rate of work-related serious injuries or illnesses, in a one-year period; or

(3) Are engaged in a type of industry determined by the Department to be at high risk for serious or fatal work-related injuries or illnesses.

(4) Repealed by Session Laws 1997-443, s. 17(b).

To identify an employer for a special emphasis inspection, the Department shall use the most current data available from its own database and from other sources, including State departments, divisions, boards, commissions, and other State entities. The Department shall ensure that every employer targeted for a special emphasis inspection is inspected at least one time within the two-year period following targeting of the employer by the Department. The Department shall update its special emphasis inspection records at least annually.

(c) The Director shall make information about the special emphasis inspection program available prior to the date of implementation of the program.

(d) The Department shall by March 1, 1995, and annually thereafter, report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division of the General Assembly on the impact of the special emphasis inspection program on safety and health compliance and enforcement. (1991 (Reg. Sess., 1992), c. 924, s. 1; 1997-443, s. 17(b); 2017-57, s. 14.1(oo).)

§ 95-136.2. Third-party subpoenas to the Department.

(a) The Commissioner, any current employee, or any former employee of the Department may only be required to appear and testify regarding an occupational safety and health inspection under one of the following circumstances:

(1) An enforcement proceeding is brought under this Article.

(2) An action is filed in which the Department is a party.

(3) The Commissioner consents in writing to waive the exemption provided by subsection (b) of this section.

(4) A court finds all of the following:

a. The information sought is essential to the underlying case.

b. There are no reasonable alternative means for acquiring the information.

c. A significant injustice would occur if the requested testimony was not available.

(b) Except as provided in subsection (a) of this section, the Commissioner, any current employee, and any former employee of the Department may not be subpoenaed to appear or testify for an inquiry into any occupational safety and health inspection.

(c) Any written report, citation, or investigative finding issued by the Department pursuant to an occupational safety and health inspection shall be admissible in any judicial or administrative civil proceeding to the same extent as if the author were available to testify, unless the court finds the document clearly lacks indicia of reliability or would result in manifest injustice.

(d) This section does not apply to a subpoena requesting only documents or other records. (2025-28, s. 1.1.)

§ 95-137. Issuance of citations.

(a) If, upon inspection or investigation, the Director or his authorized representative has reasonable grounds to believe that an employer has not fulfilled his duties as prescribed in this Article, or has violated any standard, regulation, rule or order promulgated under this Article, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the act, standards, rules and regulations, or orders alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or health. Each citation or notice in lieu of citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Director, at or near such place a violation referred to in the citation occurred.

(b) Procedure for Enforcement. –

(1) If, after an inspection or investigation, the Director issues a citation under any provisions of this Article, the Director shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal [Service], by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an email address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery of any citation, if any, the Director has recommended to the Commissioner to be proposed under the provisions of this Article and that the employer has 15 working days within which to notify the Director in writing that the employer wishes to:

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

b. Request an informal conference.

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

(2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in case of any review proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an email address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.

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

(4) If an employer notifies the Director that the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

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

(6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes. (1973, c. 295, s. 12; 1987 (Reg. Sess., 1988), c. 1111, s. 11; 1991 (Reg. Sess., 1992), c. 1020, ss. 2, 3; 1993, c. 300, s. 2; 2003-308, s. 6; 2005-133, ss. 6, 7; 2007-231, s. 10; 2022-74, s. 13.1(a); 2023-134, s. 13.2(a); 2024-3, s. 6.1; 2025-25, s. 29(1).)

§ 95-138. Civil penalties.

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order adopted under this Article, for amounts set in accordance with subsection (a1) of this section, except as otherwise provided, as follows:

(1) A penalty shall be assessed for each willful or repeat violation.

(2) A penalty shall be assessed for each serious violation.

(2a) A penalty of up to twenty-nine thousand dollars ($29,000) shall be assessed for each serious violation that involves injury to an employee under 18 years of age.

(2b) A penalty may be assessed for each violation that is adjudged not to be of a serious nature.

(3) A penalty shall be assessed against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in

good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

(4) A penalty shall be assessed for violating the posting requirements, as required under the provisions of this Article.

(a1) The Commissioner shall adjust minimum and maximum civil penalties in this section in accordance with the requirements set forth in the United States Consumer Price Index for All Urban Consumers published by the United States Department of Labor as necessary to comply with federal law. The Commissioner shall have a period of 60 calendar days from the date a final rule is published in the Federal Register to publish the civil penalties in the North Carolina Register under 13 NCAC 07A .0301 or any related or subsequent regulations setting penalty standards in compliance with Part 1903 of Title 29 of the Code of Federal Regulations, and on its website.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged.

(2) The gravity of the violation.

(3) The good faith of the employer.

(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

(5) Whether the violation involves injury to an employee under 18 years of age.

(b1) The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 295, s. 13; 1987 (Reg. Sess., 1988), c. 1111, s. 12; 1989 (Reg. Sess., 1990), c. 844; 1991, c. 329, s. 1; c. 761, s. 17; 1993, c. 474, s. 2; 1998-215, s. 111; 2004-203, s. 39(a); 2005-133, s. 8; 2006-39, s. 3; 2009-351, s. 4; 2022-74, s. 13.2(a).)

§ 95-139. Criminal penalties.

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee 18 years of age or older, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000).

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000).

(c) If an employer is convicted of more than one violation of subsection (a) or (b) of this section, the subsequent violation shall be penalized as follows:

(1) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000) if the subsequent violation results in the death of an employee 18 years of age or older.

(2) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars ($40,000) if the subsequent violation results in the death of an employee under 18 years of age.

(d) This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

(e) Whoever knowingly makes any 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, shall be guilty of a Class 2 misdemeanor, which may include a fine of (i) not more than ten thousand dollars ($10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars ($20,000) for falsifications pertaining to employees under 18 years of age.

(f) Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege. (1973, c. 295, s. 14; 1993, c. 539, s. 671; 1994, Ex. Sess., c. 24, s. 14(c); 2009-351, s. 5.)

§ 95-140. Procedures to counteract imminent dangers.

(a) The superior courts of this State shall have jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists, which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except those individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to assume normal operations without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the superior court shall, without the necessity of showing an adequate remedy at law, have jurisdiction to grant injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Article. The proceeding shall be as provided under the statutes and Rules of Civil Procedure of this State except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Commissioner that relief be sought. If the Commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in the superior court of the district in which the imminent danger is alleged to exist or the employer has its principal office or place of business, for a writ of

mandamus to compel the Commissioner to seek such an order for such relief as may be appropriate. (1973, c. 295, s. 15.)

§ 95-141. Judicial review.

Any person or party in interest who has exhausted all administrative remedies available under this Article and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, firm or corporation under order resides, or, if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1973, c. 295, s. 16; c. 1331, s. 3; 1987, c. 827, s. 265.)

§ 95-142. Legal representation of the Department of Labor.

The Department may represent itself in all actions and proceedings in connection with this Article. Upon request of the Department, it shall be the duty of the Attorney General to represent the Department of Labor in actions or proceedings in connection with this Article. The Attorney General may designate staff to fulfill the duty under this section. (1973, c. 295, s. 17; 2025-92, s. 4.1(f).)

§ 95-143. Record keeping and reporting.

(a) Each employer shall make available to the Commissioner, or his agents, in such manner as the Commissioner shall require, copies of the same records and reports regarding his activities relating to this Article as are required to be made, kept, or preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) and regulations made pursuant thereto.

(b) Each employer shall make, keep and preserve and make available to the Commissioner such records regarding his activities relating to this Article as the Commissioner may prescribe by regulation as necessary and appropriate for the enforcement of this Article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their protections and obligations under this Article, including the provisions of applicable standards. The Commissioner shall prescribe regulations requiring employers to maintain accurate records of, and to make reports at least annually on, work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The Commissioner shall issue regulations requiring employers to maintain accurate records of employee exposure to potentially toxic materials of [or] harmful physical agents which are required to be monitored or measured under this Article. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring,

and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable safety and health standard promulgated under this Article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Commissioner or his duly authorized agents under this Article shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible. (1973, c. 295, s. 18; 1991 (Reg. Sess., 1992), c. 894, s. 1.)

§ 95-144. Statistics.

(a) In order to further the purposes of this Article, the Commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The Commissioner shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious or significant injuries or illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. On the basis of records made and kept pursuant to the provisions of this Article, employers shall file such reports with the Commissioner as he shall prescribe by regulations and as may be necessary to carry out his functions.

(b) A listing of employment by area and industry of employers who have an assigned account number by the Division of Employment Security (DES) of the Department of Commerce of this State shall be supplied annually to the Commissioner by the DES. The listing of employment by area and industry shall contain at least the following: employer name; DES account number; indication of whether multiple or a single report unit; number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the Commissioner to meet federal reporting requirements. (1973, c. 295, s. 19; 2011-401, s. 5.1.)

§ 95-145. Reports to the Secretary.

(a) The Commissioner shall require employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan in force under this Article were not in effect, and

(b) The Commissioner shall make such reports to the Secretary in such form and containing such information as the Secretary from time to time shall require. (1973, c. 295, s. 20.)

§ 95-146. Continuation and effectiveness of this Article.

The Commissioner shall from time to time furnish to the Secretary information and assurances that this Article is being administered by adequate methods and by standards and enforcement procedures which are and will continue to be as effective as federal standards. (1973, c. 295, s. 21.)

§ 95-147. Training and employee education.

(a) The Commissioner, after consultation with appropriate departments and agencies of the State and subdivisions of government, shall conduct, directly or by grants or contracts, (i)

education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Article, and (ii) informational, educational and training programs on the importance of and proper use of adequate safety and health equipment to encourage voluntary compliance.

(b) The Commissioner is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) The Commissioner shall provide employers and employees programs covering recognition, avoidance and prevention of unsafe and unhealthful working conditions in places of employment and shall advise employers and employees, or their representatives, [of] effective means to prevent occupational injuries and illnesses. (1973, c. 295, s. 22.)

§ 95-148. Safety and health programs of State agencies and local governments.

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

(1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article.
(2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees.
(3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions.
(4) Keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action.
(5) Consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section.
(6) Make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, the Commissioner shall, after unsuccessfully seeking by negotiations to abate this failure, include this in the Commissioner's annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct the condition.

The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

This section shall not apply to volunteer fire departments not a part of any municipality.

Any municipality with a population of 10,000 or less may exclude its fire department from the operation of this section by a resolution of the governing body of the municipality, except that the resolution may not exclude those firefighters who are employees of the municipality.

The North Carolina Fire and Rescue Commission shall recommend regulations and standards for fire departments. (1973, c. 295, s. 23; 1983, c. 164; 1985, c. 544; 1989, c. 750, s. 3; 1991 (Reg. Sess., 1992), c. 1020, s. 1; 2014-115, s. 6.)

§ 95-149. Authority to enter into contracts with other State agencies and subdivisions of government.

The Commissioner may enter into contracts with the Department of Health and Human Services or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this Article. (1973, c. 295, s. 24; 1989, c. 727, s. 24; 1997-443, s. 11A.35.)

§ 95-150. Assurance of adequate funds to enforce Article.

The Commissioner shall submit to the General Assembly a budget and request for appropriations to adequately administer this Article which shall be sufficient to give satisfactory assurance that this State will devote adequate funds to the administration and enforcement of the standards herein provided and the proper administration of this Article as required by federal standards. (1973, c. 295, s. 25.)

§ 95-151. Discrimination.

No employer, employee, or any other person related to the administration of this Article shall be discriminated against in any work, procedure, or employment by reason of sex, race, ethnic origin, or by reason of religious affiliation. (1973, c. 295, s. 26.)

§ 95-152. Confidentiality of trade secrets.

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article which contains or which might reveal a trade secret shall be considered confidential, as provided by section 1905 of Title 18 of U.S.C., except as to carrying out this Article or when it is relevant in any proceeding under this Article. In any such proceeding the Commissioner, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1973, c. 295, s. 27; 2005-133, s. 9.)

§ 95-153. Reserved for future codification purposes.

§ 95-154. Authorization for similar safety and health federal-state programs.

Consistent with the requirements and conditions provided in this Article the State, upon the recommendation of the Commissioner of Labor and approval of the Governor, may enter into agreements or arrangements with other federal agencies for the purpose of administering occupational safety and health measures for such employees and employers within the State of North Carolina as may be covered by such federal safety and health statutes. (1973, c. 295, s. 29.)

§ 95-155. Construction of Article and severability.

This Article shall receive a liberal construction to the end that the safety and health of the employees of the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not

affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1973, c. 295, s. 30.)

§ 95-156. Handling of dangerous antineoplastic agents.

(a) The Commissioner of Labor shall adopt rules to establish requirements for the handling of antineoplastic agents in facilities where there is occupational exposure to antineoplastic agents.

(b) The rules adopted pursuant to this section shall be consistent with, but not exceed, the recommendations issued by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), as contained in the Alert: Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings, as published in 2004 and including subsequent amendments and editions. The Department's adoption of the rules may incorporate updates and changes to NIOSH's guidelines as made by CDC.

(c) Rules adopted pursuant to this section shall not apply to an entity that has obtained a permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A.

(d) The Commissioner shall enforce these rules and investigate complaints in accordance with the provisions of this Article. (2014-76, s. 4.)

§ 95-157. Carolina Star Program.

(a) The Commissioner may adopt rules for the operation of the Carolina Star Program in a manner that will promote safe and healthy workplaces throughout the State. The rules for the Carolina Star Program adopted by the Commissioner shall pertain to the following matters:

(1) Upper management leadership and active and meaningful employee involvement.
(2) Systematic assessment of occupational hazards.
(3) Comprehensive hazard prevention, control, and mitigation programs.
(4) Employee safety and health training.
(5) Annual safety and health program evaluation.
(6) Star Annual Report.
(7) Attendance and active participation on Carolina Star Safety Conference Regional Teams and conference related activities.

(b) Applications for participation in the Carolina Star Program shall be submitted by the workplace's management. Applications shall include documentation establishing to the satisfaction of the Commissioner that the employer meets all standards for Carolina Star Program participation.

(c) The Department shall provide for on-site evaluations, as resources allow, by Carolina Star Program evaluation teams of each workplace that has applied to participate in the Carolina Star Program to determine if the applicant's workplace complies with the standards for Carolina Star Program participation.

(d) A workplace's continued participation in the Carolina Star Program shall be conditioned on meeting the requirements and expectations established by the Carolina Star Program Policies and Procedures Manual, Star Annual Report, and successful completion of periodic on-site evaluations conducted by the Carolina Star Program evaluation team.

(e) During periods in which a workplace is a participant in the Carolina Star Program, the workplace shall be exempt from inspections under G.S. 95-136; however, this exception shall not

apply to inspections or investigations of the workplace arising from complaints, referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases. (2017-211, s. 15(b).)

§ 95-158: Reserved for future codification purposes.

§ 95-159: Reserved for future codification purposes.

§ 95-160: Reserved for future codification purposes.