

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 506

Short Title: Health Law Changes.

(Public)

Sponsors: Senator Kincaid

Referred to: Children and Human Resources

March 28, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, TECHNICAL CHANGES TO VARIOUS PUBLIC HEALTH LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 143 of the General Statutes is repealed.

Sec. 2. G.S. 130A-4(b) reads as rewritten:

"(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules. ~~However, the preceding sentence is inapplicable to the exercise of enforcement and permit authority under G.S. 130A-277.~~"

Sec. 3. G.S. 130A-277 reads as rewritten:

"§ 130A-277. Duties of the Department.

The Department shall enforce the rules of the Commission governing Grade 'A' milk by making sanitary inspections of Grade 'A' dairy farms, Grade 'A' processing plants, Grade 'A' milk haulers and Grade 'A' distributors; by determining the quality of Grade 'A' milk; and by evaluating methods of handling Grade 'A' milk to insure compliance with the provisions of the rules of the Commission. The Department shall issue permits for the operation of Grade 'A' dairy farms, processing plants and haulers in accordance with the provisions of the rules of the Commission and shall suspend or revoke permits for

1 violations in accordance with the rules. ~~Upon request by a local board of health the~~
2 ~~Department shall delegate enforcement and permit authority to the local health department."~~

3 Sec. 4. G.S. 113A-105(b) reads as rewritten:

4 "(b) The Coastal Resources Advisory Council shall consist of not more than 47
5 members appointed or designated as follows:

6 (1) Two individuals designated by the Secretary from among the employees
7 of his Department;

8 (1a) The Secretary of the Department of Commerce or his designee;

9 (2) The Secretary of the Department of Administration or his designee;

10 (3) The Secretary of the Department of Transportation and Highway Safety
11 or his designee, and one additional member selected by him from his
12 Department;

13 (4) ~~The State Health Director;~~ Director or the designee thereof;

14 (5) The Commissioner of Agriculture or his designee;

15 (6) The Secretary of the Department of Cultural Resources or his designee;

16 (7) One member from each of the four multi-county planning districts of the
17 coastal area to be appointed by the lead regional agency of each district;

18 (8) One representative from each of the counties in the coastal area to be
19 designated by the respective boards of county commissioners;

20 (9) No more than eight additional members representative of cities in the
21 coastal area and to be designated by the Commission;

22 (10) Three members selected by the Commission who are marine scientists
23 or technologists;

24 (11) One member who is a local health director selected by the Commission
25 upon the recommendation of the Secretary."

26 Sec. 5. G.S. 130A-33.31(a) reads as rewritten:

27 "(a) The Commission of Anatomy shall consist of five members, one representative
28 from the field of mortuary science, ~~from the membership of the State Board of Mortuary~~
29 ~~Science~~, and one each from The University of North Carolina School of Medicine, East
30 Carolina University School of Medicine, Duke University School of Medicine, and
31 Bowman Gray School of Medicine. The dean of each school shall make
32 recommendations and the Secretary of Environment, Health, and Natural Resources shall
33 appoint from such recommendations a member to the Commission. The president of the
34 State Board of Mortuary Science shall appoint the representative from the field of
35 mortuary science ~~one member from that Board~~ to the Commission. The members shall
36 serve terms of four years except two of the original members shall serve a term of one
37 year, one shall serve a term of two years, one shall serve a term of three years, and one
38 shall serve a term of four years. The Secretary shall determine the terms of the original
39 members."

40 Sec. 6. G.S. 130A-452 reads as rewritten:

41 "**§ 130A-452. Local air pollution control programs.**

42 (a) The Department may authorize any local air pollution control program to adopt
43 and enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and

1 renovation if the local air pollution control ~~that~~ program is certified by the North Carolina
2 Environmental Management Commission pursuant to G.S. 143-215.112. The Department
3 shall authorize any local air pollution control program to adopt and enforce the asbestos
4 NESHAP for ~~renovations and demolitions~~ demolition and renovation if the local air
5 pollution control program was certified by the North Carolina Environmental
6 Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local
7 air pollution control program shall continue to be authorized by the Department to
8 enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation
9 so long as the local air pollution control program maintains its certification under G.S.
10 143-215.112 and complies with any rules adopted by the Commission for Health Services
11 pursuant to subsection (b) of this section. Any local air pollution control program
12 authorized to adopt and enforce the asbestos NESHAP for demolition and renovation
13 shall have the authority to enforce the asbestos NESHAP for demolition and renovation
14 under G.S. 130A-18, 130A-22(b1), 130A-22(b2), and 130A-25. Judicial review of an
15 administrative penalty assessed under G.S. 130-22(b1) and G.S. 130A-22(b2) shall be as
16 provided in G.S. 143-215.112(d2)(1) and Article 4 of Chapter 150B of the General
17 Statutes.

18 (b) The Commission for Health Services shall adopt rules regarding the
19 authorization of local air pollution control programs to enforce the asbestos NESHAP for
20 ~~renovations and demolitions~~ demolition and renovation."

21 Sec. 7. G.S. 130A-444 reads as rewritten:

22 "**§ 130A-444. Definitions.**

23 Unless a different meaning is required by the context, the following definitions apply
24 throughout this Article:

- 25 (1) 'AHERA' means Title II, Asbestos Hazard Emergency Response Act of
26 the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as
27 amended by the Asbestos School Hazard Abatement Reauthorization
28 Act of 1990, P.L. 101-637, 104 Stat. 4589 ('ASHARA').
- 29 (2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine),
30 crocidolite (riebeckite), amosite (cummingtonite-grunerite),
31 anthophyllite, tremolite and actinolite.
- 32 (3) 'Asbestos containing material' means material which contains more than
33 one percent (1%) asbestos, including friable asbestos containing
34 material and nonfriable asbestos containing material.
- 35 (3a) ~~'Asbestos NESHAP for renovations and demolitions' means Title II,~~
36 ~~National Emission Standards for Hazardous Air Pollutants, specifically~~
37 ~~those regulations pertaining to regulation of asbestos in renovations and~~
38 ~~demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as~~
39 ~~amended.~~ 'demolition and renovation' means that portion of the National
40 Emission Standards for Hazardous Air Pollutants for asbestos that
41 governs demolition and renovation as set out in 40 CFR §§ 61.141,
42 61.145, 61.150, and 61.154 (1 July 1993 edition).

- 1 (4) 'Abatement' means work performed to repair, maintain, remove, isolate,
2 or encapsulate asbestos containing material. The term does not include
3 inspections, preparation of management plans, abatement project
4 design, taking of samples, or project overview.
- 5 (5) 'Friable' means any material that when dry can be broken, crumbled,
6 pulverized, or reduced to powder by hand pressure, and includes
7 previously nonfriable material after such material becomes damaged to
8 the extent that when dry it can be crumbled, pulverized, or reduced to
9 powder by hand pressure.
- 10 (6) 'Management' means all activities related to asbestos containing
11 material, including inspections, preparation of management plans,
12 abatement project design, abatement, project overview, and taking of
13 samples.
- 14 (6a) 'Person' means an individual, a corporation, a company, an association,
15 a partnership, a unit of local government, a State or federal agency, or
16 any other legal entity.
- 17 (7) 'Public area' means those areas in any building other than a residence
18 that are not covered under the Occupational Safety and Health Act of
19 1970, Pub. L. 91-596, 84 Stat. 1590 ~~(codified as amended in scattered~~
20 ~~sections of U.S.C.)~~ 1590, 29 U.S.C. § 651, et seq. as amended.
- 21 (8) 'Removal' means stripping, chipping, sanding, sawing, drilling,
22 scraping, sucking, and other methods of separating material from its
23 installed location in a building.
- 24 (9) 'Residence' means any single family dwelling or any multi-family
25 dwelling of fewer than 10 units."

26 Sec. 8. G.S. 130A-447(c) reads as rewritten:

27 "(c) The following persons are exempt from the accreditation requirements:

- 28 (1) The owner or operator of a building, other than school buildings subject
29 to the provisions of AHERA, and his permanent employees when
30 performing small-scale, short duration activities, as defined in 40 C.F.R.
31 Pt. 763, Subpt. E, Appendix C ~~(1993)~~ (1994).
- 32 (2) A person performing asbestos containing material management
33 activities in his personal residence.
- 34 (3) Governmental regulatory personnel performing inspections of asbestos
35 containing material management activities solely for the purpose of
36 determining compliance with applicable statutes or regulations.
- 37 (4) Persons licensed by the General Contractors Licensing Board, State
38 Board of Examiners of Plumbing and Heating Contractors, State Board
39 of Examiners of Electrical Contractors, or the State Board of
40 Refrigeration Examiners when engaged in activities associated with
41 their license when performing small-scale, short duration activities, as
42 defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C ~~(1993)~~ (1994)."

43 Sec. 9. G.S. 143-215.107(a) reads as rewritten:

1 "(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and
2 empowered, as rapidly as possible within the limits of funds and facilities available to it,
3 and subject to the procedural requirements of this Article and Article 21:

- 4 (1) To prepare and develop, after proper study, a comprehensive plan or
5 plans for the prevention, abatement and control of air pollution in the
6 State or in any designated area of the State.
- 7 (2) To determine by means of field sampling and other studies, including
8 the examination of available data collected by any local, State or federal
9 agency or any person, the degree of air contamination and air pollution
10 in the State and the several areas of the State.
- 11 (3) To develop and adopt, after proper study, air quality standards
12 applicable to the State as a whole or to any designated area of the State
13 as the Commission deems proper in order to promote the policies and
14 purposes of this Article and Article 21 most effectively.
- 15 (4) To collect information or to require reporting from classes of sources
16 which, in the judgment of the Environmental Management Commission,
17 may cause or contribute to air pollution. Any person operating or
18 responsible for the operation of air contaminant sources of any class for
19 which the Commission requires reporting shall make reports containing
20 such information as may be required by the Commission concerning
21 location, size, and height of contaminant outlets, processes employed,
22 fuels used, and the nature and time periods or duration of emissions, and
23 such other information as is relevant to air pollution and available or
24 reasonably capable of being assembled.
- 25 (5) To develop and adopt emission control standards as in the judgment of
26 the Commission may be necessary to prohibit, abate, or control air
27 pollution commensurate with established air quality standards. The
28 standards may be applied uniformly to the State as a whole or to any
29 area of the State designated by the Commission. This subdivision does
30 not apply to ~~asbestos NESHAP for renovations and demolitions, defined in~~
31 ~~G.S. 130A-444, that are subject to regulation by the Commission for Health~~
32 ~~Services under Article 19 of Chapter 130A of the General Statutes. that~~
33 ~~portion of the National Emission Standards for Hazardous Air~~
34 ~~Pollutants for asbestos that governs demolition and renovation as set out~~
35 ~~in 40 C.F.R. §§ 61.141, 61.145, 61.150, and 61.154 (1 July 1993~~
36 ~~edition).~~
- 37 (6) To adopt, when necessary and practicable, a program for testing
38 emissions from motor vehicles and to adopt motor vehicle emission
39 standards in compliance with applicable federal regulations.
- 40 (7) To develop and adopt standards and plans necessary to implement
41 programs for the prevention of significant deterioration and for the
42 attainment of air quality standards in nonattainment areas.

- 1 (8) To develop and adopt standards and plans necessary to implement
2 programs to control acid deposition and to regulate the use of sulfur
3 dioxide allowances and nitrogen oxides emissions in accordance with
4 Title IV and implementing regulations adopted by the United States
5 Environmental Protection Agency.
- 6 (9) To regulate the oxygen content of gasoline, to require use of
7 reformulated gasoline as the Commission determines necessary, to
8 implement the requirements of Title II and implementing regulations
9 adopted by the United States Environmental Protection Agency, and to
10 develop standards and plans to implement this subdivision. Rules
11 adopted under this subdivision may specify standards for a particular
12 area of the State that differ from standards specified for other areas as
13 may be necessary to improve ambient air quality within a particular
14 area, achieve attainment or preclude violations of the National Ambient
15 Air Quality Standards, or to meet other federal requirements. Rules may
16 authorize the use of marketable oxygen credits for gasoline as provided
17 in federal requirements.
- 18 (10) To develop and adopt standards and plans necessary to implement
19 requirements of the federal Clean Air Act and implementing regulations
20 adopted by the United States Environmental Protection Agency."

21 Sec. 10. G.S. 130A-440(a) reads as rewritten:

22 "(a) Every child in this State entering kindergarten in the public schools shall
23 receive a health assessment. The health assessment shall be made ~~between the first of~~
24 ~~January prior to school entry and no more than 12 months prior to~~ the date of school entry.
25 No child shall attend kindergarten unless a health assessment transmittal form, developed
26 pursuant to G.S. 130A-441, indicating that the child has received the health assessment
27 required by this section, is presented to the school principal. The medical provider, or the
28 parent, guardian, or person in loco parentis, must present a completed health assessment
29 transmittal form to the principal of the school on or before the child's first day of
30 attendance. If a health assessment transmittal form is not presented on or before the first
31 day, the principal shall present a notice of deficiency to the parent, guardian, or
32 responsible person. The parent, guardian, or responsible person shall have 30 calendar
33 days from the first day of attendance to present the required health assessment transmittal
34 form for the child. Upon termination of 30 calendar days, the principal shall not permit
35 the child to attend the school until the required health assessment transmittal form has
36 been presented."

37 Sec. 11. Part 2 of Article 8 of Chapter 130A is repealed.

38 Sec. 12. G.S. 130A-247 reads as rewritten:

39 **"§ 130A-247. Definitions.**

40 The following definitions shall apply throughout this Part:

- 41 (1) 'Establishment' means (i) an establishment that prepares or serves drink,
42 (ii) an establishment that prepares or serves food, (iii) an establishment
43 that provides lodging, ~~or~~ (iv) a bed and breakfast ~~inn~~ inn, or (v) an

1 establishment that prepares and sells meat food products as defined in
2 G.S. 106-549.15(14) or poultry products as defined in G.S. 106-
3 549.51(26).

4 (1a) 'Permanent house guest' means a person who receives room or board for
5 periods of a week or longer. The term includes visitors of the
6 permanent house guest.

7 (2) 'Private club' means an organization that maintains selective members,
8 is operated by the membership, does not provide food or lodging for pay
9 to anyone who is not a member or a member's guest, and is either
10 incorporated as a nonprofit corporation in accordance with Chapter 55A
11 of the General Statutes or is exempt from federal income tax under the
12 Internal Revenue Code as defined in G.S. 105-130.2(1).

13 (3) 'Regular boarder' means a person who receives food for periods of a
14 week or longer.

15 (4) 'Establishment that prepares or serves drink' means a business or other
16 entity that puts together, portions, sets out, or hands out drinks in
17 unpackaged portions using containers that are reused on the premises
18 rather than single-service containers.

19 (5) 'Establishment that prepares or serves food' means a business or other
20 entity that cooks, puts together, portions, sets out, or hands out food in
21 unpackaged portions for human consumption.

22 (6) 'Bed and breakfast inn' means a business of not more than 12 guest
23 rooms that offers bed and breakfast accommodations to at least nine but
24 not more than 23 persons per night for a period of less than one week,
25 and that:

- 26 a. Does not serve food or drink to the general public for pay;
27 b. Serves only the breakfast meal, and that meal is served only to
28 overnight guests of the business;
29 c. Includes the price of breakfast in the room rate; and
30 d. Is the permanent residence of the owner or the manager of the
31 business."

32 Sec. 13. (a) The catch line to G.S. 130A-248 reads as rewritten:

33 "**§ 130A-248. Regulation of ~~restaurants and hotels.~~ food and lodging establishments.**"

34 (b) G.S. 130A-248(a) reads as rewritten:

35 "(a) For the protection of the public health, the Commission shall adopt rules
36 governing the sanitation of ~~restaurants, school cafeterias, summer camps, food or drink~~
37 ~~stands, mobile food units, pushcarts, and other establishments that prepare or serve food~~
38 ~~or drink for pay.~~ establishments that prepare or serve drink or food for pay and
39 establishments that prepare and sell meat food products or poultry products. However,
40 any establishment that prepares or serves food or drink to the public, regardless of pay,
41 shall be subject to the provisions of this Article if the establishment that prepares or
42 serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the

1 definitions in G.S. 18B-1000, and does not meet the definition of a private club as
2 provided in G.S. 130A-247(2)."

3 (c) G.S. 130A-248(a3) reads as rewritten:

4 "(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and
5 (a2) of this section shall address, but not be limited to, the following:

6 (1) Sanitation requirements for construction and cleanliness of floors, walls,
7 ceilings, storage spaces, utensils, ventilation equipment, and other areas
8 and items;

9 (2) ~~The adequacy of:~~ Requirements for:

10 a. Lighting and water supply;

11 b. Wastewater collection, treatment, and disposal facilities; and

12 c. ~~Lavatories, —Lavatory and toilet facilities, food protection,~~
13 protection facilities, and waste disposal;

14 (3) The cleaning and bactericidal treatment of eating and drinking utensils
15 and other food-contact surfaces;

16 (3a) The appropriate and reasonable use of gloves or utensils by employees
17 who handle unwrapped food;

18 (4) The methods of food preparation, transportation, catering, storage, and
19 serving;

20 (5) The health of employees;

21 (6) Animal and vermin control; and

22 (7) The prohibition against the offering of unwrapped food samples to the
23 general public unless the offering and acceptance of the samples are
24 continuously supervised by an agent of the entity preparing or offering
25 the samples or by an agent of the entity on whose premises the samples
26 are made available. As used in this subdivision, 'food samples' means
27 unwrapped food prepared and made available for sampling by and
28 without charge to the general public for the purpose of promoting the
29 food made available for sampling. This subdivision does not apply to
30 unwrapped food prepared and offered in buffet, cafeteria, or other style
31 in exchange for payment by the general public or by the person or entity
32 arranging for the preparation and offering of such unwrapped food.
33 This subdivision shall not apply to open air produce markets nor to
34 farmer market facilities operated on land owned or leased by the State
35 of North Carolina or any local government.

36 The rules shall contain a system for grading facilities, such as Grade A, Grade B, and
37 Grade C."

38 (d) G.S. 130A-248(d) reads as rewritten:

39 "(d) The Department shall charge each establishment subject to this section, except
40 nutrition programs for the elderly administered by the Division of Aging of the
41 Department of Human ~~Resources—Resources, establishments that prepare and sell meat~~
42 food products or poultry products, and public school cafeterias, an annual fee of twenty-
43 five dollars (\$25.00). The Department shall charge an additional twenty-five dollar

1 (\$25.00) late payment fee to any establishment that fails to pay the required fee within 45
2 days after billing by the Department. The Department may, in accordance with G.S.
3 130A-23, suspend or revoke the permit of an establishment that fails to pay the required
4 fee within 60 days after billing by the Department. The Commission shall adopt rules to
5 implement this subsection. Fees collected under this subsection shall be used for State
6 and local public health programs and activities. No more than thirty-three and one-third
7 percent (33-1/3%) of the fees collected may be used to support State health programs and
8 activities."

9 Sec. 14. G.S. 130A-250 reads as rewritten:

10 **"§ 130A-250. Exemptions.**

11 The following shall be exempt from this Part:

- 12 (1) Establishments that provide lodging described in G.S. 130A-248(a1)
13 with four or fewer lodging units;
- 14 (2) Condominiums;
- 15 (3) Establishments that prepare or serve food or provide lodging to regular
16 boarders or permanent house guests only;
- 17 (4) Private homes that occasionally offer lodging accommodations, which
18 may include the providing of food, for two weeks or less to persons
19 attending special events, provided these homes are not bed and breakfast
20 homes or bed and breakfast inns;
- 21 (5) Private clubs;
- 22 (6) Curb markets operated by the State Agricultural Extension Service;
- 23 (7) Establishments that prepare or serve food or drink for pay no more
24 frequently than once a month for a period not to exceed two consecutive
25 days; ~~and~~
- 26 (8) Establishments that put together, portion, set out, or hand out only
27 drinks using single service containers that are not reused on the
28 ~~premises.~~ premises; and
- 29 (9) Markets where meat food products or poultry products are prepared and
30 sold and which are under the continuous inspection by the North
31 Carolina Department of Agriculture or the United States Department of
32 Agriculture."

33 Sec. 15. G.S. 130A-23(d) reads as rewritten:

34 "(d) A permit shall be suspended or revoked immediately if a violation of the
35 Chapter, the rules or a condition imposed upon the permit presents an imminent hazard.
36 An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended
37 for failure of a public swimming pool to maintain minimum water quality or safety
38 standards or design and construction standards pertaining to the abatement of suction
39 hazards which result in an unsafe condition. A permit issued pursuant to ~~G.S. 130A-228 or~~
40 ~~G.S. 130A-248~~ shall be revoked immediately for failure of ~~a market or a facility~~ an
41 establishment to maintain a minimum grade of C. The Secretary shall immediately give
42 notice of the suspension or ~~revocation and shall immediately file a petition for a contested case~~

- 1 ~~in accordance with~~ revocation and the right of the permit holder or program participant to
2 appeal the suspension or revocation under G.S. 150B-23."
3 Sec. 16. This act is effective upon ratification.