

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 768  
Committee Substitute Favorable 5/9/05  
Committee Substitute #2 Favorable 5/18/05  
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Short Title: 2005 Omnibus Labor Law Changes.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM  
BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE  
WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

**"§ 95-69.9. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) This Article shall not apply to:

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

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

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

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

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

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

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

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

5           b. No steam is generated within the coil.

6           c. Maximum one-inch tube size.

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

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

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

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

12          h. Maximum pressure of 260 psig.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 32 (1) The employer is required or empowered to do so by State or federal  
33 ~~law, or law;~~
- 34 (2) ~~The employer has a written authorization from the employee which is~~  
35 ~~signed on or before the payday for the pay period from which the~~  
36 ~~deduction is to be made indicating the reason for the deduction. Two~~  
37 ~~types of authorization are permitted:~~
  - 38 a. When the amount or rate of the proposed deduction is known and  
39 agreed upon in advance, the employer must have written authorization  
40 from the employee which (i) is signed on or before the payday(s) for  
41 the pay period(s) from which the deduction is to be made; (ii) indicates  
42 the reason for the deduction; and (iii) states the actual dollar amount or  
43 percentage of wages which shall be deducted from one or more  
44 paychecks. authorization shall specify the dollar amount or percentage

1 of wages which shall be deducted from one or more paychecks,  
2 ~~provided~~ Provided, that if the deduction is for the convenience of the  
3 employee, the employee shall be given a reasonable opportunity to  
4 withdraw the ~~authorization~~; authorization; or

5 (3)~~b~~. When the amount of the proposed deduction is not known and agreed  
6 upon in advance, the employer must have written authorization from  
7 the employee which (i) is signed on or before the payday(s) for the pay  
8 period(s) from which the deduction is to be made; and (ii) indicates the  
9 reason for the deduction. Prior to any deductions being made under  
10 this section, the employee must (i) receive advance written notice of  
11 the amount to be deducted; (ii) receive written notice of their right to  
12 withdraw the authorization; and (iii) be given a reasonable opportunity  
13 to withdraw the authorization in writing.~~the authorization need not~~  
14 ~~specify a dollar amount which can be deducted from one or more~~  
15 ~~paychecks, provided that the employee receives advance notice of the~~  
16 ~~specific amount of any proposed deduction and is given a reasonable~~  
17 ~~opportunity to withdraw the authorization before the deduction is~~  
18 ~~made.~~

19 (b) The withholding or diversion of wages owed for the employer's benefit must  
20 comply with the following requirements:

21 (1) In nonovertime workweeks, an employer may reduce wages to the  
22 minimum wage level.

23 (2) In overtime workweeks, employers may reduce wages to the minimum  
24 wage level for nonovertime hours.

25 (3) No reductions may be made to overtime wages owed.

26 (c) In addition to complying with the requirements in subsections (a) and (b) of  
27 this section, an employer may withhold or divert a portion of an employee's wages for  
28 cash shortages, inventory shortages, or loss or damage to an employer's property after  
29 giving the employee written notice of the amount to be deducted seven days prior to the  
30 payday on which the deduction is to be made, except that when a separation occurs the  
31 seven-day notice is not required.

32 (d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to  
33 an employee as a result of a miscalculation or other bona fide error, advances of wages  
34 to an employee or to a third party at the employee's request, and the principal amount of  
35 loans made by an employer to an employee are considered prepayment of wages and  
36 may be withheld or deducted from an employee's wages. Deductions for interest and  
37 other charges related to loans by an employer to an employee shall require written  
38 authorization in accordance with subsection (a), above.

39 (e) Notwithstanding subsections (a) and (c), above, if criminal process has issued  
40 against an employee, an employee has been indicted, or an employee has been arrested  
41 pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge  
42 incident to a cash shortage, inventory shortage, or damage to an employer's property, an  
43 employer may withhold or divert a portion of the employee's wages in order to recoup  
44 the amount of the cash shortage, inventory shortage, or damage to the employer's

1 property, without the written authorization required by this section, but the amount of  
2 such withholdings shall comply with the provisions of subsection (b) of this section. If  
3 the employee is not found guilty, then the amount deducted shall be reimbursed to the  
4 employee by the employer.

5 (f) For purposes of this section, a written authorization or written notice may be  
6 in the form of an electronic record in compliance with Article 40 of Chapter 66 (the  
7 Uniform Electronic Transactions Act).

8 (g) Nothing in this Article shall preclude an employer from bringing a civil  
9 action in the General Court of Justice to collect any amounts due the employer from the  
10 employee."

11 **SECTION 17.** G.S. 95-25.9 is repealed.

12 **SECTION 18.** G.S. 95-25.10 is repealed.

13 **SECTION 19.** G.S. 95-25.11 reads as rewritten:

14 **"§ 95-25.11. Employers' remedies preserved.**

15 (a) ~~The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply~~  
16 ~~if criminal process has issued against the employee, if the employee has been indicted,~~  
17 ~~or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A~~  
18 ~~of the General Statutes for a charge incident to a cash shortage, inventory shortage, or~~  
19 ~~damage to an employer's property.~~

20 ~~If the employee is not found guilty, then the amount deducted shall be reimbursed to~~  
21 ~~the employee by the employer.~~

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

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

26 **"§ 95-25.12. Vacation ~~pay~~ plans.**

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

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

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

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

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

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

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

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

13 **"§ 95-25.17. Wage and Hour Division established.**

14 ~~The State Employment Standards Division within the North Carolina Department of~~  
15 ~~Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the~~  
16 ~~Director of the State Employment Standards Division as the Director of the Wage and~~  
17 ~~Hour Division and shall reappoint such other employees as he deems necessary to assist~~  
18 ~~him in administering the provisions of this Article. The Commissioner of Labor is~~  
19 ~~charged with enforcement of this Article. The Commissioner shall appoint a Wage and~~  
20 ~~Hour Director and any other employees the Commissioner deems necessary for~~  
21 ~~enforcement of this Article. The Commissioner shall continue to prescribe the powers,~~  
22 ~~duties, and responsibilities of the Director and employees engaged in the administration~~  
23 ~~of this Article."~~

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