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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.

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

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

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

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

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

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

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

20 **"§ 95-69.10. Application of Article; exemptions.**

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

30 (b) This Article shall not apply to:

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

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

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

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

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

- 1 (16) Autoclaves in medical offices and hospitals that are less than five
2 cubic feet in volume, even if they are equipped with a quick actuating
3 closure.
- 4 (17) Coil-type hot water supply boilers of the instantaneous type where
5 adequate safety relief valves and controls are installed if none of the
6 following limitations are exceeded:
- 7 a. There is no drum, header, or other steam space.
8 b. No steam is generated within the coil.
9 c. Maximum one-inch tube size.
10 d. Maximum three-quarter-inch nominal pipe size.
11 e. Maximum six-gallon nominal water storage capacity.
12 f. Water temperature not to exceed 250°F.
13 g. Maximum heat input does not exceed 400,000 Btu/hr or 110
14 kW.
15 h. Maximum pressure of 260 psig.
- 16 (18) Toy boilers, if all of the following apply:
- 17 a. The water containing volume of the boiler is less than one
18 quart.
- 19 b. The operating pressure does not exceed 15 psig.
20 c. The maximum outside diameter of the shell is no greater than
21 six inches.
22 d. The boiler is manually fired by solid fuels.
- 23 (19) Pressure vessels associated with electrical apparatus in electrical
24 switchyards if the pressure vessels have proper pressure relief devices.
- 25 (20) Carbon dioxide tanks used in beverage dispensing service.

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

- 30 (1) ~~Heat input of 200,000 BTU HR;~~ Btu/hr or 58.6 kW.
31 (2) ~~Water temperature of 200 degrees F;~~
32 (3) ~~Nominal water capacity of 120 gallons;~~ gallons.

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

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

- 37 (1) Are of one-piece, ~~forged—construction—and—have—no~~
38 ~~weldments;~~ unwelded, forged construction;
- 39 (2) Are constructed before January 1, 1981, and operating or could be
40 operated, under the laws of any state or Canadian Province that has
41 adopted one or more sections of the ASME Code;
- 42 (3) Are transferred into this State without a change of ownership; and

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

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

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

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

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

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

24 "**§ 95-69.11. Powers and duties of Commissioner.**

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

- 26 (1) To adopt, modify, or revoke rules governing the construction,
27 operation, and use of boilers and pressure vessels, including, where
28 necessary, requirements for fencing to prevent unauthorized persons
29 from coming in contact with boilers and pressure vessels or the
30 systems they are connected to.
31 (2) ~~To supervise the office of the Director of Boiler and Pressure Vessel~~
32 ~~Division.~~ To delegate to the Chief Inspector any powers, duties, and
33 responsibilities that the Commissioner determines will best serve the
34 public interest in the safe operation of boilers and pressure vessels, and
35 to supervise the Chief Inspector in the performance of those duties.
36 (3) To enforce rules adopted under authority of this Article.
37 (4) To inspect boilers and pressure vessels covered under this Article.
38 (5) To issue inspection certificates to those boilers and pressure vessels
39 found in compliance with this Article.
40 (6) To enjoin violations of this Article in the civil and criminal courts of
41 this State.
42 (7) To keep adequate records of the type, dimensions, age, conditions,
43 pressure allowed upon, location, and date of the last inspection of all
44 boilers and pressure vessels to which this Article applies.

- 1 (8) To require such periodic reports from inspectors, owners, and
2 operators of boilers and pressure vessels as he deems appropriate in
3 carrying out the purposes of this Article.
- 4 (9) To have free access, without notice, to any location in this State,
5 during reasonable hours, where a boiler or pressure vessel is being
6 built, installed, or operated for the purpose of ascertaining whether
7 such boiler or pressure vessel is built, installed, or operated in
8 accordance with the provisions of this Article.
- 9 (10) To investigate serious accidents involving boilers and pressure vessels
10 to determine the causes of the accidents, and to have full subpoena
11 powers in conducting the investigation.
- 12 (11) To establish reasonable fees for the inspection and issuance of
13 inspection certificates for boilers and pressure vessels that are in use.
- 14 (12) To establish reasonable fees for the examination and certification of
15 inspectors.
- 16 (13) To appoint qualified individuals to the Board of Boiler and Pressure
17 Vessel Rules.
- 18 (14) To perform inspections and audits relating to the construction and
19 repair of boilers and pressure vessels and to establish and collect fees
20 for these activities.
- 21 (15) To order the payment of civil penalties provided by this section.
- 22 (16) To require that before any boiler or pressure vessel that is subject to
23 this Article is transferred into the State, or is moved from one location
24 to another within the State, the owner or the owner's authorized agent
25 shall file with the Commissioner a written notice of intent to do so and
26 the type of device involved and provide a copy of the specifications,
27 previous inspection documents, or other information that the
28 Commissioner deems necessary to determine whether the boiler or
29 pressure vessel is in compliance with the provisions of this Article and
30 the rules adopted under this Article."

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

32 "**~~§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created;~~**
33 **~~powers and duties. Boiler Safety Bureau established.~~**

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

40 ~~The Director shall be primarily responsible for the inspection of boilers and~~
41 ~~pressure vessels subject to this Article and for the issuance of inspection certificates for~~
42 ~~those boilers and pressure vessels found suitable. He shall also be responsible for the~~
43 ~~collection of fees for the inspection of boilers and pressure vessels and transmitting the~~

1 same to the State Treasurer, where they shall be held in a special account to cover the
2 operating expenses of the Division.

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

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

8 "**§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment,**
9 **terms, compensation and duties.**

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

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

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

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

42 (2a) Act as proctors during the administration of the National Board
43 commissioning examination.

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

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

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

12 "**§ 95-69.14. Rules and regulations governing the construction, operation and use**
13 **of boilers and pressure vessels.**

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

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

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

30 "**§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates**
31 **of competency; inspector's commission.**

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

34 (1) Boiler and Pressure Vessel ~~Inspector~~ Inspector or Deputy Inspector. –
35 Shall be a qualified ~~individual~~ individual, employed by the
36 Department of Labor and appointed by the Commissioner, to assist in
37 conducting inspections under this Article and report on the suitability
38 of boilers and pressure vessels so ~~inspected;~~ inspected.

39 (2) Special ~~Inspector~~ Inspector or Insurance Inspector. – Shall be a
40 qualified individual regularly employed by an insurance company
41 authorized to insure in this State against injury to person ~~and/or~~ or
42 property or both from explosions and accidents involving boilers and
43 pressure ~~vessels;~~ vessels. Special Inspectors shall not include
44 employees of private contract inspection agencies.

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

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

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

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

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

- 30 (1) ~~Have passed an examination provided and administered by the Board;~~
31 ~~or~~
32 (2) ~~Have passed an examination and been certified in a state having rules~~
33 ~~and regulations substantially similar to those effective within North~~
34 ~~Carolina; or~~
35 (3) ~~Hold a certificate of competency of the National Board of Boiler and~~
36 ~~Pressure Vessel Inspectors; and~~
37 (4) ~~Continue in the employ of the company requesting the certificate of~~
38 ~~competency from the Board."~~

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

40 "**§ 95-69.16. Inspection certificate required.**

41 All boilers and pressure vessels subject to the provisions of this Article shall be
42 inspected by ~~an authorized~~ a commissioned inspector. The Commissioner may
43 determine both the frequency and the method of inspection. In determining the
44 frequency of inspection, the Commissioner shall give due consideration to the hazard

1 involved and the need for the protection of the public. The method of inspection must
2 provide an adequate procedure to insure the safety of individuals likely to be injured by
3 an explosion or accident involving a boiler or pressure vessel.

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

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

10 "**§ 95-69.17. Administrative and judicial review of decisions. Noncomplying**
11 **devices; appeal.**

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

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

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

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

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

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

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

34 "**§ 95-69.18. Inspection certificates required; misrepresentation as**
35 **inspector. Operation without inspection certificate; operation not in**
36 **compliance with this Article; operation after nonissuance or revocation**
37 **of certificate.**

38 ~~It shall be unlawful for any person, firm, partnership, association or corporation to~~
39 ~~operate or use any boiler or pressure vessel in this State, and to which this Article~~
40 ~~applies, without a valid inspection certificate issued by the North Carolina Department~~
41 ~~of Labor. Any person, firm, partnership, association or corporation found to be~~
42 ~~operating or using a boiler or pressure vessel without a valid inspection certificate shall~~
43 ~~be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars~~
44 ~~(\$1,000).~~

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

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

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

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

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

15 **"§ 95-69.19. Violations; civil penalties; appeals.**

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

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

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

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

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

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

1 **"§ 95-69.20. Violations; criminal penalties.**

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

5 (b) Any person knowingly making a material and false statement, representation,
6 or certification in any application, record, report, plan, or any other document filed or
7 required to be maintained pursuant to this Article or the rules adopted pursuant to this
8 Article shall be guilty of a Class 2 misdemeanor."

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

10 **"§ 95-107. Assessment and collection of fees; certificates of safe operation.**

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

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

20 **"§ 95-108. Disposition of fees.**

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

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

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

- 28 (1) The certificate requirements of subsection (a) of this section.
- 29 (2) The prohibition from hazardous or detrimental occupations of
30 subsection (b) of this section.
- 31 (3) The prohibitions of subsection (j)(2) of this section if the youths only
32 work at the establishment when another employee at least 21 years of
33 age is in charge of and present at the licensed premises."

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

35 **"§ 95-25.8. Withholding of wages.**

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

- 38 (1) The employer is required or empowered to do so by State or federal
39 ~~law, or law;~~
- 40 (2) ~~The employer has a written authorization from the employee which is~~
41 ~~signed on or before the payday for the pay period from which the~~
42 ~~deduction is to be made indicating the reason for the deduction. Two~~
43 ~~types of authorization are permitted:~~

- 1 a. When the amount or rate of the proposed deduction is known and
2 agreed upon in advance, the employer must have written authorization
3 from the employee which (i) is signed on or before the payday(s) for
4 the pay period(s) from which the deduction is to be made; (ii) indicates
5 the reason for the deduction; and (iii) states the actual dollar amount or
6 percentage of wages which shall be deducted from one or more
7 paychecks. authorization shall specify the dollar amount or percentage
8 of wages which shall be deducted from one or more paychecks,
9 provided Provided, that if the deduction is for the convenience of the
10 employee, the employee shall be given a reasonable opportunity to
11 withdraw the ~~authorization~~; authorization; or
- 12 (3)~~b~~. When the amount of the proposed deduction is not known and agreed
13 upon in advance, the employer must have written authorization from
14 the employee which (i) is signed on or before the payday(s) for the pay
15 period(s) from which the deduction is to be made; and (ii) indicates the
16 reason for the deduction. Prior to any deductions being made under
17 this section, the employee must (i) receive advance written notice of
18 the actual amount to be deducted; (ii) receive written notice of their
19 right to withdraw the authorization; and (iii) be given a reasonable
20 opportunity to withdraw the authorization in writing. ~~the authorization~~
21 ~~need not specify a dollar amount which can be deducted from one or~~
22 ~~more paychecks, provided that the employee receives advance notice~~
23 ~~of the specific amount of any proposed deduction and is given a~~
24 ~~reasonable opportunity to withdraw the authorization before the~~
25 ~~deduction is made.~~
- 26 (b) The withholding or diversion of wages owed for the employer's benefit must
27 comply with the following requirements:
- 28 (1) In nonovertime workweeks, an employer may reduce wages to the
29 minimum wage level.
- 30 (2) In overtime workweeks, employers may reduce wages to the minimum
31 wage level for nonovertime hours.
- 32 (3) No reductions may be made to overtime wages owed.
- 33 (c) In addition to complying with the requirements in subsections (a) and (b) of
34 this section, an employer may withhold or divert a portion of an employee's wages for
35 cash shortages, inventory shortages, or loss or damage to an employer's property after
36 giving the employee written notice of the amount to be deducted seven days prior to the
37 payday on which the deduction is to be made, except that when a separation occurs the
38 seven-day notice is not required.
- 39 (d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to
40 an employee as a result of a miscalculation or other bona fide error, advances of wages
41 to an employee or to a third party at the employee's request, and the principal amount of
42 loans made by an employer to an employee are considered prepayment of wages and
43 may be withheld or deducted from an employee's wages. Deductions for interest and

1 other charges related to loans by an employer to an employee shall require written
2 authorization in accordance with subsection (a), above.

3 (e) Notwithstanding subsections (a) and (c), above, if criminal process has issued
4 against an employee, an employee has been indicted, or an employee has been arrested
5 pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge
6 incident to a cash shortage, inventory shortage, or damage to an employer's property, an
7 employer may withhold or divert a portion of the employee's wages in order to recoup
8 the amount of the cash shortage, inventory shortage, or damage to the employer's
9 property, without the written authorization required by this section, but the amount of
10 such withholdings shall comply with the provisions of subsection (b) of this section. If
11 the employee is not found guilty, then the amount deducted shall be reimbursed to the
12 employee by the employer.

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

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

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

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

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

22 **"§ 95-25.11. Employers' remedies preserved.**

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

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

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

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

34 **"§ 95-25.12. Vacation ~~pay~~ plans.**

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

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

43 "(3) Notify ~~its~~ employees, in writing or through a posted notice maintained
44 in a place accessible to its employees, ~~of~~ at least 24 hours prior to any

1 changes in promised wages prior to the time of such changes except
2 that wages—wages. Wages may be retroactively increased without the
3 prior notice required by this subsection; and".

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

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

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

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

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

20 "**§ 95-25.17. Wage and Hour Division established.**

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

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