

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-231
HOUSE BILL 680**

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM
BOILER AND PRESSURE VESSEL ACT AND TO REVISE SERVICE
REQUIREMENTS TO CONFORM WITH RULE 4 OF THE NORTH CAROLINA
RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-69.10 reads as rewritten:

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

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

(b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned or operated by the federal government, unless the agency in question has asked for coverage by this Article.
- (2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.
- (3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.
- (5) ~~Pressure vessels used for transportation or storage of liquified petroleum gas.~~
- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.
- (8) Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:
 - a. Five cubic feet in volume and 250 psig.
 - b. Three cubic feet in volume and 350 psig.
 - c. One and one-half cubic feet in volume and 600 psig.

- d. An inside diameter of six inches with no limitation on pressure.
 - (9) Pressure vessels operating at a working pressure not exceeding 15 psig.
 - (10) Pressure vessels with a nominal water capacity not exceeding 120 gallons and containing water under pressure at temperatures not exceeding 120° F, including those containing air, the compression of which serves as a cushion.
 - (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal ~~safety regulations~~ railway safety regulations pursuant to 49 C.F.R. § 230.
 - (12) Repealed by Session Laws 1985, c. 620, s. 2.
 - (13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:
 - a. There is no drum, header, or other steam space.
 - b. No steam is generated within the coil.
 - c. Maximum 1 inch tube size.
 - d. Maximum ¾ inch nominal pipe size.
 - e. Maximum 6 gallon nominal water storage capacity.
 - f. Water temperature of 350°F.
 - (14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.
 - (15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.
 - (16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.
 - (17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:
 - a. There is no drum, header, or other steam space.
 - b. No steam is generated within the coil.
 - c. Maximum one-inch tube size.
 - d. Maximum three-quarter-inch nominal pipe size.
 - e. Maximum six-gallon nominal water storage capacity.
 - f. Water temperature not to exceed 250°F.
 - g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
 - h. Maximum pressure of 260 psig.
 - (18) Toy boilers, if all of the following apply:
 - a. The water containing volume of the boiler is less than one quart.
 - b. The operating pressure does not exceed 15 psig.
 - c. The maximum outside diameter of the shell is no greater than six inches.
 - d. The boiler is manually fired by solid fuels.
 - (19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper pressure relief devices.
 - (20) Carbon dioxide tanks used in beverage dispensing service.
- (c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas

or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 Btu/hr or 58.6 kW.
- (2) Repealed by Session Laws 2005-453, s. 2.
- (3) Nominal water capacity of 120 gallons.

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

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

- (1) Are of one-piece, unwelded, forged construction;
- (2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;
- (3) Are transferred into this State without a change of ownership; and
- (4) Are determined by the Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

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

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

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

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

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

(g) The inspection requirements established by the Department of Labor shall not apply to pressure vessels used for transportation or storage of liquefied petroleum gas that are subject to inspection in accordance with the requirements established by the Department of Agriculture and Consumer Services."

SECTION 2. G.S. 95-69.15 reads as rewritten:

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

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

- (1) Boiler and Pressure Vessel Inspector or Deputy Inspector. – Shall be a qualified individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so inspected.
- (2) Special Inspector or Insurance Inspector. – Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person or property or both from explosions and accidents involving boilers and pressure vessels.

Special Inspectors shall not include employees of private contract inspection agencies.

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

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

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

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

~~(c) Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board."~~

SECTION 3. G.S. 95-69.16 reads as rewritten:

"§ 95-69.16. Inspection certificate required.

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

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

SECTION 4. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail ~~or with return receipt, by signature confirmation as provided by the U.S. Postal Service,~~ by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding

pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 5. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail ~~or with return receipt, by signature confirmation as provided by the U.S. Postal Service,~~ by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 6. G.S. 95-69.19(d) reads as rewritten:

"(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 7. G.S. 95-110.10(e) reads as rewritten:

"(e) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail ~~or with return receipt, by signature confirmation as provided by the U.S. Postal Service,~~ by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 8. G.S. 95-111.13(g) reads as rewritten:

"(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail ~~or with return receipt, by signature confirmation as provided by the U.S. Postal Service,~~ by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 9. G.S. 95-123 reads as rewritten:

"§ 95-123. Orders.

If, after investigation, the Commissioner finds that a violation of any of his rules and regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance which endangers the safety of the public, the Commissioner shall forthwith issue his written order setting forth his findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. The order shall be sent to the affected operator by certified mail ~~or with return receipt, by signature~~

confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, and shall become final unless the operator contests the order by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the order. The Commissioner shall have the power to institute injunctive proceedings in any court of competent jurisdiction of the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the passenger tramway is located for the purpose of restraining the operation of said tramway or for compelling compliance with any lawful order of the Commissioner. Judicial review of a final decision under this section may be obtained under Article 4 of Chapter 150B of the General Statutes."

SECTION 10. G.S. 95-137(b) reads as rewritten:

"(b) Procedure for Enforcement. –

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

- a. Contest the citation or proposed assessment of penalty; or
- b. Request an informal conference.

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

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

Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.

- (3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (4) If an employer notifies the Director that the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.
- (5) Repealed by Session Laws 1993, c. 300, s. 2.
- (6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes."

SECTION 11. G.S. 95-234(a) reads as rewritten:

"(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail ~~or with return receipt, by signature confirmation as provided by the U.S. Postal Service,~~ by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 12. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 9th day of July,
2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:49 a.m. this 18th day of July, 2007