

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 25, 2015
S.B. 429
PRINCIPAL CLERK

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SENATE DRS15170-LR-76A (03/05)

Short Title: Labor/2015 Technical & Conforming Changes. (Public)

Sponsors: Senator Brock (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT MAKING TECHNICAL AND CONFORMING CHANGES TO THE LABOR
3 LAWS OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. TECHNICAL AND CONFORMING CHANGES**

7 **SECTION 1.1.** G.S. 95-3 reads as rewritten:

8 "**§ 95-3. Divisions of Department; Commissioner; administrative officers.**

9 The Department of Labor shall consist of the following officers, divisions and sections:

10 A Commissioner of Labor.

11 A Division of Standards and Inspections.

12 A Division of ~~Statistics.~~ Occupational Safety and Health.

13 Each division shall be in the charge of a chief administrative officer and shall be organized
14 under such rules and regulations as the Commissioner of Labor and the head of the division
15 concerned, ~~with the approval of the Governor,~~ shall prescribe and promulgate. The
16 Commissioner of Labor, ~~with the approval of the Governor,~~ may make provision for one person
17 to act as chief administrative officer of two or more divisions, when such is deemed advisable.
18 The chief administrative officers of the several divisions shall be appointed by the
19 Commissioner of ~~Labor with the approval of the Governor.~~ Labor. The Commissioner of
20 Labor, ~~with the approval of the Governor~~ may combine or consolidate the activities of two or
21 more of the divisions of the Department, or provide for the setting up of other divisions when
22 such action shall be deemed advisable for the more efficient and economical administration of
23 the work and duties of the Department."

24 **SECTION 1.2.** G.S. 95-4 reads as rewritten:

25 "**§ 95-4. Authority, powers and duties of Commissioner.**

26 The Commissioner of Labor shall be the executive and administrative head of the
27 Department of Labor. In addition to the other powers and duties conferred upon the
28 Commissioner of Labor by this Article, the said Commissioner shall have authority and be
29 charged with the duty:

- 30 (1) To appoint and assign to duty such clerks, stenographers, and other
31 employees in the various divisions of the Department, ~~with approval of said~~
32 ~~director of division,~~ as may be necessary to perform the work of the
33 Department, and fix their compensation, subject to the approval of the
34 Department of Administration. The Commissioner of Labor may assign or
35 transfer stenographers, or clerks, from one division to another, or inspectors
36 from one division to another, or combine the clerical force of two or more



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1 divisions, or require from one division assistance in the work of another
2 division, as he may consider necessary and advisable: Provided, however,
3 the provisions of this subdivision shall not apply to the Industrial
4 Commission, or the Division of Workers' Compensation.

5 (2) To make such rules and regulations with reference to the work of the
6 Department and of the several divisions thereof as shall be necessary to
7 properly carry out the duties imposed upon the said Commissioner and the
8 work of the ~~Department; such rules and regulations to be made subject to the~~
9 ~~approval of the Governor.~~Department.

10 (3) To take and preserve testimony, examine witnesses, administer oaths, and
11 under proper restriction enter any public institution of the State, any factory,
12 store, workshop, laundry, public eating house or mine, and interrogate any
13 person employed therein or connected therewith, or the proper officer of a
14 corporation, or file a written or printed list of interrogatories and require full
15 and complete answers to the same, to be returned under oath within 30 days
16 of the receipt of said list of questions.

17 (4) To secure the enforcement of all laws relating to the inspection of factories,
18 mercantile establishments, mills, workshops, public eating places, and
19 commercial institutions in the State. To aid him in the work, he shall have
20 power to appoint factory inspectors and other assistants. The duties of such
21 inspectors and other assistants shall be prescribed by the Commissioner of
22 Labor.

23 (5) To visit and inspect, personally or through his assistants and factory
24 inspectors, at reasonable hours, as often as practicable, the factories,
25 mercantile establishments, mills, workshops, public eating places, and
26 commercial institutions in the State, where goods, wares, or merchandise are
27 manufactured, purchased, or sold, at wholesale or retail.

28 (6) To enforce the provisions of this section and to prosecute all violations of
29 laws relating to the inspection of factories, mercantile establishments, mills,
30 workshops, public eating houses, and commercial institutions in this State
31 before any court of competent jurisdiction. It shall be the duty of the district
32 attorney of the proper district upon the request of the Commissioner of
33 Labor, or any of his assistants or deputies, to prosecute any violation of a
34 law, which it is made the duty of the said Commissioner of Labor to
35 enforce."

36 **SECTION 1.3.** G.S. 95-69.11 reads as rewritten:

37 "**§ 95-69.11. Powers and duties of Commissioner.**

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

39 (1) To adopt, modify, or revoke rules governing the construction, operation, and
40 use of boilers and pressure vessels, including, where necessary, requirements
41 for fencing to prevent unauthorized persons from coming in contact with
42 boilers and pressure vessels or the systems they are connected to.

43 (2) To delegate to the Chief Inspector any powers, duties, and responsibilities
44 that the Commissioner determines will best serve the public interest in the
45 safe operation of boilers and pressure vessels, and to supervise the Chief
46 Inspector in the performance of those duties.

47 (3) To enforce rules adopted under authority of this Article.

48 (4) To inspect boilers and pressure vessels covered under this Article.

49 (5) To issue inspection certificates to those boilers and pressure vessels found in
50 compliance with this Article.

- 1 (6) To enjoin violations of this Article in the civil and criminal courts of this
2 State.
- 3 (7) To keep adequate records of the type, dimensions, age, conditions, pressure
4 allowed upon, location, and date of the last inspection of all boilers and
5 pressure vessels to which this Article applies.
- 6 (8) To require such periodic reports from inspectors, owners, and operators of
7 boilers and pressure vessels as he deems appropriate in carrying out the
8 purposes of this Article.
- 9 (9) To have free access, without notice, to any location in this State, during
10 reasonable hours, where a boiler or pressure vessel is being built, installed,
11 or operated for the purpose of ascertaining whether such boiler or pressure
12 vessel is built, installed, or operated in accordance with the provisions of this
13 Article.
- 14 (10) To investigate serious accidents involving boilers and pressure vessels to
15 determine the causes of the accidents, and to have full subpoena powers in
16 conducting the investigation.
- 17 (11) To establish reasonable fees for the inspection and issuance of inspection
18 certificates for boilers and pressure vessels that are in use.
- 19 (12) To establish reasonable fees for the examination and certification of
20 inspectors.
- 21 (13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel
22 Rules.
- 23 (14) To perform inspections and audits relating to the construction and repair of
24 boilers and pressure vessels and to establish and collect fees for these
25 activities.
- 26 (15) To order the payment of civil penalties provided by this section.
- 27 (16) To require that before any boiler or pressure vessel that is subject to this
28 Article is transferred into the State, or is moved from one location to another
29 within the State, the owner or the owner's authorized agent shall file with the
30 Commissioner a written notice of intent to do so and the type of device
31 involved and provide a copy of the specifications, previous inspection
32 documents, or other information that the Commissioner deems necessary to
33 determine whether the boiler or pressure vessel is in compliance with the
34 provisions of this Article and the rules adopted under this Article.
- 35 (17) To grant exceptions from the requirements of the rules and regulations
36 adopted under authority of this Article and to permit the use of other devices
37 when such exceptions and uses will not expose the public to an unsafe
38 condition likely to result in serious personal injury or property damage.
- 39 (18) To devise and proctor examinations covering this Article and the rules
40 adopted under this Article to applicants seeking a commission as inspectors
41 of boilers and pressure vessels in this State.
- 42 (19) To act as proctors during the administration of the National Board
43 commissioning examination.
- 44 (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers
45 and pressure vessels within this State. Whenever action is taken under this
46 section to suspend or revoke a commission, the affected party shall be given
47 notice of the availability of an administrative hearing and of judicial review
48 in accordance with Chapter 150B of the General Statutes, the Administrative
49 Procedure Act."

50 **SECTION 1.4.** G.S. 95-69.17(c) reads as rewritten:

1 "~~(c) Whenever action is taken under this section, the affected party shall be given notice~~
2 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
3 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
4 under this section by the Commissioner shall be final, unless within 15 days after receipt of
5 notice thereof by certified mail with return receipt, by signature confirmation as provided by
6 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
7 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
8 taken takes exception to the determination, in which event the final determination of the action
9 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
10 150B of the General Statutes, the Administrative Procedure Act."

11 **SECTION 1.5.** G.S. 95-110.6(c) reads as rewritten:

12 "~~(c) Whenever action is taken under this section, the affected party shall be given notice~~
13 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
14 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
15 under this section by the Commissioner shall be final, unless within 15 days after receipt of
16 notice thereof by certified mail with return receipt, by signature confirmation as provided by
17 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
18 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
19 taken takes exception to the determination, in which event the final determination of the action
20 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
21 150B of the General Statutes, the Administrative Procedure Act."

22 **SECTION 1.6.** G.S. 95-111.6(c) reads as rewritten:

23 "~~(c) Whenever action is taken under this section, the affected party shall be given notice~~
24 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
25 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
26 under this section by the Commissioner shall be final, unless within 15 days after receipt of
27 notice thereof by certified mail with return receipt, by signature confirmation as provided by
28 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
29 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
30 taken takes exception to the determination, in which event the final determination of the action
31 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
32 150B of the General Statutes, the Administrative Procedure Act."

33 34 **PART II. STATUTORY UPDATING/REPEALS**

35 **SECTION 2.1.** G.S. 95-5 reads as rewritten:

36 "~~§ 95-5. Annual report to Governor; recommendation as to legislation needed.~~

37 ~~The Commissioner of Labor shall annually, on or before the first day of January, file with~~
38 ~~the Governor a report covering the activities of the Department, and the report so made on or~~
39 ~~before January 1 of the years in which the General Assembly shall be in session shall be~~
40 ~~accompanied by recommendations of the Commissioner with reference to such changes in the~~
41 ~~law applying to or affecting industrial and labor conditions as the Commissioner may deem~~
42 ~~advisable. The report of the Commissioner of Labor shall be printed and distributed in such~~
43 ~~manner and form as the Director of the Budget shall authorize."~~

44 **SECTION 2.2.** G.S. 95-6 reads as rewritten:

45 "~~§ 95-6. Statistical report to Governor; publication of information given by employers.~~

46 ~~It shall be the duty of the Commissioner of Labor to collect in the manner herein provided~~
47 ~~for, and to assort, systematize, and present to the Governor as a part of the report provided for~~
48 ~~in G.S. 95-5, statistical details relating to all divisions of labor in the State, and particularly~~
49 ~~concerning the following: the extent of unemployment, the hours of labor, the number of~~
50 ~~employees and sex thereof, and the daily wages earned; the conditions with respect to labor in~~
51 ~~all manufacturing establishments, hotels, stores, and workshops; and the industrial, social,~~

1 educational, moral, and sanitary conditions of the labor classes, in the productive industries of
2 the State. Such statistical details shall include the names of firms, companies, or corporations,
3 where the same are located, the kind of goods produced or manufactured, the period of
4 operation of each year, the number of employees, male or female, the number engaged in
5 clerical work and the number engaged in manual labor, with the classification of the number of
6 each sex engaged in such occupation and the average daily wage paid each: Provided, that the
7 Commissioner shall not, nor shall anyone connected with his office, publish or give or permit
8 to be published or given to any person the individual statistics obtained from any employer, and
9 all such statistics, when published, shall be published in connection with other similar statistics
10 and be set forth in aggregates and averages."

11 **SECTION 2.3.** G.S. 95-11 reads as rewritten:

12 **"§ 95-11. Division of Standards and Inspection.**

13 (a) ~~The chief administrative officer of the Division of Standards and Inspection shall be~~
14 ~~known as the Director of the Division. It shall be his duty, under the direction and supervision~~
15 ~~of the Commissioner of Labor, and under rules and regulations to be adopted by the~~
16 ~~Department as herein provided, to make or cause to be made all necessary inspections to see~~
17 ~~that all laws, rules and regulations concerning the safety and well-being of labor are promptly~~
18 ~~and effectively carried out.~~

19 (b) ~~The Division shall make studies and investigations of special problems connected~~
20 ~~with the labor of women and children, and create the necessary organization, and appoint an~~
21 ~~adequate number of investigators, with the consent of the Commissioner of Labor and the~~
22 ~~approval of the Governor; and the Director of said Division, under the supervision and~~
23 ~~direction of the Commissioner of Labor and under such rules and regulations as shall be~~
24 ~~prescribed by said Commissioner, with the approval of the Governor, shall perform all duties~~
25 ~~devolving upon the Department of Labor, or the Commissioner of Labor with relation to the~~
26 ~~enforcement of laws, rules, and regulations governing the employment of women and children.~~

27 (c) ~~The Director shall report annually to the Commissioner of Labor the activities of the~~
28 ~~Division, with such recommendations as may be considered advisable for the improvement of~~
29 ~~the working conditions for women and children.~~

30 (d) ~~The Division shall collect and collate information and statistics concerning the~~
31 ~~location, estimated and actual horsepower and condition of valuable water powers, developed~~
32 ~~and undeveloped, in this State; also concerning farmlands and farming, the kinds, character,~~
33 ~~and quantity of the annual farm products in this State; also of timber lands and timbers, truck~~
34 ~~gardening, dairying, and such other information and statistics concerning the agricultural and~~
35 ~~industrial welfare of the citizens of this State as may be deemed to be of interest and benefit to~~
36 ~~the public. The Director shall also perform the duties of mine inspector as prescribed in the~~
37 ~~Chapter on Mines and Quarries.~~

38 (e) ~~The Division shall conduct such research and carry out such studies as will~~
39 ~~contribute to the health, safety, and general well-being of the working classes of the State. The~~
40 ~~finding of such investigations, with the approval of the Commissioner of Labor and the~~
41 ~~Governor and the cooperation of the chief administrative officer of the Division or Divisions~~
42 ~~directly concerned, shall be promulgated as rules and regulations governing work places and~~
43 ~~working conditions. All recommendations and suggestions pertaining to health, safety, and~~
44 ~~well-being of employees shall be transmitted to the Commissioner of Labor in an annual report~~
45 ~~which shall cover the work of the Division of Standards and Inspection.~~

46 (f) ~~The Division shall make, promulgate and enforce rules and regulations for the~~
47 ~~protection of employees from accident and from occupational disease; and shall upon request,~~
48 ~~and after such investigation as it deems proper, issue certificates of compliance to such~~
49 ~~employers as are found by it to be in compliance with the rules and regulations made and~~
50 ~~promulgated in accordance with the provisions of this paragraph."~~

51 **SECTION 2.4.** G.S. 95-12 reads as rewritten:

1 ~~"§ 95-12. Division of Statistics.~~

2 ~~The Division of Statistics shall be in charge of a Chief Statistician. It shall be his duty,~~
3 ~~under the direction and supervision of the Commissioner of Labor, to collect, assort,~~
4 ~~systematize, and print all statistical details relating to all divisions of labor in this State as is~~
5 ~~provided in G.S. 95-6."~~

6 **SECTION 2.5.** G.S. 95-69.13 reads as rewritten:

7 ~~"§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms,~~
8 ~~compensation and duties.~~

9 (a) ~~There is hereby created the North Carolina Board of Boiler and Pressure Vessels~~
10 ~~Rules consisting of nine members appointed by the Commissioner for a term of five years each.~~
11 ~~Of these nine appointed members, one shall be a representative of the owners and users of~~
12 ~~steam boilers within this State, one a representative of boiler manufacturers within this State,~~
13 ~~one a representative of boilermakers within this State who has had not less than five years'~~
14 ~~practical experience as a boilermaker, one shall be a representative of the owners or users of~~
15 ~~pressure vessels within the State, one shall be a representative of the pressure vessel~~
16 ~~manufacturers within the State, one a representative of boiler inspection and insurance~~
17 ~~companies authorized to insure boilers and pressure vessels within the State, one a~~
18 ~~representative of the antique boiler owners and operators in this State, one a contractor holding~~
19 ~~a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a~~
20 ~~recognized engineering college or a licensed professional engineer having boiler and pressure~~
21 ~~vessel experience. The Commissioner of Labor shall serve as 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, modification or~~
25 ~~revocation by the Commissioner, governing the construction, installation,~~
26 ~~inspection, repair, alteration, use and operation of boilers and pressure~~
27 ~~vessels in this State. The rules and regulations so formulated shall conform~~
28 ~~as nearly as possible to the standards of the American Society of Mechanical~~
29 ~~Engineers.~~

30 (2) ~~Devise and proctor examinations covering this Article and the rules adopted~~
31 ~~under this Article to applicants seeking a commission as inspectors of boilers~~
32 ~~and pressure vessels in this State.~~

33 (2a) ~~Act as proctors during the administration of the National Board~~
34 ~~commissioning examination.~~

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

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

43
44 **PART III. EFFECTIVE DATE**

45 **SECTION 3.1.** This act is effective when it becomes law.