

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 680**

Short Title: Omnibus Labor Law Changes.-AB

(Public)

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Sponsors: Representative Howard.

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Referred to: Judiciary I.

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March 15, 2007

A BILL TO BE ENTITLED

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.

- 1 (3) Portable pressure vessels used for agricultural purposes only or for  
2 pumping or drilling in an open field for water, gas or coal, gold, talc,  
3 or other minerals and metals.
- 4 (4) Boilers and pressure vessels which are located in private residences or  
5 in apartment houses of less than six families.
- 6 (5) ~~Pressure vessels used for transportation or storage of liquified~~  
7 ~~petroleum gas.~~
- 8 (6) Air tanks located on vehicles licensed under the rules and regulations  
9 of other state authorities operating under rules and regulations  
10 substantially similar to those of this State and used for carrying  
11 passengers or freight within interstate commerce.
- 12 (7) Air tanks installed on right-of-way of railroads and used directly in the  
13 operation of trains.
- 14 (8) Any of the following pressure vessels that do not exceed the listed  
15 limitations if the vessel is not equipped with a quick actuating closure:  
16 a. Five cubic feet in volume and 250 psig.  
17 b. Three cubic feet in volume and 350 psig.  
18 c. One and one-half cubic feet in volume and 600 psig.  
19 d. An inside diameter of six inches with no limitation on pressure.
- 20 (9) Pressure vessels operating at a working pressure not exceeding 15  
21 psig.
- 22 (10) Pressure vessels with a nominal water capacity not exceeding 120  
23 gallons and containing water under pressure at temperatures not  
24 exceeding 120° F, including those containing air, the compression of  
25 which serves as a cushion.
- 26 (11) Boilers and pressure vessels on railroad steam locomotives that are  
27 subject to federal ~~safety regulations~~ railway safety regulations pursuant  
28 to 49 C.F.R. § 230.
- 29 (12) Repealed by Session Laws 1985, c. 620, s. 2.
- 30 (13) Coil-type hot water supply boilers, generally referred to as steam  
31 jennies, where the water can flash into steam when released directly to  
32 the atmosphere through a manually operated nozzle and where  
33 adequate safety relief valves and controls are installed on them,  
34 provided none of the following limitations are exceeded:  
35 a. There is no drum, header, or other steam space.  
36 b. No steam is generated within the coil.  
37 c. Maximum 1 inch tube size.  
38 d. Maximum ¾ inch nominal pipe size.  
39 e. Maximum 6 gallon nominal water storage capacity.  
40 f. Water temperature of 350°F.
- 41 (14) Pressure vessels containing water at a temperature not exceeding 110  
42 degrees fahrenheit except that this provision shall not exclude  
43 hydropneumatic pressure vessels from regulation.

- 1 (15) An air tank that does not exceed eight cubic feet in volume that is  
2 installed on a service vehicle.
- 3 (16) Autoclaves in medical offices and hospitals that are less than five  
4 cubic feet in volume, even if they are equipped with a quick actuating  
5 closure.
- 6 (17) Coil-type hot water supply boilers of the instantaneous type where  
7 adequate safety relief valves and controls are installed if none of the  
8 following limitations are exceeded:
- 9 a. There is no drum, header, or other steam space.  
10 b. No steam is generated within the coil.  
11 c. Maximum one-inch tube size.  
12 d. Maximum three-quarter-inch nominal pipe size.  
13 e. Maximum six-gallon nominal water storage capacity.  
14 f. Water temperature not to exceed 250°F.  
15 g. Maximum heat input does not exceed 400,000 Btu/hr or 110  
16 kW.  
17 h. Maximum pressure of 260 psig.
- 18 (18) Toy boilers, if all of the following apply:
- 19 a. The water containing volume of the boiler is less than one  
20 quart.  
21 b. The operating pressure does not exceed 15 psig.  
22 c. The maximum outside diameter of the shell is no greater than  
23 six inches.  
24 d. The boiler is manually fired by solid fuels.
- 25 (19) Pressure vessels associated with electrical apparatus in electrical  
26 switchyards if the pressure vessels have proper pressure relief devices.
- 27 (20) Carbon dioxide tanks used in beverage dispensing service.
- 28 (c) The construction and inspection requirements established by the Department  
29 of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas  
30 or electricity, or hot water supply tanks heated by steam or any other indirect means,  
31 which do not exceed any of the following limitations:
- 32 (1) Heat input of 200,000 Btu/hr or 58.6 kW.  
33 (2) Repealed by Session Laws 2005-453, s. 2.  
34 (3) Nominal water capacity of 120 gallons.
- 35 provided that they are equipped with ASME Code and National Board certified safety  
36 relief valves.
- 37 (d) The construction requirements established by the Department of Labor shall  
38 not apply to pressure vessels installed in this State prior to December 31, 1981, that:
- 39 (1) Are of one-piece, unwelded, forged construction;  
40 (2) Are constructed before January 1, 1981, and operating or could be  
41 operated, under the laws of any state or Canadian Province that has  
42 adopted one or more sections of the ASME Code;  
43 (3) Are transferred into this State without a change of ownership; and

1 (4) Are determined by the Chief Inspector to be constructed under  
2 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 Chief Inspector to be constructed under  
16 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 (g) The inspection requirements established by the Department of Labor shall not  
24 apply to pressure vessels used for transportation or storage of liquefied petroleum gas  
25 that are subject to inspection in accordance with the requirements established by the  
26 Department of Agriculture and Consumer Services."

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

28 "**§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates**  
29 **of competency; inspector's commission.**

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

- 32 (1) Boiler and Pressure Vessel Inspector or Deputy Inspector. – Shall be a  
33 qualified individual, employed by the Department of Labor and  
34 appointed by the Commissioner, to assist in conducting inspections  
35 under this Article and report on the suitability of boilers and pressure  
36 vessels so inspected.  
37 (2) Special Inspector or Insurance Inspector. – Shall be a qualified  
38 individual regularly employed by an insurance company authorized to  
39 insure in this State against injury to person or property or both from  
40 explosions and accidents involving boilers and pressure vessels.  
41 Special Inspectors shall not include employees of private contract  
42 inspection agencies.  
43 (3) Owner-User Inspectors. – Shall be a qualified individual employed on  
44 a full-time basis by a company operating pressure vessels for its own

1 use and not for resale, and maintains an established inspection program  
2 for periodic inspection of pressure vessels owned or used by that  
3 company and where such inspection program is under the supervision  
4 of one or more engineers having qualifications satisfactory to the  
5 Commissioner.

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

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

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

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

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

27 "**§ 95-69.16. Inspection certificate required.**

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

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

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

41 "(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth  
42 Employment) or any regulation issued thereunder, shall be subject to a civil penalty not  
43 to exceed two hundred fifty dollars (\$250.00) for each violation. In determining the  
44 amount of such penalty, the appropriateness of such penalty to the size of the business

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

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

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

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

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

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

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

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

38 "(e) The determination of the amount of the penalty by the Commissioner shall be  
39 final, unless within 15 days after receipt of notice thereof by certified mail ~~or with~~  
40 return receipt, by signature confirmation as provided by the U.S. Postal Service, by a  
41 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery  
42 receipt, or via hand delivery, the person charged with the violation takes exception to  
43 the determination in which event the final determination of the penalty shall be made in

1 an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of  
2 the General Statutes, the Administrative Procedure Act."

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

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

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

13 **"§ 95-123. Orders.**

14 If, after investigation, the Commissioner finds that a violation of any of his rules and  
15 regulations exists, or that there is a condition in passenger tramway construction,  
16 operation, or maintenance which endangers the safety of the public, the Commissioner  
17 shall forthwith issue his written order setting forth his findings, the corrective action to  
18 be taken, and fixing a reasonable time for compliance therewith. The order shall be sent  
19 to the affected operator by certified mail ~~or~~with return receipt, by signature  
20 confirmation as provided by the U.S. Postal Service, by a designated delivery service  
21 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand  
22 delivery, and shall become final unless the operator contests the order by filing a  
23 petition for a contested case under G.S. 150B-23 within 20 days after receiving the  
24 order. The Commissioner shall have the power to institute injunctive proceedings in any  
25 court of competent jurisdiction of the district court district as defined in G.S. 7A-133 or  
26 superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be,  
27 in which the passenger tramway is located for the purpose of restraining the operation of  
28 said tramway or for compelling compliance with any lawful order of the Commissioner.  
29 Judicial review of a final decision under this section may be obtained under Article 4 of  
30 Chapter 150B of the General Statutes."

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

32 "(b) Procedure for Enforcement. –

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

44 a. Contest the citation or proposed assessment of penalty; or

1           b. Request an informal conference.

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

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

35          (3) No citation may be issued under this section after the expiration of six  
36          months following the occurrence of any violation.

37          (4) If an employer notifies the Director that the employer intends to  
38          contest a citation issued under the provisions of this Article or  
39          notification issued under the provisions of this Article, or if, within 15  
40          working days of the receipt of a citation under this Article, any  
41          employee or representative thereof files a notice with the Director  
42          alleging that the period of time fixed in the citation for the abatement  
43          of the violation is unreasonable, the Director shall immediately advise  
44          the Commission of such notification, and the Commission shall afford



1 an opportunity for a hearing. The Commission shall thereafter issue an  
2 order, based on findings of fact, affirming, modifying, or vacating the  
3 Director's citation or the proposed penalty fixed by the Commissioner,  
4 or directing other appropriate relief, and such order shall become final  
5 30 days after its issuance. Upon showing by an employer of a good  
6 faith effort to comply with the abatement requirements of a citation,  
7 and that an abatement has not been completed because of factors  
8 beyond the employer's reasonable control, the Director, after an  
9 opportunity for a hearing as provided in this Article, shall issue an  
10 order affirming or modifying the abatement requirements in such  
11 citation. The rules of procedure prescribed by the chairman of the  
12 Commission shall provide affected employees or representatives of  
13 affected employees an opportunity to participate as parties to hearings  
14 under this section.

15 (5) Repealed by Session Laws 1993, c. 300, s. 2.

16 (6) Each local unit of government shall report each violation for which it  
17 is issued a citation to its local governing board at its next public  
18 meeting and to its workers compensation insurance carrier or to the  
19 risk pool of which it is a member pursuant to Article 23 of Chapter 58  
20 of the General Statutes."

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

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

27 (1) The appropriateness of the penalty for the size of the business of the  
28 employer charged; and

29 (2) The gravity of the violation.

30 The determination by the Commissioner shall be final, unless within 15 days after  
31 receipt of notice thereof by certified mail ~~or~~ with return receipt, by signature  
32 confirmation as provided by the U.S. Postal Service, by a designated delivery service  
33 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand  
34 delivery, the person charged with the violation takes exception to the determination, in  
35 which event final determination of the penalty shall be made in an administrative  
36 proceeding pursuant to Article 3 of Chapter 150B and which final determination shall  
37 be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter  
38 150B."

39 **SECTION 12.** This act is effective when it becomes law.