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SENATE BILL DRS35161-LR-91B

Short Title: DOL/Omnibus Law Changes Agency Bill.

(Public)

Sponsors: Senators Galey, Barnes, and Corbin (Primary Sponsors).

Referred to:

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

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.1.** G.S. 95-25.23(a) reads as rewritten:

6 "(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or
7 any regulation issued thereunder, shall be subject to a civil penalty not to exceed five hundred
8 dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1,000) for each
9 subsequent violation. In determining the amount of such penalty, the appropriateness of such
10 penalty to the size of the business of the person charged and the gravity of the violation shall be
11 considered. The determination by the Commissioner shall be final, unless within 15 days after
12 receipt of notice thereof by certified mail with return receipt, by signature confirmation as
13 provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26
14 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an email address
15 provided by the employer to the Commissioner, with a delivery receipt, that will be effective to
16 give the employer notice of the penalty, or via hand delivery, the person charged with the
17 violation takes exception to the determination, in which event final determination of the penalty
18 shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a
19 judicial proceeding pursuant to Article 4 of Chapter 150B."

20 **SECTION 1.2.** G.S. 95-25.23A(a) reads as rewritten:

21 **"§ 95-25.23A. Violation of record-keeping requirement; civil penalty.**

22 (a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation
23 issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of ~~up to two hundred fifty~~
24 ~~dollars (\$250.00) per employee with the maximum not to exceed two thousand dollars (\$2,000)~~
25 seven hundred fifty dollars (\$750.00) per employee with the maximum not to exceed four
26 thousand five hundred dollars (\$4,500) per violation by the Commissioner or the Commissioner's
27 authorized representative. In determining the amount of the penalty, the Commissioner shall
28 consider each of the following:

- 29 (1) ~~The appropriateness of the penalty for the size of the business of the employer~~
30 ~~charged.~~
31 (2) ~~The gravity of the violation.~~
32 (3) ~~Whether the violation involves an employee under 18 years of age.~~

33 The determination by the Commissioner shall be final, unless within 15 days after receipt of
34 notice thereof by certified mail with return receipt, by signature confirmation as provided by the
35 U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
36 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address



provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice of the violation, 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 2.1. G.S. 95-69.9 reads as rewritten:

"§ 95-69.9. Definitions.

(a) Repealed by Session Laws 2015-221, s. 2.7, effective August 18, 2015.

(b) ~~The term "boiler" shall mean a Boiler.~~ – A closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum by the direct or indirect application of heat. The term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units are complete within themselves.

(b1) ~~The term "Chief Inspector" shall mean the Chief Inspector.~~ – The individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

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

(d) Repealed by Session Laws 2005-453, s. 1.

(d1) ~~The term "Deputy Inspector" shall mean any Deputy Inspector.~~ – Any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(d2) Imminent Danger. – Any condition or practice in any location that a boiler or pressure vessel is being operated such that a danger exists that could be expected to cause death or serious physical harm if the condition is not abated.

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

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

(f1) Menace to Public Safety. – A boiler or pressure vessel that cannot be operated without a risk of injury to persons and property.

~~(f1)(f2)~~ The term "National Board" shall mean the National Board. – The National Board of Boiler and Pressure Vessel Inspectors.

~~(f2)(f3)~~ The term "person" shall mean any Person. – Any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision of the State or any unit of local government.

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

SECTION 2.2. G.S. 95-69.10 reads as rewritten:

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

...

(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 temporary 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. This exemption shall not apply to permanently installed vessels that are refilled on-site.
- (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) Repealed by Session Laws 2007-231, s. 1, effective July 18, 2007.
- (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~~ trains, if installed with proper pressure relief devices, including vessels associated with electrical apparatus in electrical switchyards.
- (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:
- Five cubic feet in volume and ~~250 psig~~ a maximum allowable working pressure not exceeding 15 psig.
 - Three cubic feet in volume and a maximum allowable working pressure not exceeding 350 psig.
 - One and one-half cubic feet in volume and a maximum allowable working pressure not exceeding 600 psig.
 - An inside diameter of six inches with no limitation on pressure.
 - Five cubic feet in volume when the pressure vessel is constructed and operated on the same real property zoned industrial and where its operation is undertaken using commercially acceptable safety precautions for the application.
- (9) Pressure vessels operating at a working pressure not exceeding 15 psig.
- (10) ~~Pressure~~ Unfired hot water storage vessels with a nominal ~~water~~ capacity not exceeding 120 gallons and containing water ~~under pressure~~ at a maximum allowable working pressure not exceeding 160 psig or temperatures not exceeding 120°F, including those containing air, the compression of which serves as a cushion, 210°F.
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal 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:
- There is no drum, header, or other steam space.
 - No steam is generated within the coil.
 - Maximum 1 inch tube size.
 - Maximum 3/4 inch nominal pipe size.
 - Maximum 6 gallon nominal water storage capacity.
 - Water temperature of 350°F.

- (14) Pressure vessels containing water under pressure, including those containing air, the compression of which serves as a cushion, at a temperature not exceeding 110 degrees ~~fahrenheit~~ Fahrenheit and a maximum allowable working pressure not exceeding 300 psig, except that this provision shall not exclude hydropneumatic pressure vessels providing potable water service 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:
- There is no drum or header.
 - No steam is generated within the coil.
 - Maximum one-inch tube size.
 - Maximum three-quarter-inch nominal pipe size.
 - Maximum six-gallon nominal water storage capacity.
 - Water temperature not to exceed 250°F.
 - Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
 - Maximum allowable working pressure of 260 psig.
- (18) Toy boilers, if all of the following apply:
- The water containing volume of the boiler is less than one quart.
 - The operating pressure does not exceed 15 psig.
 - The maximum outside diameter of the shell is no greater than six inches.
 - 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.~~ providing potable water service having an internal bladder for containing an air cushion, provided the vessels are not connected to a continuous air source for the purpose of monitoring and maintaining air pressure or volume.
- (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 or water heaters which are directly fired with oil, gas, or electricity, or to ~~hot water storage tanks indirect fired water heaters~~ heated by steam or any other indirect means, if they are equipped with ASME Code and National Board certified safety relief valves and do not exceed any of the following limitations:
- Heat input of 200,000 Btu/hr or 58.6 kW.
 - Repealed by Session Laws 2005-453, s. 2.
 - Nominal water capacity of 120 gallons.

...."

SECTION 2.3. G.S. 95-69.17 reads as rewritten:

"§ 95-69.17. Noncomplying devices; appeal.

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

(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, to include nonpayment of fees within 30 days of assessment, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

(c) Any action taken under this section 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice of the penalty, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action 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 2.4. G.S. 95-69.18 is amended by adding a new subsection to read:

"(d) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue, refused to renew, or has revoked an inspection certificate for nonpayment of fees."

SECTION 2.5. G.S. 95-69.19 reads as rewritten:

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

(a) ~~Any person who violates G.S. 95-69.18(a) or (b) (operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each boiler or pressure vessel is so operated or used.~~

(b) ~~Any person who violates G.S. 95-69.18(c) (operation after refusal to issue or after revocation of inspection certificate) G.S. 95-69.18 shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any such boiler or pressure vessel is so operated or used.~~ verified by an inspector to be operated or used in a condition considered to be a menace to public safety or an imminent danger.

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

(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, by electronic means to include an email address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice of the violation, 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.

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

SECTION 3.1. G.S. 95-110.6(c) reads as rewritten:

"(c) Any action taken under this section 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action 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 3.2. 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 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, 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 4.1. G.S. 95-111.6(c) reads as rewritten:

"(c) Any action taken under this section 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action 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 4.2. G.S. 95-111.13(g) reads as rewritten:

"(g) The determination of the amount of the penalty by the Commissioner is 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, 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 5.1. 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 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, 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 5.2. G.S. 95-125.3(e) reads as rewritten:

"(e) The Commissioner's determination of the amount of the penalty is 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, 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 Chapter 150B of the General Statutes, the Administrative Procedures Act."

SECTION 6.1. 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 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery of any ~~penalty, citation,~~ 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 in writing 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 in writing 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 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, 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.

...."

SECTION 7.1. 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 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, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, 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 8.1. Article 22 of Chapter 95 of the General Statutes is repealed.

SECTION 9.1. This act is effective when it becomes law.