

## **Chapter 95.**

### **Department of Labor and Labor Regulations.**

#### Article 1.

#### Department of Labor.

##### **§ 95-1. Department of Labor established.**

A Department of Labor is hereby created and established. The duties of said Department shall be exercised and discharged under the supervision and direction of a commissioner, to be known as the Commissioner of Labor. (Rev., s. 3909; 1919, c. 314, s. 4; C.S., s. 7309; 1931, c. 312, s. 1.)

##### **§ 95-2. Election of Commissioner; term; salary; vacancy.**

The Commissioner of Labor shall be elected by the people in the same manner as is provided for the election of the Secretary of State. The term of office of the Commissioner of Labor shall be four years, and the salary of the Commissioner of Labor shall be set by the General Assembly in the Current Operations Appropriations Act. Any vacancy in the office shall be filled by the Governor, until the next general election. The office of the Department of Labor shall be kept in the City of Raleigh and shall be provided for as are other public offices of the State. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the North Carolina Human Resources Act. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; C.S., s. 7310; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 349; 1943, c. 499, s. 2; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 5; 1967, c. 1130; c. 1237, s. 5; 1969, c. 1214, s. 5; 1971, c. 912, s. 5; 1973, c. 778, s. 5; 1975, 2nd Sess., c. 983, s. 20; 1977, c. 802, s. 42.11; 1983, c. 761, s. 207; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b); 2013-382, s. 9.1(c).)

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

The Department of Labor shall consist of the following officers, divisions and sections:  
A Commissioner of Labor.

A Division of Standards and Inspections.

A Division of Occupational Safety and Health.

Each division shall be in the charge of a chief administrative officer and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division concerned shall prescribe and promulgate. The Commissioner of Labor may make provision for one person to act as chief administrative officer of two or more divisions, when such is deemed advisable. The chief administrative officers of the several divisions shall be appointed by the Commissioner of Labor. The Commissioner of Labor may combine or consolidate the activities of two or more of the divisions of the Department, or provide for the setting up of other divisions when such action shall be deemed advisable for the more efficient and economical administration of the work and duties of the Department. (1931, c. 277; c. 312, s. 4; 1933, c. 46; 1963, c. 313, s. 2; 2015-221, s. 1.1.)

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

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

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Department of Administration. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workers' Compensation.
- (2) To make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said Commissioner and the work of the Department.
- (3) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within 30 days of the receipt of said list of questions.
- (4) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the Commissioner of Labor.
- (5) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.
- (6) To enforce the provisions of this section and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating houses, and commercial institutions in this State before any court of competent jurisdiction. It shall be the duty of the district attorney of the proper district upon the request of the Commissioner of Labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said Commissioner of Labor to enforce. (1925, c. 288; 1931, c. 277; c. 312, ss. 5, 6; 1933, cc. 46, 244; 1945, c. 723, s. 2;

1957, c. 269, s. 1; 1973, c. 47, s. 2; c. 108, s. 41; 1991, c. 636, s. 3; 2015-221, s. 1.2.)

§ 95-5: Repealed by Session Laws 2015-221, s. 2.1, effective August 18, 2015.

§ 95-6: Repealed by Session Laws 2015-221, s. 2.2, effective August 18, 2015.

**§ 95-7. Power of Commissioner to compel the giving of information; refusal as contempt.**

The Commissioner of Labor, or his authorized representative, shall have power to examine witnesses on oath, to compel the attendance of witnesses and the giving of such testimony and production of such papers as shall be necessary to enable him to gain the necessary information. Upon the refusal of any witness to comply with the requirements of the Commissioner of Labor or his representative in this respect, it shall be the duty of any judge of the superior court, upon the application of the Commissioner of Labor, or his representative, to order the witness to show cause why he should not comply with the requirements of the said Commissioner, or his representative, if in the discretion of the judge such requirement is reasonable and proper. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court. (1931, c. 312, s. 9; 2015-221, s. 2.3.)

**§ 95-8. Employers required to make statistical report to Commissioner; refusal as contempt.**

It shall be the duty of every owner, operator, or manager of every factory, workshop, mill, mine, or other establishment, where labor is employed, to make to the Department, upon blanks furnished by said Department, such reports and returns as the said Department may require, for the purpose of compiling such labor statistics as are authorized by this Article, and the owner or business manager shall make such reports and returns within the time prescribed therefor by said Commissioner, and shall certify to the correctness of the same. Upon the refusal of any person, firm, or corporation to comply with the provisions of this section, it shall be the duty of any judge of the superior court, upon application by the Commissioner or by any representative of the Department authorized by him, to order the person, firm, or corporation to show cause why he or it should not comply with the provisions of this section. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court. (1931, c. 312, s. 10.)

**§ 95-9. Employers to post notice of laws.**

It shall be the duty of every employer to keep posted in a conspicuous place in every room where five or more persons are employed a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Commissioner of Labor shall furnish the printed form of such notice upon request. (1933, c. 244, s. 6.)

**§ 95-9.1. Notice of employer's rights during farm inspections.**

The Department of Labor shall, in consultation with farm organizations and the Department of Agriculture and Consumer Services, prepare a notice to be delivered to the employer, at the beginning of an inspection of any premises engaged in agricultural

employment in this State. The notice shall advise the employer of any rights or recourse to which the employer and employees are entitled under State or federal law in connection with any inspection of the employer's premises or operation conducted by the Department of Labor. The Department shall deliver the notice to the employer at the beginning of an inspection of premises used for agricultural employment. For purposes of this section, the term "agricultural employment" shall have the same meaning as defined in G.S. 95-223(1). (2012-187, s. 10.1(b).)

**§ 95-10. Repealed by Session Laws 1963, c. 313, s. 1.**

**§ 95-11:** Repealed by Session Laws 2015-221, s. 2.4, effective August 18, 2015.

**§ 95-12:** Repealed by Session Laws 2015-221, s. 2.5, effective August 18, 2015.

**§ 95-13. Enforcement of rules and regulations.**

In the event any person, firm or corporation shall, after notice by the Commissioner of Labor, violate any of the rules or regulations promulgated under the authority of this Article or any laws amendatory hereof relating to safety devices, or measures, the Attorney General of the State, upon the request of the Commissioner of Labor, may take appropriate action in the civil courts of the State to enforce such rules and regulations. Upon request of the Attorney General, any district attorney of the State of North Carolina in whose district such rule or regulation is violated may perform the duties hereinabove required of the Attorney General. (1939, c. 398; 1973, c. 47, s. 2.)

**§ 95-14. Agreements with certain federal agencies for enforcement of Fair Labor Standards Act.**

The North Carolina State Department of Labor may and it is hereby authorized to enter into agreements with the Wage and Hour Division, and the Children's Bureau, United States Department of Labor, for assistance and cooperation in the enforcement within this State of the act of Congress known as the Fair Labor Standards Act of 1938, approved June 25, 1938, and is further authorized to accept payment and/or reimbursement for its services as provided by said act of Congress. Any such agreement may be subject to the regulations of the administrator of the Wage and Hour Division, or the chief of the Children's Bureau of the United States Department of Labor, as the case may be, and shall be subject to the approval of the Director of the State Budget. Nothing in this section shall be construed as authorizing the State Department of Labor to spend in excess of its appropriation from State funds, except to the extent that such excess may be paid and/or reimbursed to it by the United States Department of Labor. All payments received by the State Department of Labor under this section shall be deposited in the State treasury and are hereby appropriated to the State Department of Labor to enable it to carry out the agreements entered into under this section. (1939, c. 245.)

**§ 95-14.1:** Repealed by Session Laws 2011-145, s. 12.1, effective July 1, 2011.

## Article 2.

### Maximum Working Hours.

**§§ 95-15 through 95-25. Recodified as §§ 95-25.1 to 95-25.25.**

Article 2A.

Wage and Hour Act.

**§ 95-25.1. Short title and legislative purpose.**

(a) This Article shall be known and may be cited as the "Wage and Hour Act."

(b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.

(c) Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017. (1937, c. 409, s. 2; 1979, c. 839, s. 1; 2016-3, 2nd Ex. Sess., s. 2.1; 2017-4, s. 1.)

**§ 95-25.2. Definitions.**

In this Article, unless the context otherwise requires:

- (1) "Agriculture" includes farming in all its branches performed by a farmer or on a farm as an incident to or in conjunction with farming operations.
- (2) "Commissioner" means the Commissioner of Labor.
- (3) "Employ" means to suffer or permit to work.
- (4) "Employee" includes any individual employed by an employer.
- (5) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
- (6) "Establishment" means a physical location where business is conducted.
- (7) "The Fair Labor Standards Act" means the Fair Labor Standards Act of 1938, as amended and as the same may be amended from time to time by the United States Congress.
- (8) "Hours worked" includes all time an employee is employed.
- (9) "Payday" means that day designated for payment of wages due by virtue of the employment relationship.
- (10) "Pay periods" may be daily, weekly, biweekly, semimonthly, or monthly.
- (11) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and G.S. 95-25.20, it also means the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government. The Government of the United States and any agency of the United States (including the United States Postal Service and Postal Rate Commission) are not included as persons for any purpose under this Article.
- (12) "Seasonal food service establishment" means a restaurant, food and drink stand or other establishment generally recognized as a commercial food service

- establishment, preparing and serving food to the public but operating 180 days or less per year.
- (13) "Seasonal religious or nonprofit educational conference center or a seasonal amusement or recreational establishment" means an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year had average receipts for any six months of such year of not more than thirty-three and one-third percent (33 1/3%) of its average receipts for the other six months of that year.
  - (14) "Tipped employee" means any employee who customarily receives more than twenty dollars (\$20.00) a month in tips.
  - (15) "Tip" shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid in cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.
  - (16) "Wage" paid to an employee means compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission, or other basis of calculation, and the reasonable cost as determined by the Commissioner of furnishing employees with board, lodging, or other facilities. For the purposes of G.S. 95-25.6 through G.S. 95-25.13 "wage" includes sick pay, vacation pay, severance pay, commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments.
  - (17) "Workweek" means any period of 168 consecutive hours.
  - (18) "Enterprise" means the related activities performed either through unified operations or common control by any person or persons for a common business purpose and includes all such activities whether performed in one or more establishments or by one or more corporate units but shall not include the related activities performed for such enterprise by an independent contractor or franchisee. (1959, c. 475; 1961, c. 652; 1969, c. 34, s. 2; c. 218; 1971, c. 1231, s. 1; 1975, c. 413, s. 1; c. 605; 1977, c. 653; c. 672, s. 1; c. 826, s. 1; 1979, c. 839, s. 1; 1981, c. 663, ss. 10, 11; 1983, c. 708, s. 3; 1991, c. 330, s. 1.)

### **§ 95-25.3. Minimum wage.**

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section.

(b) In order to prevent curtailment of opportunities for employment, the wage rate for full-time students, learners, apprentices, and messengers, as defined under the Fair Labor Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above, rounded to the lowest nickel.

(c) The Commissioner, in order to prevent curtailment of opportunities for employment, may, by regulation, establish a wage rate less than the wage rate in effect

under section (a) which may apply to persons whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the Division of Employment Security.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks.

(e) The Commissioner, in order to prevent curtailment of opportunities for employment, and to not adversely affect the viability of seasonal establishments, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) that shall apply to any employee employed by an establishment that is a seasonal food service establishment.

(f) Tips earned by a tipped employee may be counted as wages only up to the amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement.

(g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006. (1959, c. 475; 1963, c. 816; 1965, c. 229; 1969, c. 34, s. 1; 1971, c. 138; 1973, c. 802; 1975, c. 256, s. 1; 1977, c. 519; 1979, c. 839, s. 1; 1981, c. 493, s. 1; c. 663, s. 13; 1983, c. 708, s. 1; 1985, c. 97; 1987, c. 79; 1991, c. 270, ss. 1, 2; c. 330, s. 5; 1997-146, s. 1; 1997-443, s. 12.25; 2006-114, s. 1; 2006-259, s. 18; 2011-401, s. 3.6; 2017-185, s. 3(b).)

**§ 95-25.3A:** Repealed by Session Laws 2003-308, s. 8, effective July 1, 2003.

#### **§ 95-25.4. Overtime.**

(a) Every employer shall pay each employee who works longer than 40 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 40 per week.

(b) Repealed by Session Laws 1991, c. 330, s. 2, effective June 19, 1991. (1973, c. 685, s. 1; 1979, c. 839, s. 1; 1991, c. 330, s. 2; c. 492, s. 1; 2017-185, s. 3(c).)

**§ 95-25.5. Youth employment.**

(a) No youth under 18 years of age shall be employed by any employer in any occupation without a youth employment certificate unless specifically exempted. The Commissioner of Labor shall prescribe regulations for youths and employers concerning the issuance, maintenance and revocation of certificates. Certificates will be issued by the Commissioner, both directly and electronically.

(a1) During the regular school term, no youth under 18 years of age who is enrolled in school in grade 12 or lower may be employed between 11 P.M. and 5 A.M. when there is school for the youth the next day. This restriction does not apply to youths 16 and 17 years of age if the employer receives written approval for the youth to work beyond the stated hours from the youth's parent or guardian and from the youth's principal or the principal's designee.

(b) No youth under 18 years of age may be employed by an employer in any occupation which the United States Department of Labor shall find and by order declare to be hazardous and without exemption under the Fair Labor Standards Act, or in any occupation which the Commissioner of Labor after public hearing shall find and declare to be detrimental to the health and well-being of youths.

(c) No youth 14 or 15 years of age may be employed by an employer in any occupation except those determined by the United States Department of Labor to be permitted occupations under the Fair Labor Standards Act; provided, such youths may be employed by employers:

- (1) No more than three hours on a day when school is in session for the youth;
- (2) No more than eight hours on a day when school is not in session for the youth;
- (3) Only between 7 A.M. and 7 P.M., except to 9 P.M. during the summer (when school is not in session);
- (4) No more than 40 hours in any one week when school is not in session for the youth;
- (5) No more than 18 hours in any one week when school is in session for the youth; and
- (6) Only outside school hours.

Notwithstanding the above, enrollees in high school apprenticeships or in work experience and career exploration programs as defined under the Fair Labor Standards Act may work up to 23 hours in any one week when school is in session, any portion of which may be during school hours.

(d) No youth 13 years of age or less may be employed by an employer, except youths 12 and 13 years of age may be employed outside school hours in the distribution of newspapers to the consumer but not more than three hours per day. An employment certificate shall not be required for any youth under 18 years of age engaged in the distribution of newspapers to the consumer outside of school hours.



(e) No youth under 16 years of age shall be employed for more than five consecutive hours without an interval of at least 30 minutes for rest. No period of less than 30 minutes shall be deemed to interrupt a continuous period of work.

(f) For any youth 13 years of age or older, the Commissioner may waive any provision of this section and authorize the issuance of an employment certificate when:

- (1) He receives a letter from a social worker, court, probation officer, county department of social services, a letter from the North Carolina Alcohol Beverage Control Commission or school official stating those factors which create a hardship situation and how the best interest of the youth is served by allowing a waiver; and
- (2) He determines that the health or safety of the youth would not be adversely affected; and
- (3) The parent, guardian, or other person standing in loco parentis consents in writing to the proposed employment.

(g) Youths employed as models, or as actors or performers in motion pictures or theatrical productions, or in radio or television productions are exempt from all provisions of this section except the certificate requirements of subsection (a).

(h) Youths employed by an outdoor drama directly in production-related positions such as stagehands, lighting, costumes, properties and special effects are exempt from all provisions of this section except the certificate requirements of subsection (a). Positions such as office workers, ticket takers, ushers and parking lot attendants have no exemption and are subject to all provisions of this section.

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

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

(j) No person who holds any ABC permit issued pursuant to the provisions of Chapter 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages, including any mixed beverages, shall employ a youth:

- (1) Under 16 years of age on the premises for any purpose, unless the youth is at least 14 years of age and each of the following conditions is met:
  - a. The person obtains the written consent of a parent or guardian of the youth.
  - b. The youth is employed to work on the outside grounds of the premises for a purpose that does not involve the preparation, serving, dispensing, or sale of alcoholic beverages.
- (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages, including mixed beverages, except for sale of alcoholic beverages at the point-of-sale for only off-premises consumption.

(k) Persons and establishments required to comply with or subject to regulation of child labor under the Fair Labor Standards Act are exempt from all provisions of this section, except the certificate requirements of subsection (a), the provisions of subsection (a1), the prohibition from occupations found and declared to be detrimental by the Commissioner of Labor pursuant to subsection (b), and the prohibitions of subsection (j). In addition, employment certificates will not be issued if such person's employment will be in violation of the applicable child labor provisions of the Fair Labor Standards Act. Such employers may also be assessed civil penalties pursuant to G.S. 95-25.23 for each violation of the provisions of this section or any regulation issued hereunder from which there is no exemption.

(l) Notwithstanding any other provision of this section, any youth who holds a North Carolina driver's license valid for the type of driving involved may be assigned as part of his employment to drive an automobile or truck not exceeding 6,000 pounds gross vehicle weight within a 25-mile radius of the principal place of employment, provided that the youth has completed a State-approved driver-education course, and provided that the assignment does not involve the towing of vehicles. "Gross vehicle weight" includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

(m) Notwithstanding any other provision of this section, youths who are enrolled at an institution of higher education may be employed by the institution provided the employment is not hazardous. As used in this subsection, "institution of higher education" means any constituent institution of The University of North Carolina, any North Carolina community college, or any college or university that awards postsecondary degrees.

(n) Nothing in this section prohibits qualified youths under 18 years of age from participating in training through their fire department, the Office of State Fire Marshal, or the North Carolina Community College System. As used in this subsection, the term "qualified youth under 18 years of age" means an uncompensated fire department or rescue squad member who is at least the age of 15 and under the age of 18 and who is a member of a bona fide fire department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S. 58-86-30. (1937, c. 317, ss. 1-3, 6, 9, 18; 1943, c. 670; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962; 1973, c. 649, s. 1; c. 758, s. 1; 1977, c. 551, ss. 1-4; 1979, c. 839, s. 1; 1981, c. 412, ss. 3, 4; c. 489, ss. 1-7; c. 747, s. 66; 1985, c. 97, s. 1; 1987, c. 154; 1991, c. 492, s. 2; 1991 (Reg. Sess., 1992), c. 991, s. 1; 1993, c. 239, s. 1; 1995, c. 214, s. 1; 1999-237, s. 14.1; 2001-312, s. 3; 2001-515, s. 5; 2005-453, s. 15; 2009-21, s. 2; 2010-97, s. 9; 2015-221, s. 3.1; 2017-211, s. 14(a).)

#### **§ 95-25.6. Wage payment.**

Every employer shall pay every employee all wages and tips accruing to the employee on the regular payday. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly. Wages based upon bonuses, commissions, or other forms of calculation may be paid as infrequently as annually if prescribed in advance. (1975, c. 413, s. 3; 1977, c. 826, s. 3; 1979, c. 839, s. 1.)

**§ 95-25.7. Payment to separated employees.**

Employees whose employment is discontinued for any reason shall be paid all wages due on or before the next regular payday either through the regular pay channels or by mail if requested by the employee. Wages based on bonuses, commissions or other forms of calculation shall be paid on the first regular payday after the amount becomes calculable when a separation occurs. Such wages may not be forfeited unless the employee has been notified in accordance with G.S. 95-25.13 of the employer's policy or practice which results in forfeiture. Employees not so notified are not subject to such loss or forfeiture. (1975, c. 413, s. 4; 1979, c. 839, s. 1; 1981, c. 663, s. 1; 1993, c. 214, s. 1.)

**§ 95-25.7A. Wages in dispute.**

(a) If the amount of wages is in dispute, the employer shall pay the wages, or that part of the wages, which the employer concedes to be due without condition, within the time set by this Article. The employee retains all remedies that the employee might otherwise be entitled to regarding any balance of wages claimed by the employee, including those remedies provided under this Article.

(b) Acceptance of a partial payment of wages under this section by an employee does not constitute a release of the balance of the claim. Further, any release of the claim required by an employer as a condition of partial payment is void. (1989, c. 687, s. 1.)

**§ 95-25.8. Withholding of wages.**

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

- (1) The employer is required or empowered to do so by State or federal law;
- (2) When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization; or
- (3) When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the deduction. Prior to any deductions being made under this section, the employee must (i) receive advance written notice of the actual amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing.

(b) The withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

- (1) In nonovertime workweeks, an employer may reduce wages to the minimum wage level.
- (2) In overtime workweeks, employers may reduce wages to the minimum wage level for nonovertime hours.

(3) No reductions may be made to overtime wages owed.

(c) In addition to complying with the requirements in subsections (a) and (b) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required.

(d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an employee as a result of a miscalculation or other bona fide error, advances of wages to an employee or to a third party at the employee's request, and the principal amount of loans made by an employer to an employee are considered prepayment of wages and may be withheld or deducted from an employee's wages. Deductions for interest and other charges related to loans by an employer to an employee shall require written authorization in accordance with subsection (a), above.

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

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

(g) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee. (1975, c. 413, s. 6; 1979, c. 839, s. 1; 1981, c. 663, s. 2; 2005-453, s. 16.)

**§§ 95-25.9, 95-25.10:** Repealed by Session Laws 2005-453, ss. 17 and 18, effective October 1, 2005.

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

(a) Repealed by Session Laws 2005-453, s. 19.

(b) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee. (1979, c. 839, s. 1; 1981, c. 663, s. 5; 2005-453, s. 19.)

**§ 95-25.12. Vacation pay plans.**

No employer is required to provide vacation pay plans for employees. However, if an employer provides these promised benefits for employees, the employer shall give all

vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture. (1979, c. 839, s. 1; 1981, c. 663, s. 6; 2005-453, s. 20.)

#### **§ 95-25.13. Notification, posting, and records.**

Every employer shall:

- (1) Notify its employees, orally or in writing at the time of hiring, of the promised wages and the day and place for payment;
- (2) Make available to its employees, in writing or through a posted notice maintained in a place accessible to its employees, employment practices and policies with regard to promised wages;
- (3) Notify employees, in writing or through a posted notice maintained in a place accessible to its employees, at least 24 hours prior to any changes in promised wages. Wages may be retroactively increased without the prior notice required by this subsection; and
- (4) Furnish each employee with an itemized statement of deductions made from that employee's wages under G.S. 95-25.8 for each pay period such deductions are made. (1975, c. 413, s. 7; 1979, c. 839, s. 1; 1981, c. 663, s. 12; 1993, c. 203, s. 1; 2005-453, s. 21.)

#### **§ 95-25.14. Exemptions.**

(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

- (1) Any person employed in an enterprise engaged in commerce or in the production of goods for commerce as defined in the Fair Labor Standards Act:
  - a. Except as otherwise specifically provided in G.S. 95-25.5;
  - b. Notwithstanding the above, any employee other than a learner, apprentice, student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is less than the minimum wage provided in G.S. 95-25.3, is not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;
  - c. Notwithstanding the above, any employer or employee exempt from the minimum wage, overtime, or child labor requirements of the Fair Labor Standards Act for whom there is no comparable exemption under this Article shall not be exempt under this subsection except that where an exemption in the Fair Labor Standards Act provides a method of computing overtime which is an alternative to the method required in 29 U.S.C.S. § 207(a), the employer or employee subject to that alternate method shall be exempt from the provisions of G.S. 95-25.4(a); provided that, persons not employed at an enterprise described in

subdivision (1) of this subsection shall also be subject to the same alternative methods of overtime calculation in the circumstances described in the Fair Labor Standards Act exemptions providing those alternative methods;

- (2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;
- (3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;
- (4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;
- (5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;
- (6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;
- (7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;
- (8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

- (1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;
- (2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;
- (3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;
- (4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;
- (5) Repealed by Session Laws 1989, c. 687, s. 2.
- (6) Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21;
- (7) Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act.

(b1) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to the exemptions provided for in this subsection, do not apply to any of the following:

- (1) Hours worked as a bona fide volunteer firefighter in an incorporated, nonprofit volunteer or community fire department.
- (2) Hours worked as a bona fide volunteer rescue and emergency medical services personnel in an incorporated, nonprofit volunteer or community fire department, or an incorporated, nonprofit rescue squad.

Hours worked in accordance with this subsection shall not be considered hours worked for purposes of G.S. 95-25.3 or G.S. 95-25.4.

(c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to this exemption, do not apply to:

- (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;
- (2) Taxicab drivers;
- (3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;
- (4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;
- (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;
- (6) Live-in child care workers or other live-in employees in homes for dependent children;
- (7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.
- (8) Any employee of a seasonal amusement or recreational establishment.

(d) The provisions of this Article do not apply to the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, except for the following provisions, which do apply:

- (1) The minimum wage provisions of G.S. 95-25.3;
- (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable provisions;
- (3) The exemptions of subsections (a) and (b) of this section;
- (4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage). (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, cc. 475, 629; 1961, cc. 602, 1070; 1963, c. 1123; 1965, c. 724; 1967, c. 998; 1973, c. 600, s. 1; 1975, c. 19, s. 26; c. 413, s. 2; 1977, c. 146; 1979, c. 839, s. 1; 1981, c. 493, s. 2; c. 606, s. 2; c. 663, s. 7; 1983, c. 708, s. 2; 1989, c. 687, s. 2; 1991, c. 330, s. 3; 1993, c. 214, s. 2; 1995, c. 509, s. 47; 1997-146, s. 2; 2002-113, s. 2; 2017-185, s. 3(a).)

#### **§ 95-25.15. Investigations and inspection of records; notice of law.**

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

With respect to any provision of this Article under which the employer is covered, the Commissioner or the Commissioner's designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and

investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.

(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government.

(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following in plain language:

- (1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-786(a)(3), 96-1(b)(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.
- (2) Any employee who believes that the employee has been misclassified as an independent contractor by the employee's employer may report the suspected misclassification to the Employee Classification Section within the Industrial Commission.
- (3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification occurred may be reported to the Employee Classification Section within the Industrial Commission. (1937, c. 317, ss. 5, 19; 1959, c. 475; 1971, c. 1231, s. 2; 1973, c. 649, s. 4; 1975, c. 413, ss. 7, 9; 1979, c. 839, s. 1; 2005-453, s. 22; 2009-351, s. 2; 2017-203, s. 3.)

#### **§ 95-25.16. Enforcement.**

(a) The Commissioner shall enforce and administer the provisions of this Article, and the Commissioner or his authorized representative is empowered to hold hearings and to institute criminal and civil proceedings hereunder.

(b) The Commissioner or his authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and take depositions and affidavits in any proceeding hereunder.

(c) The Commissioner is empowered to enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of the department or agency, for the collection in the other state of claims and judgments for wages based upon investigations and findings made by the Commissioner or his authorized representative.



The Commissioner may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state, as provided in this section, maintain actions in the courts of any other state for the collection of claims or judgments for wages and may assign the claims and judgments to the labor department or agency of the other state for collection to the extent that such an assignment may be permitted or provided for by the law of that state or by reciprocal agreement.

Except as provided in subsection (d) of this section, the Commissioner may, upon the written consent of the labor department or corresponding agency of any other state or of any person, board, officer, or commission authorized to act on behalf of the department or agency, maintain actions in the courts of this State upon assigned claims and judgments for wages arising in the other state in the same manner and to the same extent that these actions by the Commissioner are authorized when arising in this State.

(d) Subsection (c) of this section applies only to those states that extend comity to this State. (1937, c. 317, s. 19; c. 409, s. 7; 1971, c. 1231, s. 2; 1973, c. 649, s. 4; 1975, c. 473, s. 9; c. 475; 1979, c. 839, s. 1; 1989, c. 687, s. 3.)

#### **§ 95-25.17. Wage and Hour Division established.**

The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article. (1979, c. 839, s. 1; 2005-453, s. 23.)

#### **§ 95-25.18. Legal representation.**

It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article. (1979, c. 839, s. 1.)

#### **§ 95-25.19. Rules.**

The Commissioner may adopt rules needed to implement this Article. (1937, c. 317, s. 18; 1975, c. 413, s. 12; 1979, c. 839, s. 1; 1987, c. 827, s. 262.)

#### **§ 95-25.20. Records.**

Files and other records relating to investigations and enforcement proceedings pursuant to this Article, or pursuant to Article 21 of this Chapter with respect to Wage and Hour Act violations, shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending. Nothing under this section shall impede the right to discovery under G.S. 1A-1, Rules of Civil Procedure. (1979, c. 839, s. 1; 1981, c. 663, s. 8; 1991 (Reg. Sess., 1992), c. 1021, s. 3.)

#### **§ 95-25.21. Illegal acts.**

(a) It shall be unlawful for any person to interfere unduly with, hinder, or delay the Commissioner or any authorized representative in the performance of official duties or

refuse to give the Commissioner or his authorized representative any information required for the enforcement of this Article.

(b) It shall be unlawful for any person to make any statement or report, or keep or file any record pursuant to this Article or regulations issued thereunder, knowing such statement, report, or record to be false in a material respect.

(c) Any person who violates this section shall be guilty of a Class 2 misdemeanor. (1937, c. 409, ss. 6, 8; 1979, c. 839, s. 1; 1993, c. 539, s. 661; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 95-25.22. Recovery of unpaid wages.**

(a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through 95-25.12, as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due.

(a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the court shall award liquidated damages in an amount equal to the amount found to be due as provided in subsection (a) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (a) of this section.

(b) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(c) Action to recover such liability may also be maintained in the General Court of Justice by the Commissioner at the request of the employees affected. Any sums thus recovered by the Commissioner on behalf of an employee shall be held in a special deposit account and shall be paid directly to the employee or employees affected.

(d) The court, in any action brought under this Article may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant. In an action brought by the Commissioner in which a default judgment is entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by the defendant.

The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(e) The Commissioner is authorized to determine and supervise the payment of the amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (b) of this section.

(f) Actions under this section must be brought within two years pursuant to G.S. 1-53.

(g) Prior to initiating any action under this section, the Commissioner shall exhaust all administrative remedies, including giving the employer the opportunity to be heard on the matters at issue and giving the employer notice of the pending action. (1959, c. 475; 1975, c. 413, s. 11; 1979, c. 839, s. 1; 1989, c. 687, s. 4; 1991, c. 298.)

**§ 95-25.23. Violation of youth employment; civil penalty.**

(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 five hundred dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1,000) for each subsequent 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 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.

(b) The amount of such penalty when finally determined may be recovered in the manner set forth in G.S. 95-25.23B.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation. (1979, c. 839, s. 1; 1981, c. 663, s. 9; 1989, c. 687, s. 6; 1993, c. 225, s. 1; 1998-215, s. 107; 2003-308, s. 1; 2007-231, s. 4; 2009-351, s. 1.)

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

(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 two thousand dollars (\$2,000) per investigation by the Commissioner or the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall consider each of the following:

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

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, 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.

(b) The amount of the penalty when finally determined may be recovered in the manner set forth in G.S. 95-25.23B.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation. (1989, c. 687, s. 5; 1993, c. 225, s. 2; 1998-215, s. 108; 2003-308, s. 2; 2007-231, s. 5; 2009-351, s. 3.)

#### **§ 95-25.23B. Civil penalty collection.**

The Commissioner may file in the office of the clerk of the superior court of any county a certified copy of an assessment, either unappealed from or affirmed in whole or in part upon appeal, of a civil money penalty under G.S. 95-25.23 or G.S. 95-25.23A. Upon such filing, the clerk shall enter judgment in accordance with the unappealed or affirmed portion of the assessment and shall notify the parties. Such judgment shall have the same effect, and all proceedings in relation to the judgment shall thereafter be the same, as though the judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1993, c. 225, s. 3.)

#### **§ 95-25.23C. Report on youth employment enforcement activities.**

(a) Findings. – The General Assembly finds that:

- (1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.
- (2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.
- (3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's education and enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) Report. – No later than February 1 of each year, the Commissioner shall submit a written report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act

pertaining to youth employment. Each report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date on which the last written report was submitted. The report shall include at least all of the following:

- (1) All activities the Department of Labor has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.
- (2) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.
- (3) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.
- (4) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.
- (5) The total number of administrative proceedings involving youth employment violations.
- (6) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.
- (7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (8) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (9) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.
- (10) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and

regulations and (ii) effectively implement any recommended changes. (2009-139, s. 1; 2011-291, s. 2.21; 2017-57, s. 14.1(nn).)

**§ 95-25.24. Restraint of violations.**

The General Court of Justice has jurisdiction and authority upon application of the Commissioner to enjoin or restrain violations of this Article, including the restraint of any withholding of payment of unpaid wages, minimum wages, or overtime compensation found by the court to be due to employees under this Article (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the applicable statute of limitations). (1979, c. 839, s. 1; 1991, c. 330, s. 4.)

**§ 95-25.24A. Franchisee status.**

Neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purposes, including, but not limited to, this Article and Chapters 96, 97, and 105 of the General Statutes. For purposes of this section, "franchisee" and "franchisor" have the same definitions as set out in 16 C.F.R. § 436.1. (2017-10, s. 1.1.)

**§ 95-25.25. Construction of Article and severability.**

This Article shall receive a liberal construction to the end that the welfare of adult and minor workers may be protected. If any provisions of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the provisions or application of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1979, c. 839, s. 1.)

Article 3.

Various Regulations.

**§ 95-26. Repealed by Session Laws 1971, c. 56.**

**§ 95-27. Repealed by Session Laws 1973, c. 660, s. 3.**

**§ 95-28: Repealed by Session Laws 1997-443, s. 19.14.**

**§ 95-28.1. Discrimination against any person possessing sickle cell trait or hemoglobin C trait prohibited.**

No person, firm, corporation, unincorporated association, State agency, unit of local government or any public or private entity shall deny or refuse employment to any person or discharge any person from employment on account of the fact such person possesses sickle cell trait or hemoglobin C trait. The term "sickle cell trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the

proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. The term "hemoglobin C trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests, provided, however, that this section shall not be construed to give employment, promotion, or layoff preference to persons who possess the above traits, or to prevent such persons being discharged for cause. (1975, c. 463, s. 1.)

**§ 95-28.1A. Discrimination against persons based on genetic testing or genetic information prohibited.**

(a) No person, firm, corporation, unincorporated association, State agency, unit of local government, or any public or private entity shall deny or refuse employment to any person or discharge any person from employment on account of the person's having requested genetic testing or counseling services, or on the basis of genetic information obtained concerning the person or a member of the person's family. This section shall not be construed to prevent the person from being discharged for cause.

(b) As used in this section, the term "genetic test" means a test for determining the presence or absence of genetic characteristics in an individual or a member of the individual's family in order to diagnose a genetic condition or characteristic or ascertain susceptibility to a genetic condition. The term "genetic characteristic" means any scientifically or medically identifiable genes or chromosomes, or alterations or products thereof, which are known individually or in combination with other characteristics to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder, and which are asymptomatic of any disease or disorder. The term "genetic information" means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member. (1997-350, s. 2.)

**§ 95-28.2. Discrimination against persons for lawful use of lawful products during nonworking hours prohibited.**

(a) As used in this section, "employer" means the State and all political subdivisions of the State, public and quasi-public corporations, boards, bureaus, commissions, councils, and private employers with three or more regularly employed employees.

(b) It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employer during nonworking hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees.

(c) It is not a violation of this section for an employer to do any of the following:

- (1) Restrict the lawful use of lawful products by employees during nonworking hours if the restriction relates to a bona fide occupational requirement and is reasonably related to the employment activities. If the restriction reasonably relates to only a particular employee or group of employees, then the restriction may only lawfully apply to them.
- (2) Restrict the lawful use of lawful products by employees during nonworking hours if the restriction relates to the fundamental objectives of the organization.
- (3) Discharge, discipline, or take any action against an employee because of the employee's failure to comply with the requirements of the employer's substance abuse prevention program or the recommendations of substance abuse prevention counselors employed or retained by the employer.

(d) This section shall not prohibit an employer from offering, imposing, or having in effect a health, disability, or life insurance policy distinguishing between employees for the type or price of coverage based on the use or nonuse of lawful products if each of the following is met:

- (1) Differential rates assessed employees reflect actuarially justified differences in the provision of employee benefits.
- (2) The employer provides written notice to employees setting forth the differential rates imposed by insurance carriers.
- (3) The employer contributes an equal amount to the insurance carrier on behalf of each employee of the employer.

(e) An employee who is discharged or otherwise discriminated against, or a prospective employee who is denied employment in violation of this section, may bring a civil action within one year from the date of the alleged violation against the employer who violates the provisions of subsection (b) of this section and obtain any of the following:

- (1) Any wages or benefits lost as a result of the violation;
- (2) An order of reinstatement without loss of position, seniority, or benefits; or
- (3) An order directing the employer to offer employment to the prospective employee.

(f) The court may award reasonable costs, including court costs and attorneys' fees, to the prevailing party in an action brought pursuant to this section. (1991 (Reg. Sess., 1992), c. 1023, s. 1.)

**§ 95-28.3. Leave for parent involvement in schools.**

(a) It is the belief of the General Assembly that parent involvement is an essential component of school success and positive student outcomes. Therefore, employers shall grant four hours per year leave to any employee who is a parent, guardian, or person standing in loco parentis of a school-aged child so that the employee may attend or otherwise be involved at that child's school. However, any leave under this section is subject to the following conditions:

- (1) The leave shall be at a mutually agreed upon time between the employer and the employee.
- (2) The employer may require an employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave.
- (3) The employer may require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at that school during the time of the leave.



For the purpose of this section, "school" means any (i) public school, (ii) private church school, church of religious charter, or nonpublic school described in Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes that regularly provides a course of grade school instruction, (iii) preschool, and (iv) child care facility as defined in G.S. 110-86(3).

(b) Employers shall not discharge, demote, or otherwise take an adverse employment action against an employee who requests or takes leave under this section. Nothing in this section shall require an employer to pay an employee for leave taken under this section.

(c) An employee who is demoted or discharged or who has had an adverse employment action taken against him or her in violation of this section may bring a civil action within one year from the date of the alleged violation against the employer who violates this section and obtain either of the following:

(1) Any wages or benefits lost as a result of the violation; or

(2) An order of reinstatement without loss of position, seniority, wages, or benefits.

The burden of proof shall be upon the employee. (1993, c. 509, s. 1; 1997-506, s. 34.)

#### **§ 95-28.4. Veterans preference.**

A private, nonpublic employer in the State may provide a preference to a veteran for employment. Spouses of honorably discharged veterans who have a service-connected permanent and total disability also may be preferred for employment. Granting of this preference is not a violation of any State or local equal employment opportunity law. (2013-413, s. 14.)

#### **§ 95-29. Repealed by Session Laws 1973, c. 660, s. 4.**

#### **§ 95-30. Repealed by Session Laws 1971, c. 240.**

#### **§ 95-31. Acceptance by employer of assignment of wages.**

No employer of labor shall be responsible for any assignment of wages to be earned in the future, executed by an employee, unless and until such assignment of wages is accepted by the employer in a written agreement to pay same. (1935, c. 410; 1937, c. 90.)

### Article 4.

#### Conciliation Service and Mediation of Labor Disputes.

#### **§ 95-32. Declaration of policy.**

It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the conciliation and voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this Article is hereby declared as a matter of legislative determination. (1941, c. 362, s. 1.)

**§ 95-33. Scope of Article.**

The provisions of this Article shall apply to all labor disputes in North Carolina. (1941, c. 362, s. 2.)

**§ 95-34. Administration of Article.**

The administration of this Article shall be under the general supervision of the Commissioner of Labor of North Carolina. (1941, c. 362, s. 3.)

**§ 95-35. Conciliation service established; personnel; removal; compensation.**

There is hereby established in the Department of Labor a conciliation service. The Commissioner of Labor may appoint such employees as may be required for the consummation of the work under this Article, prescribe their duties and fix their compensation, subject to existing laws applicable to the appointment and compensation of employees of the State of North Carolina. Any member of or employee in the conciliation service may be removed from office by the Commissioner of Labor, acting in his discretion. (1941, c. 362, s. 4.)

**§ 95-36. Powers and duties of Commissioner and conciliator.**

Upon his own motion in an existent or imminent labor dispute, the Commissioner of Labor may, and, upon the direction of the Governor, must order a conciliator to take such steps as seem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

The conciliator shall promptly put himself in communication with the parties to such controversy, and shall use his best efforts, by mediation, to bring them to agreement.

The Commissioner of Labor, any conciliator or conciliators and all other employees of the Commissioner of Labor engaged in the enforcement and duties prescribed by this Article, shall not be compelled to disclose to any administrative or judicial tribunal any information relating to, or acquired in the course of their official activities under the provisions of this Article, nor shall any reports, minutes, written communications, or other documents or copies of documents of the Commissioner of Labor and the above employees pertaining to such information be subject to subpoena: Provided, that the Commissioner of Labor, any conciliator or conciliators and all other employees of the Commissioner of Labor engaged in the enforcement of this Article, may be required to testify fully in any examination, trial, or other proceeding in which the commission of a crime is the subject of inquiry. (1941, c. 362, s. 5; 1949, c. 673.)

Article 4A.

Voluntary Arbitration of Labor Disputes.

**§ 95-36.1. Declaration of policy.**

It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties to such disputes, should always be considered, respected and protected; and, where efforts at amicable settlement have been unsuccessful, that the

voluntary arbitration of such disputes will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policies, the necessity for the enactment of the provisions of this Article is hereby declared as a matter of legislative determination. (1945, c. 1045, s. 1; 1951, c. 1103, s. 1.)

#### **§ 95-36.2. Scope of Article.**

The provisions of this Article shall apply only to voluntary agreements to arbitrate labor disputes including, but not restricted to, all controversies between employers, employees and their respective bargaining representatives, or any of them, relating to wages, hours, and other conditions of employment. (1945, c. 1045, s. 2; 1951, c. 1103, s. 1.)

#### **§ 95-36.3. Administration of Article.**

(a) The administration of this Article shall be under the general supervision of the Commissioner of Labor of North Carolina.

(b) There is hereby established in the Department of Labor an arbitration service. The Commissioner of Labor may appoint such employees as may be required for the consummation of the work under this Article, prescribe their duties and fix their compensation, subject to existing laws applicable to the appointment and compensation of employees of the State of North Carolina. Any member of or employee in the arbitration service may be removed from office by the Commissioner of Labor, acting in his discretion.

(c) The Commissioner of Labor, with the written approval of the Attorney General as to legality, shall have power to adopt, alter, amend or repeal appropriate rules of procedure for selection of the arbitrator or panel and for conduct of the arbitration proceedings in accordance with this Article: Provided, however, that such rules shall be inapplicable to the extent that they are inconsistent with the arbitration agreement of the parties. (1945, c. 1045, s. 3; 1951, c. 1103, s. 1.)

#### **§ 95-36.4. Voluntary arbitrators.**

(a) It shall be the duty of the Commissioner of Labor to maintain a list of qualified and public-spirited citizens who will serve as arbitrators. All appointments of a single arbitrator or member of an arbitration panel by the Commissioner of Labor shall be made from the list of qualified arbitrators maintained by him.

(b) No person named by the Commissioner of Labor to act as an arbitrator in a dispute shall be qualified to serve as such arbitrator if such person has any financial or other interest in the company or labor organization involved in the dispute. (1945, c. 1045, s. 4; 1951, c. 1103, s. 1.)

#### **§ 95-36.5. Fees and expenses.**

(a) All the costs of any arbitration proceeding under this Article, including the fees and expenses of the arbitrator or arbitration panel, shall be paid by the parties to the proceeding in accordance with any agreement between them. In the absence of such an agreement, the award in the proceeding shall normally require the payment of such fees, expenses and other proper costs by one or more of the parties: Provided, that if the Commissioner of Labor deems that the public interest so requires, he may provide for the payment to any arbitrator appointed by him of per diem compensation at the rate established by the Commissioner, and actual travel and other necessary expenses incurred while performing duties arising under this Article.

(b) In cases where an arbitrator has been appointed by the Commissioner, the Department of Labor may furnish necessary stenographic, clerical and technical service and assistance to the arbitrator or arbitration panel.

(c) Expenditures of public funds authorized under this section shall be paid from funds appropriated for the administration of this Article. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

#### **§ 95-36.6. Appointment of arbitrators.**

The parties may by agreement determine the method of appointment of the arbitrator or arbitration panel. If the parties have agreed upon arbitration under this Article and have not otherwise agreed upon the number of arbitrators or the method for their appointment, the controversy shall be heard and decided by a single arbitrator designated in such manner as the Commissioner of Labor shall determine. Any person or agency selected by agreement or otherwise to appoint an arbitrator or arbitrators shall send by registered mail to each of the parties to the proposed proceeding notice of the demand for arbitration. The arbitrator or arbitration panel, as the case may be, shall have such powers and duties as are conferred by the voluntary agreement of the parties, and, if there is no agreement to the contrary, shall have power to decide the arbitrability as well as the merits of the dispute. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

#### **§ 95-36.7. Arbitration procedure.**

Upon the selection or appointment of an arbitrator or arbitration panel in any labor dispute, a statement of the issues or questions in dispute shall be submitted to said arbitrator or panel in writing, signed by one or more of the parties or their authorized agents. The arbitrator or panel shall appoint a time and place for the hearing, and notify the parties thereof, and may postpone or adjourn the hearing from time to time as may be necessary, subject to any time limits which are agreed upon by the parties. If any party neglects to appear before the arbitrator or panel after reasonable notice, the arbitrator or panel may nevertheless proceed to hear and determine the controversy. Unless the parties have otherwise agreed, the findings and decision of a majority of an arbitration panel shall constitute the award of the panel and, if a majority vote of the panel cannot be obtained, then the findings and decision of the impartial chairman of the panel shall constitute such award. To be enforceable, the award shall be handed down within 60 days after the written statement of the issues or questions in dispute has been received by the arbitrator or panel, or within such further time as may be agreed to by the parties. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

#### **§ 95-36.8. Enforcement of arbitration agreement and award.**

(a) Written agreements to arbitrate labor disputes, including but not restricted to controversies relating to wages, hours and other conditions of employment, shall be valid, enforceable and irrevocable, except upon such grounds as exist in law or equity for the rescission or revocation of any contract, in either of the following cases:

- (1) Where there is a provision in a collective bargaining agreement or any other contract, hereafter made or extended, for the settlement by arbitration of a controversy or controversies thereafter arising between the parties;
- (2) Where there is an agreement to submit to arbitration a controversy or controversies already existing between the parties.

(b) Any arbitration award, made pursuant to an agreement of the parties described in subsection (a) of this section and in accordance with this Article, shall be final and binding upon the parties to the arbitration proceedings. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

**§ 95-36.9. Stay of proceedings.**

(a) If any action or proceeding be brought in any court upon any issue referable to arbitration under an agreement described in subsection (a) of G.S. 95-36.8, the court where the action or proceeding is pending or a judge of the superior court having jurisdiction in any county where the dispute arose shall stay the action or proceeding, except for any temporary relief which may be appropriate pending the arbitration award, until such arbitration has been had in accordance with the terms of the agreement. The application for stay may be made by motion in writing of a party to the agreement, but such motion must be made before answer or demurrer to the pleading by which the action or proceeding was begun.

(b) Any party against whom arbitration proceedings have been initiated may, within 10 days after receiving written notice of the issue or questions to be passed upon at the arbitration hearing, apply to any judge of the superior court having jurisdiction in any county where the dispute arose for a stay of the arbitration upon the ground that he has not agreed to the arbitration of the controversy involved. Any such application shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions generally, except that it shall be entitled to priority in the interest of prompt disposition. If no such application is made within said 10-day period, a party against whom arbitration proceedings have been initiated cannot raise the issue of arbitrability except before the arbitrator and in proceedings subsequent to the award.

(c) Any party against whom an arbitration award has been issued may, within 10 days after receiving written notice of such award, apply to any judge of the superior court having jurisdiction in any county where the dispute arose for a stay of the award upon the ground that it exceeds the authority conferred by the arbitration agreement. Any such application shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions generally, except that it shall be entitled to priority in the interest of prompt disposition. If no such application is made within said 10-day period, a party against whom arbitration proceedings have been initiated cannot raise the issue of arbitrability except before the arbitrator or arbitrators, or in proceedings to enforce the award. Any failure to abide by an award shall not constitute a breach of the contract to arbitrate, pending disposition of a timely application for stay of the award pursuant to this paragraph. (1951, c. 1103, s. 1.)

Article 5.

Regulation of Employment Agencies.

**§§ 95-37 through 95-47. Recodified as §§ 95-47.1 to 95-47.13.**

Article 5A.

Regulation of Private Personnel Services.

**§ 95-47.1. Definitions.**

As used in this Article, unless the context clearly requires otherwise:

- (1) "Accept" employment means to accept an employer's offer of employment or to begin work for an employer.
- (2) "Applicant," except where it refers to an applicant for a private personnel services license, means any person who uses or attempts to use the services of a private personnel service in seeking employment.
- (3) "Commissioner" means the North Carolina Commissioner of Labor or any person designated by the Commissioner as the representative of the Commissioner.
- (4) "Complaint" means a communication to the Commissioner or department alleging facts that could support issuance of a warning or citation under G.S. 95-47.9.
- (5) "Contract" means any agreement between a private personnel service and an applicant obligating the applicant to pay a fee or any agreement subsequent to such contract reducing the obligations of the private personnel service to the applicant under the contract.
- (6) "Employee" means a person performing work or services of any kind or character for compensation.
- (7) "Employer" means a person employing or seeking to employ a person for compensation, or any representative or employee of such employer.
- (8) "Employment" means any service or engagement rendered or undertaken for wages, salary, commission, or other form of compensation.
- (9) "Fee" means anything of value, including money or other valuable consideration or services or the promise of any of the foregoing, required or received by a private personnel service, in payment for any of its services, or act rendered or to be rendered by any private personnel service.
- (10) "Interview" means a meeting between an employer and an applicant to discuss potential employment.
- (11) "Job order" means an oral or written communication from an employer authorizing a private personnel service to refer applicants for a position the employer has available.
- (12) "Licensee" means any person licensed by the Commissioner to operate a private personnel service.
- (13) "Manager" of a private personnel service means the person who is responsible for the operation of an office of a private personnel service.
- (14) "Owner" of a private personnel service means the sole proprietor of a private personnel service operated as a sole proprietorship; any partner in a partnership that owns or operates a private personnel service; any stockholder with a financial interest greater than 10 percent (10%) in a corporation that owns or operates a private personnel service.
- (15) "Person" means any individual, association, partnership or corporation.
- (16) "Private personnel service" means any business operated in the State of North Carolina by any person for profit which secures employment or by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself,

where any applicant may become liable for the payment of a fee to the private personnel service, either directly or indirectly. "Private personnel service" does not include:

- a. Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment;
- b. Any employment service operated by the State of North Carolina, the Government of the United States, or any city, county, or town, or any agency thereof;
- c. Any temporary help service that at no time advertises or represents that its employee may, with the approval of the temporary help service, be employed by one of its client companies on a permanent basis and which does not act as a private personnel service or an employer fee paid personnel service;
- d. Any newspaper of general circulation or other business engaged primarily in communicating information other than information about specific positions of employment and that does not purport to adapt the information provided to the needs or desires of an individual subscriber;
- e. Employment offices that charge no fee to the applicant other than union dues or to the employer and which are used solely for the hiring of employees under a valid union contract by the employer subscribing to this contract;
- f. Any employer fee paid personnel consulting service or temporary help service that offers temporary to permanent placement when the service operates on a one hundred percent (100%) employer fee paid service basis, requires no applicant placement contract, and has no recourse against an applicant for a fee under any circumstances.

- (17) "Refer" an applicant means to submit resumes to an employer, arrange interviews between an applicant and an employer, or to provide an employer with the name of an applicant. (1929, c. 178, ss. 1, 10; 1979, c. 780, s. 1; 1989, c. 414, s. 1.)

### **§ 95-47.2. Licensing procedures.**

(a) No person shall open, keep, maintain, own, operate or carry on a private personnel service unless the person has first procured a license therefor as provided in this Article.

(b) An application for license shall be made to the Commissioner. If the private personnel service is owned by an individual, the application shall be made by that individual; if the service is owned by a partnership, the application shall be made by all partners; if the service is owned by a corporation, the application shall be made by all stockholders who own at least twenty percent (20%) of the issued and outstanding voting stock of the corporation, or if the service is owned by an association, society, or corporation in which no one individual owns at least twenty percent (20%) of the issued and outstanding voting stock, the application shall be made by the president, vice-president, secretary and treasurer of the owner, by whatever title designated. The application shall

state the name and address of the individual who is responsible for the direction and operation of the placement activities of the private personnel service whether that individual be one of the applicants or another person; whether or not that individual has ever been employed in a private personnel service; the name and address of each of the license applicant's prior employers during the five years immediately preceding the license application; and such other information relating to the good moral character of that individual as the Commissioner may require. No change in such persons shall take place without prior notification to the Commissioner.

(c) Each application for license shall be in writing and in the form prescribed by the Commissioner, and shall state truthfully the name under which the business is to be conducted; the street and number of the building or place where the business is to be conducted.

(d) Upon the receipt of an application for a license the Commissioner:

- (1) Shall publish a notice of the pending application in a newspaper of general circulation in the area of the proposed location of the employment agency and may publish the notice in a newspaper of general circulation in each area in which the applicant (or if a corporation, the president and majority shareholder) has resided during the five years preceding the time of the application. The applicant shall incur the cost associated with the publication of this legal advertisement. The notice shall include a statement informing individuals of their right to protest the issuance of a license by filing within 10 days written comments with the Commissioner. The protest shall be in writing and signed by the person filing the protest or by his authorized agent or attorney, and shall state reasons why the license should not be granted. Upon the filing of a protest, the Commissioner, if he determines the protest to be of such a nature that a hearing should be conducted and that the protest is for a cause on which denial of a license may properly be based, shall appoint a time and place for a hearing on the application and shall give at least seven days' notice of that time and place to the license applicant and to the person filing the protest. The hearing shall be conducted in accordance with the provisions of the rules of the Administrative Procedure Act.
- (2) Shall investigate the character, criminal record and business integrity of each applicant for agency license and shall investigate the criminal records of all persons listed as agency owners, officers, directors or managers. The applicant and all agency owners, officers, directors and managers shall assist the department in obtaining necessary information by authorizing the release of all relevant information. The applicant shall incur the cost associated with this background investigation.
- (2a) The Department of Public Safety may provide a criminal record check to the Commissioner for a person or agency who has applied for a license through the Commissioner. The Commissioner shall provide to the Department of Public Safety, along with the request, the fingerprints of all applicants, any additional information required by the Department of Public Safety, and a form signed by the applicants consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or



national repositories. The applicants' fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

- (3) Upon completion of the investigation, or 60 days after the application was received, whichever is later, but in no case more than 75 days after the application was received, shall determine whether or not a license should be issued. The license shall be denied for any of the following reasons:
- a. If the applicant for agency license, or the president or majority shareholder of a corporate applicant, omits or falsifies any material information asked for in the application and required by the Commissioner.
  - b. If any owner, officer, director or manager of the employment agency:
    - 1. Has been convicted in any state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense involving fraud or moral turpitude;
    - 2. Was an owner, officer, director or manager of an employment agency or other business whose license was revoked or that was otherwise caused to cease operation by action of any State or federal agency or court because of violations of law or regulation relating to deceptive or unfair practices in the conduct of business;
    - 3. As an owner or manager of an employment agency or other business or as an employment counselor was found by any State or federal agency or court to have violated any law or regulation relating to deceptive or unfair practices in the conduct of business; or
    - 4. In any other demonstrable way engaged in deceptive or unfair practices in the conduct of business.
  - c. If the employment agency will be operated on the same premises as a loan agency (as defined in G.S. 105-88) or collection agency (as defined in G.S. 58-70-15).

(e) If it appears upon the hearing or from the inspection, examination or investigation made by the Commissioner that the owners, partners, corporation officers or the agency manager are not persons of good moral character or that the license applicant has not complied with the provisions of this Article, the application shall be denied and a license shall not be granted. The Commissioner shall find facts to substantiate his denial of the issuance of a license. Each application shall be granted or refused within 60 days from

the date of its filing, or if a hearing is held, within 75 days. Any license heretofore or hereafter issued shall expire 12 months from the date of its issuance, and shall be renewed as hereinafter provided unless sooner revoked by the Commissioner.

(f) No license shall be granted to a person to operate as a private personnel service where the name of the business is similar or identical to that of any existing licensed business (except where a franchiser has licensed two or more persons to use the same name within the State) or directly or indirectly expresses or connotes any limitation, specification or discrimination contrary to current State or federal laws against discrimination in employment.

(g) Every license shall contain the name of the person licensed and shall designate the city in which the license is issued, the name of the manager and date of the license. The license shall be displayed in a conspicuous place in the area where job applicants are received by the agency.

(h) A license granted as provided in this Article shall not be valid for any person other than the person to whom it is issued or for any place other than that designated in the license and shall not be assigned or transferred without the consent of the Commissioner, whose consent must be based on the standards contained in this Article. Applications for consent to assign or transfer shall be made in the same manner as an application for a license, and all the provisions of this Article shall apply to applications for consent. The location of a private personnel service shall not be changed without notice to the Commissioner, and any change of location shall be endorsed upon the license. A person who has obtained a license in accordance with the provisions of this Article may apply for additional licenses to conduct additional private personnel services in accordance with the provisions of this Article. The manner of application, and the conditions and terms applicable to the issuance of the additional licenses shall be the same as for an original license. The same agency manager may be designated in all such licenses.

(i) Temporary license. – If ownership of a licensed private personnel service is transferred, the department shall issue a temporary license to any new owner or successor if it appears to the department that issuance of such a license would serve the public interest. A temporary license shall be effective for a period of 90 days and shall not be renewed.

(j) Each licensee shall, before the license is issued or renewed, deposit with the department a bond payable to the State of North Carolina and executed by a surety company duly authorized to transact business in the State of North Carolina in the amount of ten thousand dollars (\$10,000) and upon condition that the private personnel service will pay to applicants all refunds due under this Article and regulations adopted hereunder if the private personnel service terminates its business. (1929, c. 178, ss. 2, 3; 1931, c. 312, s. 3; 1979, c. 780, s. 1; 1987, c. 282, s. 12; 1989, c. 414, s. 2; 2002-147, s. 12; 2003-308, s. 9; 2014-100, s. 17.1(o).)

### **§ 95-47.3. Fees and contracts; filing with Commissioner.**

(a) Every license applicant shall file with the Commissioner a schedule of fees or charges made by the private personnel service to applicants for employment for any services rendered,

stating clearly the conditions under which the private personnel service refunds or does not refund a fee, together with all rules or regulations that may in any manner affect the fees charged or to be charged for any service. Every license applicant and licensee shall include in its schedule of fees or charges a clear description of how it determines fees for placement of employment, the compensation of which is based, in whole or in part, on commission. Changes in the schedule may be made, but no change shall become effective until seven calendar days after the filing thereof with the Commissioner. It is unlawful for a private personnel service to charge, demand, collect or receive a greater compensation from an applicant for employment for any service performed than as specified in the schedule filed with the Commissioner.

(b) Every license applicant shall file with the Commissioner a copy of the contract which the private personnel service will require applicants for employment to execute. (1979, c. 780, s. 1; 1991 (Reg. Sess., 1992), c. 970, s. 1.)

**§ 95-47.3A. Fee reimbursement from employers due to overstated earnings expectations.**

(a) An applicant who accepts employment that is compensated in whole or in part on a commission basis, and who pays a fee to the licensee calculated on the commission-based compensation amount stated by the employer in the written job order, may file a written complaint with the Commissioner if the applicant did not earn at least eighty percent (80%) of the compensation amount stated by the employer in the written job order. If the applicant files the written complaint before the period upon which the anticipated earnings is based has ended, the Commissioner shall prorate the amount earned over the period of time the applicant worked prior to the filing of the complaint in order to determine whether or not the applicant earned at least eighty percent (80%) of the compensation amount stated by the employer in the written job order.

(b) The Commissioner shall investigate all complaints filed pursuant to subsection (a) of this section. After completion of the investigation and a hearing, the Commissioner shall order the employer to reimburse the applicant for part or all of the fee paid by the applicant to the licensee if the Commissioner finds the applicant is entitled to the refund based on all of the following:

- (1) The applicant did not earn at least eighty percent (80%) of the compensation amount stated by the employer in the written job order;
- (2) The licensee reasonably relied on the compensation information provided by the employer in calculating the fee paid by the applicant;
- (3) It is unrealistic to expect that an employee could earn substantially the amount of commission-based compensation stated by the employer in the written job order filed with the licensee; and
- (4) The fee paid by the applicant to the licensee was calculated based on the commission-based compensation stated by the employer in the written job order.

(c) The reimbursement due the applicant under subsection (b) shall be the difference between the fee actually paid by the applicant to the licensee, and the fee that the applicant would have paid if the compensation stated by the employer in the written job order had been what the applicant actually earned or reasonably could have earned during the applicable employment period.

(d) The Commissioner shall adopt rules setting forth procedures for complaints and investigations, and standards for determining whether a statement by the employer in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances. The Commissioner or his authorized representative shall have power to administer

oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and take depositions and affidavits in any proceeding hereunder. Additionally, the Commissioner shall adopt rules setting forth procedures for enforcement of any order made under subsections (b) and (c) of this section. Rules adopted by the Commissioner pursuant to this section shall be in accordance with Chapter 150B of the General Statutes.

(e) The Commissioner shall enforce and administer the provisions of this section, and the Commissioner or his authorized representative is empowered to hold hearings and to institute civil proceedings to collect on behalf of the applicant any amounts determined to be owed by the employer. (1991 (Reg. Sess., 1992), c. 970, s. 3.)

**§ 95-47.4. Contracts; contents; approval; tying contracts forbidden.**

(a) A contract between a private personnel service and an applicant shall be in writing, labeled as a contract, physically separate from any application and made in duplicate. One copy shall be given to the applicant and the other shall be kept by the private personnel service as required by G.S. 95-47.5(2).

(b) Any contract that obligates an applicant to pay a fee to the private personnel service shall include:

- (1) The name, address and telephone number of the private personnel service;
- (2) The name of the applicant;
- (3) The date the contract was signed;
- (4) A clear schedule of the fees to be charged to the applicant at various salary levels;
- (5) A clear explanation of when the applicant becomes obligated to pay a fee;
- (6) A clear refund policy (or no refund policy) that conforms to the requirements of G.S. 95-47.4(f) and (g);
- (7) If the applicant is obligated whether or not the applicant accepts employment, a clear explanation of the services provided and a statement that the private personnel service does not guarantee that the applicant will obtain employment as a result of its services;
- (8) A statement, in a type size no smaller than nine point, directly above the place for the applicant's signature, that reads as follows: "I have read and received a copy of this CONTRACT, which I understand makes me legally obligated to pay a fee under conditions outlined above." In the preceding statement the word "CONTRACT" and no others shall be in all capitals; and
- (9) A statement that the private personnel service is licensed and regulated by the Commissioner and the address at which a copy of laws and regulations governing private personnel services may be obtained.

(c) A copy of each contract form to be used with applicants shall be filed with the Commissioner. Until the private personnel service receives written notification from the Commissioner that the form conforms to the requirements of this Article and regulations adopted hereunder, it shall not be used with applicants.

(d) A private personnel service shall not require an applicant to sign a contract with the private personnel service before the applicant has had an opportunity to read the contract and discuss the contract with an employee of the personnel agency who regularly arranges contacts and assists in negotiations between employers and applicants. A private personnel service shall

not coerce an applicant into signing a contract by applying or using duress, undue influence, fraud or misrepresentation sufficient to invalidate the contract under North Carolina law.

(e) Any contract that obligates an applicant to pay a fee to the private personnel service when the applicant accepts employment shall be physically separate from any contract that obligates an applicant to pay a fee whether or not the applicant accepts employment. A private personnel service shall not require an applicant to sign one contract as a prerequisite to signing another contract or to pay a fee as a prerequisite to signing a contract. Express violations of this subsection are the following:

- (1) Refusal to allow an applicant to contract for counseling, job information or resume writing services, if the applicant does not agree to pay an additional fee upon acceptance of employment; and
- (2) Refusal to allow an applicant to contract for services which obligate the applicant only upon acceptance of employment, if the applicant does not agree to pay a registration fee or to contract for counseling, resume writing or other services.

(f) If a private personnel service has a refund policy, included on each contract that obligates an applicant upon acceptance of employment will be a statement defining:

- (1) The length of the period of time covered by the refund policy;
- (2) The exact manner of computing the refund so that the amount of refund due the applicant will be clear;
- (3) The conditions under which a refund becomes due to the applicant. The conditions of the refund, if other than unconditional policy is used, shall contain a definition of the reasons for which a refund will not be made. A refund will not be denied except for a reason so stated in the definition of the contract;
- (4) A personnel service shall abide by the refund policy stated on its contract by promptly paying to applicants any refund due under the terms of the contract.

(g) If a private personnel service has no refund policy, the private personnel service shall include on each contract that obligates an applicant upon acceptance of employment, in a type size no smaller than nine point, a statement that reads as follows:

"\_\_\_\_\_ (name of private personnel service) will make NO REFUND under any circumstances of fees paid by the applicant." In the preceding statement the words NO REFUND and no others shall be in all capitals.

(h) If a private personnel service places an applicant in a position of employment, the compensation of which is based, in whole or in part, on commission, the private personnel service shall:

- (1) Have a written job order from the employer that includes the anticipated earnings upon which the private personnel service may base its fee, or
- (2) In lieu of the written job order required by subdivision (1) of this subsection, have a policy of providing the same fee reimbursement as may be available to applicants from employers under the provisions of G.S. 95-47.3A.

In no case may the applicant collect the same reimbursement from both the employer and the private personnel service. When the private personnel service elects to obtain the written job order from the employer and not have its own reimbursement policy as described in subdivision (2) of this subsection, the private personnel service shall explain to the applicant and the employer how the fee for the placement is calculated, and shall inform in writing both the applicant and the employer of the provisions of G.S. 95-47.3A governing fee refunds from employers. (1979, c. 780,

s. 1; 1991 (Reg. Sess., 1992), c. 970, s. 2; 1993, c. 202, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 29(a.)

**§ 95-47.5. Records.**

Every private personnel service shall maintain for a period of two years, the following records:

- (1) Job orders or job specifications.
- (2) Executed applicant contracts.
- (3) Information on all placements made, including the employer's name and address; name and address of applicant placed; salary of the position; amount of fee charged; and refunds, where applicable. (1929, c. 178, s. 4; 1931, c. 312, s. 3; 1979, c. 780, s. 1.)

**§ 95-47.6. Prohibited acts.**

A private personnel service shall not engage in any of the following activities or conduct:

- (1) Induce or attempt to induce any employee placed by that private personnel service to terminate his employment in order to obtain other employment through the private personnel service; or procure or attempt to procure the discharge of any person from his employment.
- (2) Publish or cause to be published any false or fraudulent information, representation, promise, notice or advertisement.
- (3) Advertise in newspapers or otherwise, unless the advertising contains the name of the private personnel service and the word "personnel service."
- (4) Direct an applicant to visit or call upon an employer for the purpose of obtaining employment without having first obtained a job order or authorization from the employer for the interview. A private personnel service may attempt to sell the services of an applicant to an employer from whom no job order has been received and may charge a fee if the efforts result in the applicant's being employed.
- (5) Send or cause to be sent any person to any employer where the private personnel service knows that the prospective employment is or would be in violation of State or federal laws governing minimum wages or child labor, or has been notified that a labor dispute is in progress, without notifying the applicant of that fact, or knowingly arrange an interview for an employment or occupation prohibited by law.
- (6) Send or cause to be sent any person to any place which the private personnel service knows is maintained for immoral or illicit purposes.
- (7) Divide or share, either directly or indirectly, the fees collected by the private personnel service, with contractors, sub-contractors, employers or their agents, foremen or anyone in their employ, or if the contractors, sub-contractors or employers be a corporation, any of the officers, directors or employees of the corporation to whom applicants for employment are sent.
- (8) Make, cause to be made, or use any name, sign or advertising device bearing a name which is similar to or may reasonably be confused with the name of a federal, State, city, county or other governmental unit or agency.
- (9) Knowingly make any false or misleading promise or representation or give any false or misleading information to any applicant or employer in regard to any

employment, work or position, its nature, location, duration, compensation or the circumstances surrounding any employment, work or position including the availability thereof.

- (10) Accept a registration fee from an applicant.
- (11) Impose or attempt to collect any fee from any applicant unless that applicant accepts employment with an employer to which the applicant was directly or indirectly introduced by the private personnel service.
- (12) A fee may be charged for resume writing provided the private personnel service does not require the applicant to become obligated for any other services. (1979, c. 780, s. 1.)

§ 95-47.7: Repealed by Session Laws 2003-308, s. 10, effective July 1, 2003.

§ 95-47.8: Repealed by Session Laws 2003-308, s. 11, effective July 1, 2003.

**§ 95-47.9. Enforcement of Article; rules; hearing; penalty; criminal penalties.**

(a) This Article shall be enforced by the Commissioner. The Commissioner or any duly authorized agent, deputies or assistants designated by the Commissioner, may upon receipt of a complaint that a private personnel service has violated a specific section of this Article, inspect those records relevant to the complaint which this Article requires the private personnel service to retain. The Commissioner may also subpoena those records and witnesses and may conduct investigations of any employer or other person where the Commissioner has reasonable grounds for believing that the employer or person has conspired or is conspiring with a private personnel service to violate this Article.

(b) The Commissioner shall adopt rules necessary to carry out and administer the provisions of this Article.

(c) Complaints against any licensed person shall be made in writing to the Commissioner.

- (1) If the complaint alleges a violation of this Article, the Commissioner shall cause an investigation to be made. If, as a result of the investigation, the Commissioner has reason to believe that a material violation of this Article has been committed by a private personnel service, the Commissioner may, after compliance with Chapter 150B of the General Statutes, deny, suspend, or revoke a license issued under this Article if it is determined that the licensee or any employee of the licensee is guilty of violating the provisions of this Article. In addition, the Commissioner may issue warnings or levy a fine against the private personnel service that shall not exceed two hundred fifty dollars (\$250.00).

- (2) The denial, revocation, or suspension of a license or the issuance of a warning or fine by the Commissioner shall be in writing, shall be signed by the Commissioner or the Commissioner's designee, and shall state the grounds upon which the decision is based. The aggrieved person shall have the right to appeal from the decision as provided by Chapter 150B of the General Statutes.

(d) Whenever a license is revoked pursuant to subsection (c) of this section, another license shall not be issued to the same person within three years from the date of the revocation.

(e) Any person who operates as a private personnel service without first obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii) be subject to a civil penalty

of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each day the private personnel service operates without a license, the penalty not to exceed a total of two thousand dollars (\$2,000). Actions to recover civil penalties shall be initiated by the Attorney General. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1929, c. 178, ss. 3-5, 7, 9; 1931, c. 312, s. 3; 1979, c. 780, s. 1; 1993, c. 539, s. 663; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 109; 2003-308, s. 12.)

**§ 95-47.10. Power of Commissioner to seek injunction.**

The Commissioner may apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto, and such courts are empowered to grant such injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of such violation. A single act of unauthorized or illegal practice shall be sufficient, if shown, to invoke the injunctive relief of this section or criminal or civil penalties under G.S. 95-47.9(e). (1979, c. 780, s. 1.)

**§ 95-47.11. Government employment agencies unaffected.**

This Article shall not in any manner affect or apply to the State of North Carolina, the government of the United States, or to any city, county or town, or any agency of any of those governments. (1929, c. 178, s. 10; 1979, c. 780, s. 1.)

**§ 95-47.12. License taxes placed upon agencies not affected.**

This Article is not intended to conflict with or affect any license tax placed upon private personnel services by the revenue laws of North Carolina, but instead shall be construed as supplementary thereto in exercising the police powers of the State. (1929, c. 178, s. 11; 1979, c. 780, s. 1.)

**§ 95-47.13. Severability.**

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (1929, c. 178, s. 9; 1979, c. 780, s. 1.)

**§ 95-47.14. Notification requirement.**

Any temporary help service as described in G.S. 95-47.1(16)c. that operates in North Carolina shall notify the Department of Labor in writing that the temporary help service:

- (1) Operates only as a temporary help service;
- (2) Establishes an employer-employee relationship with its temporaries;
- (3) Does not operate as a private personnel service or an employer fee paid personnel consulting service. (1989, c. 414, s. 3.)

**§ 95-47.15. Certification requirement.**

Any employer fee paid personnel consulting service or temporary help service, as the two terms are described in G.S. 95-47.1(16)f., that operates in North Carolina shall certify annually to the Department of Labor on a form prescribed by the Commissioner that the service:

- (1) Operates on a one hundred percent (100%) employer fee paid basis;
- (2) Requires no applicant placement contract; and



- (3) Has no recourse against an applicant for a fee under any circumstances. (1989, c. 414, s. 3.)

**§§ 95-47.16 through 95-47.18. Reserved for future codification purposes.**

Article 5B.

Regulation of Job Listing Services.

**§ 95-47.19. Definitions.**

Definitions of terms used in this Article shall be the same as in Chapter 95, Article 5A (Regulation of Private Personnel Services), with the words "job listing service" substituted, where appropriate, for the words "private personnel service." "Job listing service" means any business operated in the State of North Carolina by any person for profit which publishes, either orally or in writing, lists of specific positions of employment available with any employer other than itself or which holds itself out to applicants as able to provide information about specific positions of employment available with any employer other than itself, which charges a fee to any applicant for its services or purported services and which performs none of the activities of a private personnel service other than the publishing of job listings. "Job listing service" does not include:

- (1) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in providing information about employment;
- (2) Any employment service operated by the State of North Carolina, the Government of the United States, or any city, county or town, or any agency thereof;
- (3) Any temporary help service that charges no fee for services rendered in providing information about employment;
- (4) Any newspaper of general circulation or other business engaged primarily in communicating information other than information about specific positions of employment and that does not purport to adapt the information provided to the needs or desires of an individual subscriber;
- (5) Employment offices that charge no fee to the applicant other than union dues and which are used solely for the hiring of employees under a valid union contract by the employers subscribing to this contract. (1979, c. 780, s. 2.)

**§ 95-47.20. License required.**

No person shall operate a job listing service in North Carolina without first obtaining a license from the Commissioner. A job listing service shall have a separate license for each location at which it maintains an office. (1979, c. 780, s. 2.)

**§ 95-47.21. Violation of this Article; criminal and civil penalty.**

Any person who violates the provisions of this Article by operating a job listing service without a valid license from the Commissioner shall be subject, under current regulations adopted pursuant to this Article, to criminal and civil penalties in the same amount and under substantially the same procedure as that provided under G.S. 95-47.9(e) for a person operating a private personnel service. (1979, c. 780, s. 2.)

**§ 95-47.22. Licensing procedure.**

(a) In addition to the requirements of subsection (b) of this section, the procedure, under rules adopted pursuant to this Article, for the issuance, denial and renewal of job listing service licenses and other aspects of the licensing of job listing services by the Commissioner shall be substantially the same as that provided under Article 5A of this Chapter for the licensing of private personnel services.

(b) Before the Department may issue or renew a license under this Article, each licensee shall deposit with the Department a bond payable to the State of North Carolina and executed by a surety company duly authorized to transact business in this State. The bond shall be in the amount of twenty-five thousand dollars (\$25,000) and, if the job listing service terminates its business, shall be held by the Department until all refunds due applicants under this Article have been paid by the job listing service. (1979, c. 780, s. 2; 1993, c. 172, s. 1.)

**§ 95-47.23. Enforcement.**

Under regulations adopted pursuant to this Article, a job listing service may be issued a warning, citation or notice of violation, or may have its license revoked or suspended, or its licensee reprimanded, censured or placed on probation in substantially the same manner and under substantially the same procedure as that provided for a private personnel service under Article 5A of this Chapter. (1979, c. 780, s. 2.)

**§ 95-47.24. Certain practices prohibited.**

Under regulations adopted pursuant to this Article, a job listing service shall abide by provisions substantially the same as those provided under G.S. 95-47.6(7) (kickbacks), G.S. 95-47.6(9) (misrepresentation), and G.S. 95-47.2(d)(3)c. (loan or collection agencies) for a private personnel service. (1979, c. 780, s. 2; 1993, c. 172, s. 2.)

**§ 95-47.25. Contracts; contents; approval.**

A contract between a job listing service and an applicant shall be in writing, labeled as a contract, physically separate from any application form and made in duplicate, and shall include:

- (1) A clear explanation of the services provided and the amount of the fee;
- (2) In a type size no smaller than nine point, a statement that reads "I understand that \_\_\_\_\_ (name of job listing service) does not guarantee that I will obtain employment through its services. I understand that \_\_\_\_\_ (name of job listing service) does not refund fees for any reason," unless the job listing service agrees in the contract to refund to the applicant any fee the applicant paid to the job listing service if within three months of paying such a fee the applicant has not accepted an employment position listed in a publication of the job listing service;
- (3) A statement that the job listing service is not a private personnel service or employment agency, that no additional fee will be charged to the applicant upon acceptance of employment and that the job listing service will not set up interviews or otherwise arrange direct contacts between an employer and the applicant; and
- (4) A statement that the job listing service is licensed and regulated by the Commissioner and the address at which a copy of regulations governing job listing services may be obtained.

A copy of each contract form to be used with applicants shall be filed with the Commissioner. Until the job listing service receives written notification from the Commissioner that the form conforms to the requirements of this Article and regulations adopted hereunder, it shall not be used with applicants. A job listing service shall not accept a fee from any applicant before the applicant has read and received a copy of the contract. (1979, c. 780, s. 2.)

**§ 95-47.26. Advertising and publication.**

(a) In conducting any form of advertising, a job listing service shall identify itself by its business name and identify itself as a job listing service by using in the name or elsewhere in the advertising the term "job listing service."

(b) Prior to advertising or publishing information about an available job, a job listing service shall receive a job order and shall record the job order, the date it was received and the name of the employer representative or other business who gave the job order to the job listing service. No description or representation of an employment position shall be stated in any advertising or other publication, unless the information is included on the recorded job order for the position. Information about a single employment position shall not be used in more than one advertisement or listing in a single issue of any publication.

(c) A job listing service shall not publish or cause to be published any information which it knows or reasonably ought to know is false or deceptive or which it has no reasonable basis for believing to be true.

(d) In conducting any form of advertising, a job listing service shall not use the term "no fee" or any other term indicating that applicants will not be financially obligated to the job listing service. (1979, c. 780, s. 2.)

**§ 95-47.27. Fee receipts.**

A job listing service shall give every applicant from whom payment is received a receipt stating the name and address of the job listing service, the name of the applicant, the date and the amount of the payment. (1979, c. 780, s. 2.)

**§ 95-47.28. Prohibited job listings.**

A job listing service shall not publish information about a position of employment with an employer that the job listing service knows or has reason to know:

- (1) Has included false information in the job order; or
- (2) Has a strike or lockout at its business, unless the applicant is so informed in the publication; or
- (3) Is engaging in unlawful or immoral activity; or
- (4) Is in financial or other difficulty likely to lead to imminent cessation of operation, unless the applicant is so informed in the publication; or
- (5) Is an employer in which the job listing service or any owner of the job listing service has a financial interest greater than ten percent (10%), unless the applicant is so informed in the publication. (1979, c. 780, s. 2.)

**§ 95-47.29. Records of the job listing service.**

Each job listing service shall maintain and make available for inspection by the Commissioner the following records of the operation of the job listing service for the 18 months immediately preceding:

- (1) The job listing service's copies of all contracts executed with applicants;
- (2) Copies of all fee receipts;
- (3) Copies of all advertising and job lists published orally or in writing, indexed or attached to the recorded job order (including the date it was received and the name of the employer representative or other business who gave it) for each position advertised or listed, and records of the dates advertisements were run on publications issued; and
- (4) Any records required by the Commissioner under regulations adopted pursuant to this Article. (1979, c. 780, s. 2.)

**§ 95-47.30. Administration of this Article.**

This Article shall be enforced under the general supervision of the Commissioner, who shall have the same powers and duties in the enforcement of this Article as in the enforcement of Article 5A of this Chapter. (1979, c. 780, s. 2.)

**§ 95-47.31. Review of job listing services.**

After the Commissioner receives written statements from two or more applicants complaining that the applicant failed to obtain employment as a result of the services of a job listing service, the Commissioner may contact other applicants who have paid a fee to the job listing service for the purpose of determining what percentage of such applicants obtain employment as a result of the services of the job listing service. After gathering information from such applicants and following the requirements of due process, the Commissioner shall place the survey results in the public records. (1979, c. 780, s. 2.)

**§ 95-47.32. Severability.**

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (1979, c. 780, s. 2.)

Article 6.

Separate Toilets for Sexes.

**§§ 95-48 through 95-53:** Repealed by Session Laws 1993, c. 204, s.1.

Article 7A.

Uniform Boiler and Pressure Vessel Act.

**§§ 95-54 through 95-69.7. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1187, s. 1.**

Article 7A.

Uniform Boiler and Pressure Vessel Act.

**§ 95-69.8. Short title.**

This Article shall be known as the Uniform Boiler and Pressure Vessel Act of North Carolina. (1975, c. 895, s. 1.)

**§ 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 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 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 North Carolina Commissioner of Labor.

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

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

(e) The term "inspection certificate" or "certificate of inspection" shall mean 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 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) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

(f2) The term "person" shall mean 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 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". (1975, c. 895, s. 2; 1993, c. 351, s. 1; 2005-453, s. 1; 2015-221, s. 2.7.)

**§ 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 unless specifically excluded by subsection (b) of this section.

(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) 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.
- (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.
  - e. 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 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 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 3/4 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 or header.
  - 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 or water heaters which are directly fired with oil, gas, or electricity, or to hot water storage tanks 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:

- (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.

(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, if they are equipped with ASME Code and National Board certified safety relief valves and:

- (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.

(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, if they are equipped with ASME Code and National Board certified safety relief valves and:

- (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.

(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. (1975, c. 895, s. 3; 1979, c. 920, ss. 1, 2; 1981, c. 591; 1983, c. 654; 1985, c. 620, ss. 1, 2; c. 629; 1993, c. 351, s. 2; 2005-453, s. 2; 2007-231, s. 1; 2011-366, ss. 1, 2, 3; 2017-211, s. 18.)

#### **§ 95-69.11. Powers and duties of Commissioner.**

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

- (1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.
- (2) To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.
- (3) To enforce rules adopted under authority of this Article.
- (4) To inspect boilers and pressure vessels covered under this Article.
- (5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.
- (6) To enjoin violations of this Article in the civil and criminal courts of this State.
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or



- operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.
  - (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.
  - (12) To establish reasonable fees for the examination and certification of inspectors.
  - (13) Repealed by Session Laws 2015-221, s. 1.3, effective August 18, 2015.
  - (14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.
  - (15) To order the payment of civil penalties provided by this section.
  - (16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article.
  - (17) To grant exceptions from the requirements of the rules and regulations adopted under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
  - (18) To devise and proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a commission as inspectors of boilers and pressure vessels in this State.
  - (19) To act as proctors during the administration of the National Board commissioning examination.
  - (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. (1975, c. 895, s. 4; 1985, c. 620, s. 3; 1993, c. 351, s. 3; 2005-453, s. 3; 2011-366, s. 4; 2015-221, s. 1.3.)

**§ 95-69.12. Boiler Safety Bureau established.**

There is established a Boiler Safety Bureau within the Department of Labor. The Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other employees that the Commissioner deems necessary to assist the Chief Inspector in administering the provisions of this Article and the rules adopted under this Article. (1975, c. 895, s. 5; 1981 (Reg. Sess., 1982), c. 1187, ss. 2, 3; 2005-453, s. 4.)

**§ 95-69.13:** Repealed by Session Laws 2015-221, s. 2.6, effective August 18, 2015.

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

The Commissioner may adopt, modify, or revoke any rules and regulations governing the construction, installation, repair, alteration, inspection, use, and operation of boilers and pressure vessels as the Commissioner deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the standards of the American Society of Mechanical Engineers and the amendments and interpretations of those engineering standards.

The procedure for the adoption, modification, or revocation of the rules and regulations shall be in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. (1975, c. 895, s. 7; 1985, c. 620, s. 4; 1987, c. 827, s. 1; 2005-453, s. 6; 2015-221, s. 2.8.)

**§ 95-69.15. Classification of inspectors; qualifications; examinations; 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) Repealed by Session Laws 2007, c. 231, s. 2, effective July 18, 2007. (1975, c. 895, s. 8; 2005-453, s. 7; 2007-231, s. 2.)

#### **§ 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 Commissioner. No more than 60 days grace period may be granted beyond the certificate expiration date. (1975, c. 895, s. 9; 1993, c. 351, s. 4; 2005-453, s. 8; 2007-231, s. 3; 2015-221, s. 2.9.)

#### **§ 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, 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, 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. (1975, c. 895, s. 10; 1987, c. 827, s. 263; 1993, c. 351, s. 5; 2005-453, s. 9; 2015-221, s. 1.4.)

#### **§ 95-69.18. Operation without inspection certificate; operation not in compliance with this Article; operation after nonissuance or revocation of certificate.**

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

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

(c) 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 or has revoked the inspection certificate for the boiler or pressure vessel. (1975, c. 895, s. 11; 1993, c. 539, s. 665; 1994, Ex. Sess., c. 24, s. 14(c); 2005-453, s. 10.)

#### **§ 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) 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.

(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, 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. (2005-453, s. 11; 2007-231, s. 6.)

#### **§ 95-69.20. Violations; criminal penalties.**

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

(b) Any person knowingly making a material and false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be

maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor. (2005-453, s. 12.)

§ 95-69.21: Reserved for future codification purposes.

§ 95-69.22: Reserved for future codification purposes.

§ 95-69.23: Reserved for future codification purposes.

§ 95-69.24: Reserved for future codification purposes.

§ 95-69.25: Reserved for future codification purposes.

§ 95-69.26: Reserved for future codification purposes.

§ 95-69.27: Reserved for future codification purposes.

§ 95-69.28: Reserved for future codification purposes.

§ 95-69.29: Reserved for future codification purposes.

#### Article 7B.

##### Historical Boilers.

**§ 95-69.30. Safety Program for Operators and Apprentices.**

The Department of Labor shall create and conduct a safety program for the purpose of providing instruction on how to properly care, maintain, operate, and exhibit historical boilers. The program shall also include instruction on how to train an apprentice to properly care, maintain, operate, and exhibit historical boilers. For purposes of this section, the term "historical boiler" means a steam boiler of riveted construction that is preserved, restored, or maintained for hobby or demonstration. (2013-360, s. 13.10(a).)

#### Article 8.

##### Bureau of Labor for the Deaf.

**§§ 95-70 through 95-72: Repealed by Session Laws 1975, c. 412, s. 1.**

#### Article 9.

##### Earnings of Employees in Interstate Commerce.

**§ 95-73. Collections out of State to avoid exemptions forbidden.**

No resident creditor or other holder of any book account, negotiable instrument, duebill or other monetary demand arising out of contract, due by or chargeable against any resident wage earner or other salaried employee of any railway corporation or other corporation, firm, or individual engaged in interstate business shall send out of the State, assign, or transfer the same, for value or otherwise, with intent to thereby deprive such debtor of his personal earnings and property exempt by law from application to the payment of his debts under the laws of the State of North Carolina, by instituting or causing to be instituted thereon against such debtor, in any court outside of this State, in such creditor's own name or in the name of any other person, any action, suit, or proceeding for the attachment or garnishment of such debtor's earnings in the hands of his employer, when such creditor and debtor and the railway corporation or other corporation, firm, or individual owing the wages or salary intended to be reached are under the jurisdiction of the courts of this State. (1909, c. 504, s. 1; C.S., s. 6568.)

**§ 95-74. Resident not to abet collection out of State.**

No person residing or sojourning in this State shall counsel, aid, or abet any violation of the provisions of G.S. 95-73. (1909, c. 504, s. 2; C.S., s. 6569.)

**§ 95-75. Remedies for violation of § 95-73 or 95-74; damages; indictment.**

Any person violating any provisions of G.S. 95-73 or 95-74 shall be answerable in damages to any debtor from whom any book account, negotiable instrument, duebill, or other monetary demand arising out of contract shall be collected, or against whose earnings any warrant of attachment or notice of garnishment shall be issued, in violation of the provisions of G.S. 95-73, to the full amount of the debt thus collected, attached, or garnisheed, to be recovered by civil action in any court of competent jurisdiction in this State; and any person so offending shall likewise be guilty of a Class 3 misdemeanor, punishable only by a fine of not more than two hundred dollars (\$200.00). (1909, c. 504, s. 3; C.S., s. 6570; 1993, c. 539, s. 666; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 95-76. Institution of foreign suit, etc., evidence of intent to violate.**

In any civil or criminal action instituted in any court of competent jurisdiction in this State for any violation of the provisions of G.S. 95-73 and 95-74, proof of the institution or prosecution of any action, suit, or proceeding in violation of the provisions of G.S. 95-73, or the issuance of service therein of any warrant of attachment, notice, or garnishment or other like writ for the garnishment of earnings of the defendant therein, or of the payment by the garnishee therein of any final judgment rendered in any such action, suit, or proceeding shall be deemed prima facie evidence of the intent of the creditor or other holder of the debt sued upon to deprive such debtor of his personal earnings and property exempt from application to the payment of his debts under the laws of this State, in violation of the provisions of this Article. (1909, c. 504, s. 4; C.S., s. 6571.)

**§ 95-77. Construction of Article.**

No provision of this Article shall be so construed as to deprive any person entitled to its benefits of any legal or equitable remedy already possessed under the laws of this State. (1909, c. 504, s. 5; C.S., s. 6572.)

Article 10.

## Declaration of Policy as to Labor Organizations.

### **§ 95-78. Declaration of public policy.**

The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization or association. (1947, c. 328, s. 1.)

### **§ 95-79. Certain agreements declared illegal.**

(a) Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

(b) Any provision that directly or indirectly conditions the purchase of agricultural products, the terms of an agreement for the purchase of agricultural products, or the terms of an agreement not to sue or settle litigation upon an agricultural producer's status as a union or nonunion employer or entry into or refusal to enter into an agreement with a labor union or labor organization is invalid and unenforceable as against public policy in restraint of trade or commerce in the State of North Carolina. Further, notwithstanding G.S. 95-25.8, an agreement requiring an agricultural producer to transfer funds to a labor union or labor organization for the purpose of paying an employee's membership fee or dues is invalid and unenforceable against public policy in restraint of trade or commerce in the State of North Carolina. For purposes of this subsection, the term "agricultural producer" means any producer engaged in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938, 29 U.S.C. § 203, or section 3121(g) of the Internal Revenue Code of 1986, 26 U.S.C. § 3121. (1947, c. 328, s. 2; 2013-413, s. 15; 2014-115, s. 17; 2017-108, s. 20.5(a).)

### **§ 95-80. Membership in labor organization as condition of employment prohibited.**

No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer. (1947, c. 328, s. 3.)

### **§ 95-81. Nonmembership as condition of employment prohibited.**

No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. (1947, c. 328, s. 4.)

### **§ 95-82. Payment of dues as condition of employment prohibited.**

No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization. (1947, c. 328, s. 5.)

**§ 95-83. Recovery of damages by persons denied employment.**

Any person who may be denied employment or be deprived of continuation of his employment in violation of G.S. 95-80, 95-81 and 95-82 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him by appropriate action in the courts of this State such damages as he may have sustained by reason of such denial or deprivation of employment. (1947, c. 328, s. 6.)

**§ 95-84. Application of Article.**

The provisions of this Article shall not apply to any lawful contract in force on the effective date hereof but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of any existing contract. (1947, c. 328, s. 7.)

Article 11.

Minimum Wage Act.

**§§ 95-85 through 95-96: Repealed by Session Laws 1979, c. 839, s. 2.**

Article 12.

Units of Government and Labor Unions, Trade Unions, and Labor Organizations, and Public Employee Strikes.

**§ 95-97: Repealed by Session Laws 1998-217, s. 26.**

**§ 95-98. Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.**

Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect. (1959, c. 742.)

**§ 95-98.1. Strikes by public employees prohibited.**

Strikes by public employees are hereby declared illegal and against the public policy of this State. No person holding a position either full-or part-time by appointment or employment with the State of North Carolina or in any county, city, town or other political subdivision of the State of North Carolina, or in any agency of any of them, shall willfully participate in a strike by public employees. (1981, c. 958, s. 1.)

**§ 95-98.2. Strike defined.**



The word "strike" as used herein shall mean a cessation or deliberate slowing down of work by a combination of persons as a means of enforcing compliance with a demand upon the employer, but shall not include protected activity under Article 16 of this Chapter: Provided, however, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of public employment so long as the same is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment. (1981, c. 958, s. 1.)

**§ 95-99. Penalty for violation of Article.**

Any violation of the provisions of this Article is hereby declared to be a Class 1 misdemeanor. (1959, c. 742; 1993, c. 539, s. 667; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 95-100. No provisions of Article 10 of Chapter 95 applicable to units of government or their employees.**

The provisions of Article 10 of Chapter 95 of the General Statutes shall not apply to the State of North Carolina or any agency, institution, or instrumentality thereof or the employees of same nor shall the provisions of Article 10 of Chapter 95 of the General Statutes apply to any public employees or any employees of any town, city, county or other municipality or the agencies or instrumentalities thereof, nor shall said Article apply to employees of the State or any agencies, instrumentalities or institutions thereof or to any public employees whatsoever. (1959, c. 742.)

Article 13.

Payments to or for Benefit of Labor Organizations.

**§ 95-101. Definition.**

As used in this Article, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employee or employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (1963, c. 244.)

**§ 95-102. Certain payments to and agreements to pay labor organizations unlawful.**

It shall be unlawful for any carrier or shipper of property or any association of such carriers or shippers to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways and any such agreement shall be void and unenforceable. (1963, c. 244.)

**§ 95-103. Acceptance of such payments unlawful.**

It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in G.S. 95-102 above. (1963, c. 244.)

**§ 95-104. Penalty.**

Any person, firm, corporation, association or partnership which or who agrees to pay, or does pay, or agrees to receive, or does receive, any payment described in this Article shall be guilty of

a Class 3 misdemeanor and shall only be fined not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000) for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense. (1963, c. 244; 1993, c. 539, s. 668; 1994, Ex. Sess., c. 24, s. 14(c).)

#### Article 14.

##### Inspection Service Fees.

**§ 95-105: Repealed upon adoption of rule pursuant to G.S. 95-100.5(20), effective July 1, 2003.**

**§ 95-106: Repealed upon adoption of rule pursuant to G.S. 95-100.5(20), effective July 1, 2003.**

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

The assessment of the fees adopted by the Commissioner pursuant to G.S. 95-69.11, 95-110.5, 95-111.4 and 95-120 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected. (1975, c. 777, s. 3; 1995, c. 217, s. 1; 2001-427, s. 11(c); 2005-347, s. 6; 2005-453, s. 13.)

**§ 95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to G.S. 95-69.11, 95-110.5, 95-111.4 and 95-120 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes. (1975, c. 777, s. 4; 2001-427, s. 11(d); 2005-347, s. 7; 2005-453, s. 14.)

**§ 95-109.** Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 990, s. 3.

**§ 95-110. Reserved for future codification purposes.**

#### Article 14A.

##### Elevator Safety Act of North Carolina.

**§ 95-110.1. Short title and legislative purpose.**

(a) This Article shall be known as the Elevator Safety Act of North Carolina.

(b) The General Assembly finds that the use of unsafe and defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions and that prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interests and welfare of the people of the State. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-110.2. Scope.**

This Article shall govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving:

- (1) Elevators, dumbwaiters, escalators, and moving walks;
- (2) Personnel hoists;
- (3) Inclined stairway chair lifts;
- (4) Inclined and vertical wheelchair lifts;
- (5) Manlifts; and
- (6) Special equipment.

This Article shall not apply to devices and equipment located and operated in a single family residence, to conveyors and related equipment within the scope of the American National Standard Safety Standard for Conveyors and Related Equipment (ANSI/ASME B20.1) constructed, installed and used exclusively for the movement of materials, or to mining equipment specifically covered by the Federal Mine Safety and Health Act or the Mine Safety and Health Act of North Carolina or the rules and regulations adopted pursuant thereto. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

### **§ 95-110.3. Definitions.**

(a) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or his authorized representative.

(b) The term "Director" shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(c) The term "dumbwaiter" shall mean a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, the total inside height of which, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does not exceed 500 pounds, and which is used exclusively for carrying materials.

(d) The term "elevator" shall mean a hoisting and lowering mechanism equipped with a car or platform which moves in guides, and which serves two or more floors of a building or structure.

(e) The term "escalator" shall mean a power driven, inclined continuous stairway used for raising and lowering passengers.

(f) The term "inclined stairway chair lift" shall mean a hoisting and lowering mechanism with one or more chairs or a platform for one or more wheelchairs installed on a stairway for the purpose of transporting a physically disabled person.

(g) The term "inclined or vertical wheelchair lift" shall mean a powered platform-elevating device used to transport a physically disabled person in a wheelchair.

(h) The term "manlift" shall mean platforms or brackets and accompanying handholds, mounted on, or attached to, an endless belt operating vertically in one direction only and being supported by, and driven through, pulleys at the top and bottom and intended primarily for the conveyance of persons.

(i) The term "moving walk" shall mean a type of passenger carrying device on which passengers stand or walk and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted.

(j) The term "operator" shall mean any person having direct control over the operation of any covered device or equipment.

(k) The term "owner" shall mean any person or authorized agent of such person who owns a device or equipment subject to regulation under this Article, or in the event the device or equipment is leased, the lessee. The term "owner" also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

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

(m) The term "personnel hoist" shall mean an elevator installed inside or outside of buildings during construction, alteration or demolition and used primarily to raise and lower workers and other persons connected with or related to the building project.

(n) The term "special equipment" shall mean any permanently or semi-permanently located device, manually or power-operated, used for moving or lifting person or persons and materials but not considered as an elevator, escalator, dumbwaiter, moving walk, personnel hoist, inclined stairway chair lift, inclined or vertical wheelchair lift, or manlift. Special equipment shall include, but not be limited to, manhoists, lift bridges, elevators which are used only for handling building materials and workmen during construction, and stage and orchestra lifts. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

#### **§ 95-110.4. Elevator and Amusement Device Division established.**

There is hereby created an Elevator and Amusement Device Division within the Department of Labor. The Commissioner shall appoint a director of the Elevator and Amusement Device Division and such other employees as the Commissioner deems necessary to assist the director in administering the provisions of this Article. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

#### **§ 95-110.5. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby empowered:

- (1) To delegate to the Director of the Elevator and Amusement Device Division such powers, duties and responsibilities as the Commissioner determines will best serve the public interest in the safe operation of lifting devices and equipment;
- (2) To supervise the Director of the Elevator and Amusement Device Division;
- (3) To adopt, modify, or revoke such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article including, but not limited to, those governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration and relocation of devices and equipment subject to the provisions of this Article. The rules and regulations promulgated pursuant to this rulemaking authority shall conform with good engineering practice as evidenced generally by the most recent editions of the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, the National Electrical Code, the American National Standard Safety Requirements for Personnel Hoists, the American National Standard Safety Code for Manlifts, the American National Standard Safety Standard for Conveyors and Related Equipment and similar codes promulgated by agencies engaged in research concerning strength of material, safe design, and other factors bearing upon the safe operation of the devices and equipment subject to the provisions of this Article. The rules and

regulations may apply different standards to devices and equipment subject to this Article depending upon their date of installation. The rules and regulations for special equipment shall not adopt specifically any portion of the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks to inclined and vertical reciprocating conveyors;

- (4) To enforce rules and regulations adopted under authority of this Article;
- (5) To inspect and have tested for acceptance all new, altered or relocated devices or equipment subject to the provisions of this Article;
- (6) To make maintenance and periodic inspections and tests of all devices and equipment subject to the provisions of this Article as often as every six months;
- (7) To issue certificates of operation which certify for use such devices and equipment as are found to be in compliance with this Article and the rules and regulations promulgated thereunder;
- (8) To have free access, with or without notice, to the devices and equipment subject to the provisions of this Article, during reasonable hours, for purposes of inspection or testing;
- (9) To obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the General Statutes;
- (10) To investigate accidents involving the devices and equipment subject to the provisions of this Article to determine the cause of such accident, and he shall have full subpoena powers in conducting such investigation;
- (11) To institute proceedings in the civil or criminal courts of this State, when a provision of this Article or the rules and regulations promulgated thereunder has been violated;
- (12) To issue a limited certificate of operation for any device or equipment subject to the provisions of this Article to allow the temporary or restricted use thereof;
- (13) To adopt, modify or revoke rules and regulations governing the qualifications of inspectors;
- (14) To grant exceptions from the requirements of the rules and regulations promulgated under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (15) To require that a construction permit must be obtained from the Commissioner before any device or equipment subject to the provisions of this Article is installed, altered or moved from one place to another and to require that the Commissioner must be supplied with whatever plans, diagrams or other data he deems necessary to determine whether or not the proposed construction is in compliance with the provisions of this Article and the rules and regulations promulgated thereunder;
- (16) To prohibit the use of any device or equipment subject to the provisions of this Article which is found upon inspection to expose the public to an unsafe condition likely to cause personal injury or property damage. Such device or equipment shall be made operational only upon the Commissioner's determination that such device or equipment has been made safe;

- (17) To order the payment of all civil penalties provided by this Article. Funds collected pursuant to a civil penalty order shall be deposited with the State Treasurer;
- (18) To require that any device or equipment subject to the provisions of this Article which has been out-of-service and not continuously maintained for one or more years shall not be returned to service without first complying with all rules and regulations governing existing installations; and
- (19) To coordinate enforcement and inspection activity relative to equipment, devices and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the employer or owner.
- (20) To establish fees not to exceed two hundred dollars (\$200.00) for the inspection and issuance of certificates of operation for all devices and equipment subject to this Article upon installation or alteration, for each follow-up inspection, and for annual periodic inspections thereafter. (1985 (Reg. Sess., 1986), c. 990, s. 1; 1995, c. 217, s. 2; 2001-427, s. 11(e).)

**§ 95-110.6. Noncomplying devices and equipment; appeal.**

(a) Whenever the Commissioner determines that a device or equipment is subject to the provisions of this Article, and that the operation of such device or equipment is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, he may immediately order in writing that the use of the device or equipment be stopped or limited until such time as he determines that the device or equipment has been made safe for use by the public.

(b) Whenever the Commissioner determines that the provisions of this Article or the rules and regulations promulgated thereunder have not been complied with, he may refuse to issue or renew or may revoke, suspend or amend a certificate of operation.

(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, 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 . (1985 (Reg. Sess., 1986), c. 990, s. 1; 2015-221, s. 1.5.)

**§ 95-110.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

(a) No person shall operate or permit to be operated or use any device or equipment subject to the provisions of this Article without a valid certificate of operation unless the absence of a valid certificate is the result of the Commissioner's failure to inspect such device.

(b) No person shall operate or permit to be operated or use any device or equipment subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

(c) No person shall operate or permit to be operated or use any device or equipment subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device or equipment. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-110.8. Operation of unsafe device or equipment.**

No person shall operate, permit to be operated or use any device or equipment subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-110.9. Reports required.**

(a) The owner of any device or equipment regulated under the provisions of this Article, or his authorized agent, shall within 24 hours notify the Commissioner of each and every occurrence involving such device or equipment when:

- (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
- (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or equipment, or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

(d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or equipment or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-110.10. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-110.7(a) or (b) (Operation without 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 device or equipment is so operated or used.

(b) Any person who violates G.S. 95-110.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-110.9(c) (Reports required) shall be subject to a civil penalty

not to exceed five hundred dollars (\$500.00) for each day any such device or equipment is operated or used.

(c) Any person who violates the provisions of G.S. 95-110.9(d) (Reports required) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).

(d) 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.

(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, 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.

(f) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1985 (Reg. Sess., 1986), c. 990, s. 1; 2003-308, s. 3; 2007-231, s. 7.)

#### **§ 95-110.11. Violations; criminal penalties.**

(a) Any person who violates G.S. 95-110.8 (Operation of unsafe device or equipment) shall be guilty of a Class 2 misdemeanor.

(b) Any person misrepresenting himself as an authorized inspector administering or enforcing the provisions of this Article or the rules and regulations promulgated thereunder shall be guilty of a Class 2 misdemeanor.

(c) Any person knowingly making a material and false statement, representation or certification in any application, record, report, plan or any other document filed or required to be maintained pursuant to this Article or the rules and regulations promulgated thereunder shall be guilty of a Class 2 misdemeanor which may include a fine of up to five thousand dollars (\$5,000). (1985 (Reg. Sess., 1986), c. 990, s. 1; 1993, c. 539, s. 669; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 95-110.12. Legal representation.**

It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article or the rules and regulations promulgated thereunder. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

#### **§ 95-110.13. Authorization for similar safety and health federal-State programs.**

Consistent with the requirements and conditions provided in this Article and the rules and regulations promulgated thereunder, the State, upon recommendation of the Commissioner of



Labor, may enter into agreements or arrangements with appropriate federal agencies for the purpose of administering the enforcement of federal statutes and rules and regulations governing devices and equipment subject to the provisions of this Article. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-110.14. Confidentiality of trade secrets.**

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article or the rules and regulations promulgated thereunder which contains or might reveal a trade secret shall be considered confidential, except as to carrying out this Article and the rules and regulations promulgated thereunder, or when it is relevant in any proceeding under the same. In any such proceeding the Commissioner or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-110.15. Construction of Article and rules and regulations and severability.**

This Article and the rules and regulations promulgated thereunder shall receive a liberal construction to the end that the welfare of the people may be protected. If any provisions of either or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those provisions or applications which can be given effect without the invalid provision or application, and to that end the provisions of this Article are severable. (1985 (Reg. Sess., 1986), c. 990, s. 1.)

**§ 95-111. Reserved for future codification purposes.**

Article 14B.

Amusement Device Safety Act of North Carolina.

**§ 95-111.1. Short title and legislative purpose.**

(a) This Article shall be known as the "Amusement Device Safety Act of North Carolina".

(b) The General Assembly finds that although most amusement devices are free from defect and operated in a safe manner, those which are not impose a substantial probability of serious and preventable injury to the public. Protection of the public from exposure to such unsafe conditions and the prevention of injuries is in the best interest and welfare of the people of the State.

(c) It is the intent of this Article that amusement devices shall be designed, constructed, assembled or disassembled, maintained, and operated so as to prevent injuries. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.2. Scope.**

(a) This Article shall govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving amusement devices.

(b) This Article shall not apply to any device which does not normally require the supervision or services of an operator. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1991, c. 178, s. 1; 2003-170, s. 1.)

**§ 95-111.3. Definitions.**

(a) The term "amusement device" shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. This term shall not include any of the following:

- (1) Devices operated on a river, lake, or any other natural body of water.
- (2) Wavepools.
- (3) Roller skating rinks.
- (4) Ice skating rinks.
- (5) Skateboard ramps or courses.
- (6) Mechanical bulls.
- (7) Buildings or concourses used in laser games.
- (8) All-terrain vehicles.
- (9) Motorcycles.
- (10) Bicycles.
- (11) Mopeds.
- (12) Rock walls that are in a fixed, permanent location.
- (13) Zip-lines.
- (14) Funhouses, haunted houses, and similar walk-through devices that are erected temporarily on a seasonal basis and do not have mechanical components.
- (15) Playground equipment, including but not limited to soft contained play equipment, swings, seesaws, slides, stationary spring-mounted animal features, jungle gyms, rider-propelled merry-go-rounds, and trampolines.

(b) The term "amusement park" shall mean any tract or area used principally as a permanent location for amusement devices.

(b1) The term "annual gross volume" shall mean the gross receipts a person or device receives from all types of sales made and business done during a 12-month period.

(b2) The term "carnival area" shall mean any area, track, or structure that is rented, leased, or owned as a temporary location for amusement devices.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or his authorized representative.

(d) The term "Director" shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(e) The term "operator" shall mean any person having direct control of the operation of an amusement device. The term "operator" shall not include any person on the device for the purpose of receiving amusement, pleasure, thrills, or excitement.

(f) The term "owner" shall mean any person or authorized agent of such person who owns an amusement device or in the event such device is leased, the lessee. The term "owner" also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

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

(h) The term "waterslide" shall mean a stationary amusement device that provides a descending ride on a flowing water film through a trough or tube or on an inclined plane into a pool of water. This term does not include devices where the vertical distance between the highest and the lowest points does not exceed 15 feet. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 864, s. 90(a); 1991, c. 178, s. 2; 2011-366, s. 5; 2015-152, s. 1.)

#### **§ 95-111.4. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby empowered to do all of the following:

- (1) To delegate to the Director of the Elevator and Amusement Device Division such powers, duties and responsibilities as the Commissioner determines will best serve the public interest in the safe operation of amusement devices.
- (2) To supervise the Director of the Elevator and Amusement Device Division.
- (3) To adopt, modify, or revoke such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article including, but not limited to, those governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration and relocation of devices subject to the provisions of this Article. The rules and regulations promulgated pursuant to this rulemaking authority shall conform with good engineering and safety standards, formulas and practices.
- (4) To enforce rules and regulations adopted under authority of this Article.
- (5) To inspect and have tested for acceptance all new and relocated devices subject to the provisions of this Article. Relocated amusement devices shall be inspected upon reassembly at each new location within this State; provided that the Commissioner may provide for less frequent inspections when he determines that the device is of such a type and its use is of such a nature that inspection less often than upon each reassembly would not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
- (6) To inspect amusement devices which have been substantially rebuilt or substantially modified so as to change the original action, structure or capacity of the device.
- (7) To make maintenance and periodic inspections and tests of all devices subject to the provisions of this Article. Devices located in amusement parks shall be inspected at least once annually.
- (8) To issue certificates of operation which certify for use such devices as are found to be in compliance with this Article and the rules and regulations promulgated thereunder.
- (9) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for purposes of inspection or testing.
- (10) To obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the General Statutes.
- (11) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of the accident, and the Commissioner shall have full subpoena powers in conducting the investigation.

- (12) To institute proceedings in the civil courts of this State, when a provision of this Article or the rules and regulations promulgated thereunder has been violated.
- (13) To adopt, modify or revoke rules and regulations governing the qualifications of inspectors.
- (14) To grant exceptions from the requirements of the rules and regulations promulgated under authority of this Article and to permit the use of other devices when these exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
- (15) To require that before any device subject to the provisions of this Article is erected in this State, or before any additions or alterations which substantially change the device are made, or before the physical spacing between the devices is changed, the owner or the owner's authorized agent shall file with the Commissioner a written notice of the owner's intention to do so and the type of device involved. Should circumstances necessitate, the Commissioner may require that the owner or the owner's authorized agent furnish a copy of the plans, diagrams, specifications or stress analyses of the device before the inspection of the device. When plans, diagrams, specifications or stress analyses are requested by the Commissioner, the Commissioner shall review them within 10 days of receipt, and upon approval, shall authorize the device for use by the public.
- (16) To prohibit the use of any device subject to the provisions of this Article which is found upon inspection to expose the public to an unsafe condition likely to cause personal injury or property damage. Such a device shall be made operational only upon the Commissioner's determination that it has been made safe.
- (17) To order the payment of all civil penalties provided by this Article. The clear proceeds of funds collected pursuant to a civil penalty order shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- (18) To coordinate enforcement and inspection activity relative to equipment, devices and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the employer or owner.
- (19) To establish fees not to exceed two hundred fifty dollars (\$250.00) for the inspection and issuance of certificates of operation for devices subject to this Article that are in use. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 635, s. 2; 1998-215, s. 110; 2001-427, s. 11(f); 2014-115, s. 5.)

**§ 95-111.5. Pre-opening inspection and test; records; revocation of certificate of operation.**

(a) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to make a pre-opening inspection and test of such device, prior to admitting the public, each day such device is intended to be used.

(b) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to maintain for at least the previous 12 months a signed record of the required pre-opening inspection and test and such other pertinent information as the Commissioner may require by rule or regulation.

(c) The Commissioner is hereby empowered to revoke the certificate of operation for any device regulated by this Article upon failure by the owner or his authorized agent to make the

required pre-opening inspection and test or to maintain the required record. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 2.)

**§ 95-111.6. Noncomplying devices; appeal.**

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

(b) Whenever the Commissioner determines that the provisions of this Article or the rules and regulations promulgated thereunder have not been complied with, he may refuse to issue or renew or may revoke, suspend or amend a certificate of operation.

(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, 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. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2015-221, s. 1.6.)

**§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

(a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.

(b) No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

(c) No person shall operate or permit to be operated or use any device subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least 10 working days prior to the first planned date of operation or use. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 3; 2011-366, s. 6.)

**§ 95-111.9. Operation of unsafe device.**

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose

the public to an unsafe condition which is likely to result in personal injury or property damage. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.10. Reports required.**

(a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:

- (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
- (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

(d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.11. Operators.**

(a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.

(b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 4.)

**§ 95-111.12. Liability insurance.**

(a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract

of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement device if the annual gross volume of the device does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).

(b) No certificate of operation shall be issued by the Commissioner until such time as the owner or his authorized agent provides proof of the required contract of insurance.

(c) The Commissioner shall have the right to request from the owner of a device regulated by this Article, or his authorized agent, proof of the required contract of insurance, and upon failure of the owner or his authorized agent to provide such proof, the Commissioner shall have the right to prevent the commencement of or to stop the operation of the device until such time as proof is provided.

(d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a). (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 635, s. 1; c. 864, ss. 90(b), 91(a); 1989, c. 232; 1989 (Reg. Sess., 1990), c. 914; 1995, c. 517, s. 34; 2015-152, s. 3.)

### **§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) or G.S. 95-111.8 (Location notice) is subject to a civil penalty not to exceed one thousand two hundred fifty dollars (\$1,250) for each rule, regulation, or section of this Article violated and for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) is subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day each device is so operated or used.

(c) Repealed by Session Laws 2015-152, s. 2, effective July 16, 2015, and applicable to violations occurring on or after that date.

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) is subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day each device is so operated or used.

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) is subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each day each device is so operated or used.

(f) 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 annual gross volume of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(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, 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.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) Except as provided under subsection (j) of this section, any person who willfully violates any provision of this Article is guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of the person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000).

(j) Any person who willfully violates any provision of this Article, and that violation causes the serious injury or death of any person, then the person is guilty of a Class E felony, which shall include a fine.

(k) Nothing in this section prevents any prosecuting officer of the State of North Carolina from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 5; 2003-308, s. 4; 2007-231, s. 8; 2015-152, s. 2.)

#### **§ 95-111.14. Denial of permission to enter amusement device.**

The owner or amusement device operator may deny any person entrance to an amusement device if he or she believes such entry may jeopardize the safety of the person desiring entry, riders or other persons. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.15. Legal representation.**



It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article or the rules and regulations promulgated thereunder. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.16. Authorization for similar safety and health federal-State programs.**

Consistent with the requirements and conditions provided in this Article and the rules and regulations promulgated thereunder, the State, upon recommendation of the Commissioner of Labor, may enter into agreements or arrangements with appropriate federal agencies for the purpose of administering the enforcement of federal statutes and rules and regulations governing devices subject to the provisions of this Article. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.17. Confidentiality of trade secrets.**

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article or the rules and regulations promulgated thereunder which contains or might reveal a trade secret shall be considered confidential, except as to carrying out this Article and the rules and regulations promulgated thereunder or when it is relevant in any proceeding under the same. In any such proceeding the Commissioner or the Court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.18. Construction of Article and rules and regulations and severability.**

This Article and the rules and regulations promulgated thereunder shall receive a liberal construction to the end that the welfare of the people may be protected. If any provisions of either or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those provisions or applications which can be given effect without the invalid provision or application, and to that end the provisions of this Article are severable. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§§ 95-112 through 95-115. Reserved for future codification purposes.**

Article 15.

Passenger Tramway Safety.

**§ 95-116. Declaration of policy.**

In order to safeguard life, health, property, and the welfare of this State, it shall be the policy of the State of North Carolina to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts, tramways and related devices to insure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts and passenger tramways. The primary responsibility for design, construction, maintenance, and inspection rests with the operators of such passenger tramway devices. The State, through the Commissioner of Labor, shall register all ski lift devices and passenger tramways and establish reasonable standards of design and operational practices, and cause to be made such inspections as may be necessary in carrying out this policy. (1969, c. 1021.)

## § 95-117. Definitions.

Each word or term defined in this Article has the meaning indicated in this section, unless a different meaning is plainly required by the context.

- (1) Annual gross volume. – The gross receipts a person or passenger tramway receives from all types of sales made and business done during a 12-month period.
- (2) Commissioner. – The Commissioner of Labor of the State of North Carolina.
- (3) Industry. – Activities of all those persons in the State who own, manage, or direct the operation of passenger tramways.
- (4) Operator. – Any person, firm, corporation, or organization which owns, manages, or directs the operation of a passenger tramway. "Operator" may apply to the State or any political subdivision or instrumentality thereof.
- (5) Owner. – Any person or authorized agent of such person who owns a passenger tramway or, in the event the passenger tramway is leased, the lessee. The term owner shall also include the State of North Carolina or any political subdivision thereof or any unit of local government.
- (6) Passenger tramway. – A device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. The term includes any of the following devices:
  - a. Chairlift. – A type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices.
  - a1. Conveyor. – A type of transportation on which passengers are transported uphill on a flexible moving element (conveyor belt) that travels uphill on one path and generally returns underneath the uphill portion.
  - a2. Funicular. – A system in which passengers are transported in or on carriers that are supported and guided by a level or inclined guideway and propelled by means of a haul rope or other flexible element that is driven by a power unit remaining essentially at a single location.
  - a3. Gondola. – An enclosed cabin attached to a cable that mechanically transports people or cargo.
  - b. J bar, T bar, or platter pull. – Devices which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.
  - c. Multicar aerial passenger tramway. – A device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar device.
  - d. Rope tow. – A type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar device.
  - e. Skimobile. – A device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar device.

- f. Two-car aerial passenger tramway. – A device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device.
- (7) Person. – Any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government. (1969, c. 1021; 2005-347, s. 1; 2017-211, s. 14(b).)

**§ 95-118. Registration required; application procedures.**

(a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid registration certificate.

(b) Operators of devices subject to the provisions of this Article shall apply to the Commissioner of Labor, on forms provided by the Commissioner, for registration of the devices that the operator owns or manages, or the operation of which the operator directs. The application shall contain information that the Commissioner may reasonably require in order for the Commissioner to determine whether the passenger tramway sought to be registered by the operator complies with the intent of this Article and the rules adopted by the Commissioner. (1969, c. 1021; 2005-347, s. 2.)

**§ 95-119. Certification criteria; procedures; display of certificate.**

(a) A registration certificate shall be issued annually when the Commissioner is satisfied that the facts stated in the application are sufficient to enable the Commissioner to fulfill his or her duties under this Article and that the device sought to be registered complies with the rules adopted pursuant to this Article.

(b) The Commissioner may conduct any inspections necessary to determine whether the device sought to be registered complies with the intent of this Article and the rules adopted pursuant to this Article.

(c) The registration certificate for each device subject to the provisions of this Article shall be displayed prominently at the place where passengers are loaded onto the device. (1969, c. 1021; 2005-347, s. 3; 2011-366, s. 7.)

**§ 95-120. Powers and duties of the Commissioner.**

In addition to all other powers and duties conferred and imposed upon the Commissioner by this Article, the Commissioner shall have and exercise the following powers and duties:

- (1) To adopt, modify, or revoke the rules necessary for carrying out the provisions of this Article, including those governing the design, construction, installation, operation, use, and maintenance of devices subject to the provisions of this Article. The rules adopted under this section shall conform as nearly as possible to the standards contained in the B77.1 – American National Standards Safety Requirements for Aerial Passenger Tramways and with good engineering and safety standards, formulas, and practices.
  - (1a) To enforce the rules adopted under this Article.
  - (1b) To grant exceptions from the requirements of the rules adopted under this Article and to permit the use of other devices when the exceptions and uses will

- not expose the public to an unsafe condition likely to result in serious personal injury or damage to property.
- (2) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the Commissioner, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any inquiry.
  - (3) To approve, deny, revoke, and renew the registration certificates in accordance with the rules adopted pursuant to this Article.
  - (4) To institute civil actions for injunctive or other relief against violators of this Article.
  - (5) To cause the seal of the Commissioner of Labor to be affixed to all registrations issued by the Commissioner, and to employ, within the funds available to the Commissioner, and prescribe the duties of the personnel as the Commissioner may deem necessary in the administration of this Article.
  - (6) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for the purposes of inspections and testing.
  - (7) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of the accident. The Commissioner shall have full subpoena powers in conducting the investigations.
  - (8) To coordinate enforcement and inspection activity relative to equipment, devices, and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the operator, owner, or employer.
  - (9) To establish fees not to exceed one hundred thirty-seven dollars (\$137.00) for the inspection and issuance of registration certificates for devices that are in use and subject to this Article. (1969, c. 1021; 2005-347, s. 4.)

**§ 95-120.1. Liability insurance.**

(a) No person shall operate a device subject to the provisions of this Article, unless at the time of operation, there is in existence:

- (1) A contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the device; or
- (2) A contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the devices if the annual gross volume of the receipts of the devices as defined in G.S. 95-111.3(b1) does not exceed two hundred seventy-five thousand dollars (\$275,000).

The insurance contract to be provided must be made by an insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State.

(b) The Commissioner shall not issue a certificate of registration until the operator or the operator's authorized agent provides proof of the required contract of insurance.

(c) The Commissioner may request from the operator of a device subject to the provisions of this Article or the operator's authorized agent, proof of the required contract

of insurance, and upon failure of the operator or authorized agent to provide proof of insurance, the Commissioner shall have the power to prevent the commencement of or to stop the operation of the device until such time as proof is provided. (2005-347, s. 5; 2015-152, s. 5.)

**§ 95-121. Inspections and reports.**

The Commissioner may cause to be made such inspections of the construction, operation, and maintenance of passenger tramways as he shall deem to be reasonably necessary. If, as the result of an inspection, it is found that a violation of the Commissioner's rules and regulations exists, or a condition in passenger tramway construction, operation or maintenance exists, which endangers safety of the public, an immediate report shall be made to the Commissioner for appropriate investigation and order. (1969, c. 1021.)

**§ 95-122. Emergency shutdown.**

When facts are presented to the Commissioner tending to show that an unreasonable hazard exists in the continued operation of a passenger tramway, and after such verification of said facts as is practical under the circumstances and consistent with the public safety, the Commissioner may by an emergency order require the operator of said tramway forthwith to cease using the same for the transportation of passengers. Such emergency order shall be in writing, signed by the Commissioner, and notice thereof shall be served upon the operator or his agent immediately in control of said passenger tramway by a true copy of such order, with a return being made of such service and endorsed on the original order. Such emergency shutdown shall be effective for a period not to exceed 48 hours from the time of service. Immediately after the issuance of an emergency order, the Commissioner shall conduct an investigation into the facts of the case and shall take such action as may be appropriate and as provided by the provisions of this Article. (1969, c. 1021.)

**§ 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, 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. (1969, c. 1021; 1973, c. 1331, s. 3; 1987, c. 827, s. 264; 1987 (Reg. Sess., 1988), c. 1037, s. 106; 2003-308, s. 5; 2007-231, s. 9.)

**§ 95-124. Suspension of registration.**

If any operator fails to comply with the lawful order of the Commissioner as issued under this Article, and within the time fixed thereby, the Commissioner may suspend the registration of the affected passenger tramway for such time as he may consider necessary for the protection of the safety of the public. Any operator who shall be convicted, or enter a plea of guilty or nolo contendere, to operating a passenger tramway which has not been registered by the Commissioner, or after its registration has been suspended by the Commissioner, shall be guilty of a Class 1 misdemeanor. (1969, c. 1021; 1993, c. 539, s. 670; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 95-125. Effective date of initial applications.**

This Article shall take effect and become operative on July 30, 1969, provided that the initial applications for registration of passenger tramways shall be filed on or before November 1, 1969, and passenger tramways in existence on November 1, 1969, may be operated without registration until final action is taken by the Commissioner on the application for registration thereof. (1969, c. 1021.)

**§ 95-125.1. Operation of unsafe device.**

No person shall operate, permit to be operated, or use any device subject to the provisions of this Article if the person knows or reasonably should know that the operation or use of the device will expose the public to an unsafe condition which is likely to result in personal injury or property damage. (2017-211, s. 14(c).)

**§ 95-125.2. Reports required.**

(a) The owner of any device regulated under the provisions of this Article, or the owner's authorized agent, shall, within 24 hours, notify the Commissioner of each and every occurrence involving the device when either of the following occurs:

- (1) Death or injury requiring medical treatment, other than first aid, by a physician. For the purposes of this section, "first aid" means (i) the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters, or contusions or (ii) performing a diagnostic procedure, including examination and X rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel.
- (2) Damage to the device indicating a substantial defect in design, mechanics, structure, or equipment that affects the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) of this section has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(c) No person, after an occurrence specified in subsection (a) of this section, shall do either of the following:

- (1) Operate, attempt to operate, use, or move or attempt to move such device or part thereof without the approval of the Commissioner, unless so as to prevent injury to any person or persons.
- (2) Remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The Department must initiate its investigation within 24 hours of being notified. (2017-211, s. 14(c).)

**§ 95-125.3. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-118 (Registration required; application procedures) is subject to a civil penalty not to exceed one thousand two hundred fifty dollars (\$1,250) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-120.1 (Liability insurance) or G.S. 95-125.2 (Reports required) is subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day each device is so operated and used.

(c) Any person who violates G.S. 95-125.1 (Operation of unsafe device) is subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each day each device is so operated and used.

(d) 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 annual gross volume of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(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, 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.

(f) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides or, if a corporation is involved, in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed form, or of a final order of the Commissioner affirmed upon appeal. Upon such filing, the clerk of said court shall enter judgment in accordance with the final order and notify the parties. The judgment shall have the same effect, and all proceedings in relation to the judgment shall thereafter be the same, as though the judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(g) Any person who willfully violates any provision of this Article and that violation causes the serious injury or death of any person, then the person is guilty of a Class E felony, which shall include a fine.

(h) Nothing in this section prevents any prosecuting officer of the State of North Carolina from proceeding against a person who violates this Article on a prosecution charging any degree of willful or culpable homicide. (2017-211, s. 14(c).)

## Article 16.

### Occupational Safety and Health Act of North Carolina.

#### **§ 95-126. Short title and legislative purpose.**

(a) This Article shall be known as the "Occupational Safety and Health Act of North Carolina" and also may be referred to by abbreviations as "OSHANC."

(b) Legislative findings and purpose:

- (1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the federal and State governments, employers and employees.
- (2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:
  - a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
  - b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;
  - c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review commission for carrying out adjudicatory functions under this Article;
  - d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
  - e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
  - f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;



- g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;
- h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;
- i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;
- j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
- k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
- l. By authorizing the Commissioner to enter into contracts with the Department of Health and Human Services, or any other State or local units, to the end the Commissioner and the Department of Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.
- m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina. (1973, c. 295, s. 1; c. 476, s. 128; 1989, c. 727, s. 219(13); 1997-443, s. 11A.33; 2005-133, s. 2.)

### **§ 95-127. Definitions.**

As used in this Article, the following definitions apply:

- (1) Advisory Council. – The Advisory Council or body established under this Article.
- (2) Antineoplastic agent. – A chemotherapy drug or cytotoxic drug used to treat cancer patients and some non-cancer patients.
- (2a) Carolina Star Program. – A voluntary program designed to recognize work sites that implement effective safety and health management systems and that meet standards adopted by the Commissioner pursuant to G.S. 95-157. The Carolina Star Program is inclusive of four distinct programs, which includes the following: Carolina Star, Rising Star, Building Star, and Public Sector Star.
- (3) Classified service. – A position included in the State Merit System of Personnel Administration subject to the laws, rules and regulations of the State Personnel Board as administered by the State Personnel Director and as set forth in Chapter 126 of the General Statutes.
- (4) Commission. – North Carolina Occupational Safety and Health Review Commission established under this Article.
- (5) Commissioner. – The Commissioner of Labor of North Carolina.

- (6) Day. – A calendar day unless otherwise noted.
- (7) Department. – The North Carolina Department of Labor of North Carolina.
- (8) Deputy Commissioner. – The Deputy Commissioner of the North Carolina Department of Labor, who is appointed by the Commissioner to aid and assist the Commissioner in the performance of his duties. The Deputy Commissioner shall exercise such power and authority as delegated to him or her by the Commissioner.
- (9) Director. – The officer or agent appointed by the Commissioner of Labor for the purpose of assisting in the administration of the Occupational Safety and Health Act of North Carolina.
- (10) Employee. – An employee of an employer who is employed in a business or other capacity of his or her employer, including any and all business units and agencies owned and/or controlled by the employer.
- (11) Employer. – A person engaged in a business who has employees, including any state or political subdivision of a state, but does not include the employment of domestic workers employed in the place of residence of his or her employer.
- (12) Established federal standard. – Any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any act of Congress in force on the date of enactment of this Article, and adopted by the Secretary of Labor under the Occupational Safety and Health Act of 1970.
- (13) Federal Act. – The Occupational Safety and Health Act of 1970 (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950).
- (14) Imminent danger. – Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article.
- (15) Issue. – An industrial, occupational or hazard grouping.
- (16) Occupational safety and health standard. – A standard which requires conditions, or the adoption or use of one or more practices, means, methods, safety devices, operations or processes reasonably necessary and appropriate to provide safe and healthful employment and places of employment, and shall include all occupational safety and health standards adopted and promulgated by the Secretary which also may be and are adopted by the State of North Carolina under the provisions of this Article. This term includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the Secretary, promulgated as provided by the Occupational Safety and Health Act of 1970, and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the federal act or any appropriate federal agencies.
- (17) Person. – One or more individuals, partnerships, associations, corporations, business trusts, legal representatives.
- (18) Secretary. – The United States Secretary of Labor.

- (19) Serious violation. – A violation that shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.
- (20) State. – The State of North Carolina. (1973, c. 295, s. 2; 1987, c. 282, s. 14; 2005-133, s. 3; 2013-382, s. 9.1(c); 2014-76, s. 2; 2017-211, s. 15(a).)

**§ 95-128. Coverage.**

The provisions of this Article or any standard or regulation promulgated pursuant to this Article shall apply to all employers and employees except:

- (1) The federal government, including its departments, agencies and instrumentalities;
- (2) Employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, as amended;
- (3) Employees whose safety and health are subject to protection under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725), or Subtitle V of Title 49 of the United States Code;
- (4) Railroad employees whose safety and health are subject to protection under Subtitle V of Title 49 of the United States Code;
- (5) Employees engaged in all maritime operations;
- (6) Employees whose employer is within that class and type of employment which does not permit federal funding, on a matching basis, to the State in return of State enforcement of all occupational safety and health issues. (1973, c. 295, s. 3; 1998-217, s. 27.)

**§ 95-129. Rights and duties of employers.**

Rights and duties of employers shall include but are not limited to the following provisions:

- (1) Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees;
- (2) Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this Article;
- (3) Each employer shall refrain from any unreasonable restraint on the right of the Commissioner or Director, or their lawfully appointed agents, to inspect the employer's place of business. Each employer shall assist the Commissioner, the Director or the lawful agents of either or both of them, in the performance of their inspection duties by supplying or by making available information, any necessary personnel or necessary inspection aides;
- (4) Any employer, or association of employers, is entitled to participate in the development of standards by submission of comments on proposed standards,

- participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131;
- (5) Any employer is entitled, under G.S. 95-137, to review of any citation issued because of his alleged violation of any standard promulgated under this Article, or the length of the abatement period allowed for the correction of an alleged violation;
  - (6) Any employer is entitled, under G.S. 95-137, to a review of any penalty in the form of civil damages assessed against him because of his alleged violation of this Article;
  - (7) Any employer is entitled, under G.S. 95-132, to seek an order granting a variance from any occupational safety or health standard;
  - (8) Any employer is entitled, under G.S. 95-152, to protection of his trade secrets and other legally privileged communications. (1973, c. 295, s. 4.)

### **§ 95-130. Rights and duties of employees.**

Rights and duties of employees shall include but are not limited to the following provisions:

- (1) Employees shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Article which are applicable to their own actions and conduct.
- (2) Employees and representatives of employees are entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131.
- (3) Employees shall be notified by their employer of any application for a temporary order granting the employer a variance from any provision of this Article or standard or regulation promulgated pursuant to this Article.
- (4) Employees shall be given the opportunity to participate in any hearing which concerns an application by their employer for a variance from a standard promulgated under this Article.
- (5) Any employee who may be adversely affected by a standard or variance issued pursuant to this Article may file a petition for review with the Commissioner who shall review the matters set forth and alleged in the petition.
- (6) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall have a right to file a petition for review with the Commissioner who shall investigate and pass upon same.
- (7) Subject to regulations issued pursuant to this Article any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Commissioner, Director, or their agents, at the time of the physical inspection of any work place as provided by the inspection provision of this Article.
- (8) to (10) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1021, s. 2.
- (11) Any employee or representative of employees who believes that any period of time fixed in the citation given to his employer for correction of a violation is unreasonable has the right to contest such time for correction by filing a written

and signed notice within 15 working days from the date the citation is posted within the establishment.

- (12) Nothing in this or any other provision of this Article shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. (1973, c. 295, s. 5; 1991 (Reg. Sess., 1992), c. 1021, s. 2; 2011-366, s. 8.)

**§ 95-131. Development and promulgation of standards; adoption of federal standards and regulations.**

(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

(b), (c) Repealed by Session Laws 1991, c. 418, s. 8.

(d) Rules adopted under this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards established in a rule shall be expressed in terms of objective criteria and of the performance desired. In establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of Health and Human Services, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

(e) The Commissioner may not adopt State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the adoption of such State standard, or standards, is required by compelling local conditions and does not unduly burden interstate commerce.

(f) Repealed by Session Laws 1991, c. 418, s. 8.

(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes. (1973, c. 295, s. 6; c. 476, s. 128; 1975, 2nd Sess., c. 983, s. 81; 1987, c. 285, s. 17; 1987 (Reg. Sess., 1988), c. 1111, ss. 7, 8; 1989, c. 727, s. 219(14); 1991, c. 418, s. 8; 1997-443, s. 11A.34.)

**§ 95-132. Variances.**

(a) Temporary Variances. –

- (1) The Commissioner may upon written application by an employer issue an order granting such employer a temporary variance from standards adopted by this

Article or promulgated by the Commissioner under this Article. Any such order shall prescribe the practices, means, methods, operations and processes which the employer must adopt or use while the variance is in effect and state in detail a program for coming into compliance with the standard.

- (2) An application for a temporary variance shall contain all information required as enumerated in 29 C.F.R. 1905.10(b) which is hereby incorporated by reference, as if herein fully set out.
  - (3) Upon receipt of an application for an order granting a temporary variance, the Commissioner to whom such application is addressed may issue an interim order granting such a temporary variance, for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than 180 days.
  - (4) Such a temporary variance may be granted only after notice to employees and interested parties and opportunity for hearing. The temporary variance may be for a period of no longer than required to achieve compliance or one year, whichever is shorter, and may be renewed only once. Application for renewal of a variance must be filed in accordance with provisions in the initial grant of the temporary variance.
  - (5) An order granting a temporary variance shall be issued only if the employer establishes
    - a. (i) That he is unable to comply with the standard by the effective date because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology, (ii) that all available steps have been taken to safeguard his employees against the hazards covered by the standard, and (iii) that he has an effective program for coming into compliance with the standard as quickly as practicable, or
    - b. That he is engaged in an experimental program as described in subsection (c) of this section as hereinafter stated.
- (b) Permanent Variances. –
- (1) Any affected employer may apply to the Commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard.
  - (2) The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question.
  - (3) Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Commissioner on his own motion, in the

manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(c) **Experimental Variances.** – The Commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers. (1973, c. 295, s. 7; 1997-456, s. 27.)

**§ 95-133. Office of Director of Occupational Safety and Health; powers and duties of the Director.**

(a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the Occupational Safety and Health Division. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this Article, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments, or revisions in rules, as the Commissioner may deem advisable for the administration of the office. The Commissioner shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his or her duties of office and shall not hold any other office. The Director, subject to the approval of the Commissioner, shall select a professional staff of qualified and competent employees to assist in the statewide administration of the Article. All of the employees referred to herein shall be under the classified service.

(b) Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the Division to administer and enforce. The Director shall have the power, jurisdiction and authority to:

- (1) Uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;
- (2) Make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the office has the duty, power and authority to enforce are promptly and effectively carried out;
- (3) Make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this Article and all lawful regulations issued thereunder;
- (4) Report to the Federal Occupational Safety and Health Administration any information which it may require;
- (5) Recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the

- prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;
- (6) Recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this Article;
  - (7) Employ experts, consultants or organizations for work related to the occupational safety and health program of the Division and compensate same with the approval of the Commissioner;
  - (8) Institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this Article;
  - (9) The Commissioner shall have the power and authority to issue all types of notices, citations, cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this Article as hereinafter set forth. The Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this Article or not in compliance with this Article and to apply for mandatory injunctions to compel enforcement of the Article, and the Commissioner is authorized, and further authorized by and through his agents, to institute criminal actions or proceedings for such violations of the Article as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this Article, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the Commission as hereinafter set forth.
  - (10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.
  - (11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this Article and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.
  - (12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject to review by the Commission as hereinafter provided, including all assessments for civil penalties. (1973, c. 295, s. 8; 2005-133, s. 4; 2014-76, s. 3; 2015-264, s. 29.)



**§ 95-134. Advisory Council.**

(a) There is hereby established a State Advisory Council on Occupational Safety and Health consisting of 11 members, appointed by the Commissioner, composed of three representatives from management, three representatives from labor, four representatives of the public sector with knowledge of occupational safety and occupational health professions and one representative of the public sector with knowledge of migrant labor. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Council shall advise, consult with, and make recommendations to the Commissioner on matters relating to the administration of this Article. The Council shall hold no fewer than two meetings during each calendar year. All meetings of the Advisory Council shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The Director shall furnish to the Advisory Council such secretarial, clerical and other services as he deems necessary to conduct the business of the Advisory Council. The members of the Advisory Council shall be compensated for reasonable expenses incurred, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials. The members of the Advisory Council shall be compensated in accordance with Chapter 138 of the General Statutes.

(d) In addition to its other duties, the Advisory Council shall assist the Commissioner in formulating and setting standards under the provisions of this Article. For this purpose the Commissioner may appoint persons qualified by experience and affiliation to present the viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the workers involved, and some persons to represent the health and safety agencies of the State. The Commissioner for this purpose may include representatives or professional organizations of technicians or professionals specializing in occupational safety or health. Such persons appointed for temporary purposes may be paid such per diem and expenses of attending meetings as provided in Chapter 138 of the General Statutes. (1973, c. 295, s. 9; 1977, c. 806; 1983, c. 717, ss. 17, 18.)

**§ 95-135. North Carolina Occupational Safety and Health Review Commission.**

(a) The North Carolina Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the Commission under this Article. The Governor shall appoint the members of the Commission and name one of the members as chairman of the Commission. The terms of the members of the Commission shall be six years except that the members of the Commission first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and the member of the Commission designated as chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled by the Governor for the remainder of the unexpired term. The Governor shall fill all vacancies occurring by reason of the expiration of the term of any members of the Commission.

(b) The Commission shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the Commission

until after full and adequate hearing. The Commission in the discharge of its duties under this Article is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any appeal or proceeding for review before the Commission.

(c) The Commission shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days' notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the Commission, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct, incompetency, the commission of any crime, or for any other good and adequate reason as found by the Commission. The Commission shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the Commission, and its decision shall be final. The compensation of the members of the Commission shall be on a per diem basis and shall be fixed by the Governor. The chairman of the Commission may be paid a higher rate of compensation than the other two members of the Commission. For the purpose of carrying out its duties and functions under this Article, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members of the Commission. On matters properly before the Commission the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the Commission. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review.

(d) Every official act of the Commission shall be entered of record and its hearings and records shall be open to the public. The Commission is authorized and empowered to make such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the Commission adopts a different rule, the proceedings, as nearly as possible, shall be in accordance with the Rules of Civil Procedure, G.S. 1A-1. The Commission may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this section, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the State.

(e) The rules of procedure prescribed or adopted by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(f) Any member of the Commission may be removed by the Governor for inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such removal the Governor shall give notice of hearing and state the allegations against the member of the Commission, and the same shall be heard by the Governor, and his decision shall be final. The principal office of the Commission shall be in Raleigh, North Carolina, but whenever it deems that the convenience of

the public or of the parties may be promoted, or delay or expense may be minimized, the Commission may hold hearings or conduct other proceedings at any place in the State.

(g) In case of a contumacy, failure or refusal of any person to testify before the Commission, give any type of evidence, or to produce any books, records, papers, correspondence, memoranda or other records, such person upon such failure to obey the orders of the Commission may be punished for contempt or any other matter involving contempt as set forth and described by the general laws of the State. The Commission shall issue no order for contempt without first finding the facts involved in the proceeding. Witnesses appearing before the Commission shall be entitled to the same fees as those paid for the services of said witnesses in the courts of the State, and all such fees shall be taxed against the interested parties according to the judgment and discretion of the Commission.

(h) The Director shall consult with the chairman of the Commission with respect to the preparation and presentation to the Commission for adoption of all necessary forms or citations, notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms of notices or applications for review by the Commission, and any and all other procedural papers and documents necessary for the administration of the Article as applied to employers and employees and for all procedures and proceedings brought before the Commission for review.

(i) A hearing examiner appointed by the chairman of the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and may hear any motion in connection therewith, assigned to the hearing examiner, and shall make a report of the determination which constitutes the hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for the hearing examiner's determination. The report of the hearing examiner shall become the final order of the Commission 30 days from the date of the report as determined by the hearing examiner, unless within the 30-day period any member of the Commission had directed that the report shall be reviewed by the entire Commission as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the Commission shall schedule the matter for hearing, on the record, except the Commission may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of the hearing and shall be allowed to appear in person or by attorney at the hearing. Upon review of the report and determination by the hearing examiner the Commission may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report of the hearing examiner, and the report, decision, or determination of the Commission upon review shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The report, decision or determination of the Commission upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain Administrative Agencies."

(j) Repealed by Session Laws 1993, c. 300, s. 1. (1973, c. 295, s. 10; c. 1331, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 6, 7; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1111, s. 10; 1993, c. 300, s. 1; c. 474, s. 1; 2005-133, ss. 1, 5; 2006-203, s. 21.)

## **§ 95-136. Inspections.**

(a) In order to carry out the purposes of this Article, the Commissioner or Director, or their duly authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

- (1) To enter without delay, and at any reasonable time, any factory, plant, establishment, construction site, or other area, work place or environment where work is being performed by an employee of an employer; and
- (2) To inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.
- (3) The Commissioner or Director, or their duly authorized agents, shall reinspect any place of employment where a willful serious violation was found to exist during the previous inspection and a final Order has been entered.

(b) In making his inspections and investigations under this Article, the Commissioner may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel regulations of the State. In case of a failure or refusal of any person to obey a subpoena under this section, the district judge or superior court judge of the county in which the inspection or investigation is conducted shall have jurisdiction upon the application of the Commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(c) Subject to regulations issued by the Commissioner a representative of the employer and an employee authorized by the employees shall be given an opportunity to consult with or to accompany the Commissioner, Director, or their authorized agents, during the physical inspection of any work place described under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner, Director, or their authorized agents, shall consult with a reasonable number of employees concerning matters of health and safety in the work place.

- (d) (1) Any employees or an employee representative of the employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice of such violation or danger to the Commissioner or Director. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or the employee representatives of the employees, and a copy shall be provided the employer or his agent no later than at the time of inspection. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy of any record published, released or made available pursuant to subsection (e) of this section. If upon receipt of such notification the Commissioner or Director determines there are reasonable grounds to believe that such violation or danger exists, the Commissioner or Director or their authorized agents shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the Commissioner or Director

determines there are not reasonable grounds to believe that a violation or danger exists he shall notify the employees or representatives of the employees, in writing, of such determination.

- (2) Prior to, during and after any inspection of a work place, any employees or representative of employees employed in such work place may notify the inspecting Commissioner, Director, or their agents, in writing, of any violation of this Article which they have reason to believe exists in such work place. The Commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the Commissioner or Director to issue a citation with respect to any such alleged violation and shall furnish the employees or representatives of employees requesting such review a written statement of the reason for the Commissioner's or Director's final disposition of the case.

(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending, except that, subject to the provisions of subsection (e1) of this section, an employer cited under the provisions of this Article is entitled to receive a copy of the official inspection report which is the basis for citations received by the employer following the issuance of citations.

(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer 10 days prior to a scheduled enforcement hearing unredacted copies of: (i) the witness statements the Commissioner intends to use at the enforcement hearing, (ii) the statements of witnesses the Commissioner intends to call to testify, or (iii) the statements of witnesses whom the Commissioner does not intend to use that might support an employer's affirmative defense or otherwise exonerate the employer; provided a written request for the statement or statements is received by the Commissioner no later than 12 days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than 12 days before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and

information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties.

(f) (1) Inspections conducted under this section shall be accomplished without advance notice, subject to the exception in subdivision (2) below this subsection.

(2) The Commissioner or Director may authorize the giving to any employer or employee advance notice of an inspection only when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with regulations issued by the Commissioner.

(g) The Commissioner shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Article, including rules and regulations dealing with the inspection of an employer's establishment. (1973, c. 295, s. 11; 1993, c. 317, ss. 1, 2; 1999-364, ss. 1, 2; 2003-174, s. 1.)

### **§ 95-136.1. Special emphasis inspection program.**

(a) As used in this section, a "special emphasis inspection" is an inspection by the Department's occupational safety and health division that is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

(b) The Department shall develop and implement a special emphasis inspection program that targets for special emphasis inspection employers who:

- (1) Have a high rate of serious or willful violations of any standard, rule, order, or other requirement under this Article, or of regulations prescribed pursuant to the Federal Occupational Safety and Health Act of 1970, in a one-year period;
- (2) Have a high rate of work-related deaths, or a high rate of work-related serious injuries or illnesses, in a one-year period; or
- (3) Are engaged in a type of industry determined by the Department to be at high risk for serious or fatal work-related injuries or illnesses.
- (4) Repealed by Session Laws 1997-443, s. 17(b).

To identify an employer for a special emphasis inspection, the Department shall use the most current data available from its own database and from other sources, including State departments, divisions, boards, commissions, and other State entities. The Department shall ensure that every employer targeted for a special emphasis inspection is inspected at least one time within the two-year period following targeting of the employer by the Department. The Department shall update its special emphasis inspection records at least annually.

(c) The Director shall make information about the special emphasis inspection program available prior to the date of implementation of the program.

(d) The Department shall by March 1, 1995, and annually thereafter, report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division of the General Assembly on the impact of the special emphasis inspection program on safety and health compliance and enforcement. (1991 (Reg. Sess., 1992), c. 924, s. 1; 1997-443, s. 17(b); 2017-57, s. 14.1(oo).)

**§ 95-137. Issuance of citations.**

(a) If, upon inspection or investigation, the Director or his authorized representative has reasonable grounds to believe that an employer has not fulfilled his duties as prescribed in this Article, or has violated any standard, regulation, rule or order promulgated under this Article, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the act, standards, rules and regulations, or orders alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or health. Each citation or notice in lieu of citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Director, at or near such place a violation referred to in the citation occurred.

(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, 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 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. (1973, c. 295, s. 12; 1987 (Reg. Sess., 1988), c. 1111, s. 11; 1991 (Reg. Sess., 1992), c. 1020, ss. 2, 3; 1993, c. 300, s. 2; 2003-308, s. 6; 2005-133, ss. 6, 7; 2007-231, s. 10.)

### **§ 95-138. Civil penalties.**

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order adopted under this Article, as follows:

- (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty of seventy thousand dollars (\$70,000) may be assessed for each willful or repeat violation.



- (2) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for each serious violation, except that a penalty of up to fourteen thousand dollars (\$14,000) shall be assessed for each serious violation that involves injury to an employee under 18 years of age.
- (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each violation that is adjudged not to be of a serious nature.
- (3) A penalty of up to seven thousand dollars (\$7,000) may be assessed against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.
- (4) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

- (1) Size of the business of the employer being charged.
- (2) The gravity of the violation.
- (3) The good faith of the employer.
- (4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.
- (5) Whether the violation involves injury to an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 295, s. 13; 1987 (Reg. Sess., 1988), c. 1111, s. 12; 1989 (Reg. Sess., 1990), c. 844; 1991, c. 329, s. 1; c. 761, s. 17; 1993, c. 474, s. 2; 1998-215, s. 111; 2004-203, s. 39(a); 2005-133, s. 8; 2006-39, s. 3; 2009-351, s. 4.)

### **§ 95-139. Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee 18 years of age or older, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000).

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000).

(c) If an employer is convicted of more than one violation of subsection (a) or (b) of this section, the subsequent violation shall be penalized as follows:

- (1) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars (\$20,000) if the subsequent violation results in the death of an employee 18 years of age or older.
- (2) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars (\$40,000) if the subsequent violation results in the death of an employee under 18 years of age.

(d) This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

(e) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of (i) not more than ten thousand dollars (\$10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars (\$20,000) for falsifications pertaining to employees under 18 years of age.

(f) Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege. (1973, c. 295, s. 14; 1993, c. 539, s. 671; 1994, Ex. Sess., c. 24, s. 14(c); 2009-351, s. 5.)

#### **§ 95-140. Procedures to counteract imminent dangers.**

(a) The superior courts of this State shall have jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists, which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except those individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to assume normal operations without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the superior court shall, without the necessity of showing an adequate remedy at law, have jurisdiction to grant injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Article. The proceeding shall be as provided under the statutes and Rules of Civil Procedure of this State except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Commissioner that relief be sought. If the Commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring

an action against the Commissioner in the superior court of the district in which the imminent danger is alleged to exist or the employer has its principal office or place of business, for a writ of mandamus to compel the Commissioner to seek such an order for such relief as may be appropriate. (1973, c. 295, s. 15.)

**§ 95-141. Judicial review.**

Any person or party in interest who has exhausted all administrative remedies available under this Article and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, firm or corporation under order resides, or, if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1973, c. 295, s. 16; c. 1331, s. 3; 1987, c. 827, s. 265.)

**§ 95-142. Legal representation of the Department of Labor.**

It shall be the duty of the Attorney General to represent the Department of Labor or designate some member of his staff to represent them in all actions or proceedings in connection with this Article. (1973, c. 295, s. 17.)

**§ 95-143. Record keeping and reporting.**

(a) Each employer shall make available to the Commissioner, or his agents, in such manner as the Commissioner shall require, copies of the same records and reports regarding his activities relating to this Article as are required to be made, kept, or preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) and regulations made pursuant thereto.

(b) Each employer shall make, keep and preserve and make available to the Commissioner such records regarding his activities relating to this Article as the Commissioner may prescribe by regulation as necessary and appropriate for the enforcement of this Article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their protections and obligations under this Article, including the provisions of applicable standards. The Commissioner shall prescribe regulations requiring employers to maintain accurate records of, and to make reports at least annually on, work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The Commissioner shall issue regulations requiring employers to maintain accurate records of employee exposure to potentially toxic materials of [or] harmful physical agents which are required to be monitored or measured under this Article. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring,

and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable safety and health standard promulgated under this Article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Commissioner or his duly authorized agents under this Article shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible. (1973, c. 295, s. 18; 1991 (Reg. Sess., 1992), c. 894, s. 1.)

#### **§ 95-144. Statistics.**

(a) In order to further the purposes of this Article, the Commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The Commissioner shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious or significant injuries or illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. On the basis of records made and kept pursuant to the provisions of this Article, employers shall file such reports with the Commissioner as he shall prescribe by regulations and as may be necessary to carry out his functions.

(b) A listing of employment by area and industry of employers who have an assigned account number by the Division of Employment Security (DES) of the Department of Commerce of this State shall be supplied annually to the Commissioner by the DES. The listing of employment by area and industry shall contain at least the following: employer name; DES account number; indication of whether multiple or a single report unit; number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the Commissioner to meet federal reporting requirements. (1973, c. 295, s. 19; 2011-401, s. 5.1.)

#### **§ 95-145. Reports to the Secretary.**

(a) The Commissioner shall require employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan in force under this Article were not in effect, and

(b) The Commissioner shall make such reports to the Secretary in such form and containing such information as the Secretary from time to time shall require. (1973, c. 295, s. 20.)

#### **§ 95-146. Continuation and effectiveness of this Article.**

The Commissioner shall from time to time furnish to the Secretary information and assurances that this Article is being administered by adequate methods and by standards and enforcement procedures which are and will continue to be as effective as federal standards. (1973, c. 295, s. 21.)

**§ 95-147. Training and employee education.**

(a) The Commissioner, after consultation with appropriate departments and agencies of the State and subdivisions of government, shall conduct, directly or by grants or contracts, (i) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Article, and (ii) informational, educational and training programs on the importance of and proper use of adequate safety and health equipment to encourage voluntary compliance.

(b) The Commissioner is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) The Commissioner shall provide employers and employees programs covering recognition, avoidance and prevention of unsafe and unhealthful working conditions in places of employment and shall advise employers and employees, or their representatives, [of] effective means to prevent occupational injuries and illnesses. (1973, c. 295, s. 22.)

**§ 95-148. Safety and health programs of State agencies and local governments.**

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

- (1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article.
- (2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees.
- (3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions.
- (4) Keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action.
- (5) Consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section.
- (6) Make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, the Commissioner shall, after unsuccessfully seeking by negotiations to abate this failure, include this in the Commissioner's annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct the condition.

The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

This section shall not apply to volunteer fire departments not a part of any municipality.

Any municipality with a population of 10,000 or less may exclude its fire department from the operation of this section by a resolution of the governing body of the municipality, except that the resolution may not exclude those firefighters who are employees of the municipality.

The North Carolina Fire and Rescue Commission shall recommend regulations and standards for fire departments. (1973, c. 295, s. 23; 1983, c. 164; 1985, c. 544; 1989, c. 750, s. 3; 1991 (Reg. Sess., 1992), c. 1020, s. 1; 2014-115, s. 6.)

**§ 95-149. Authority to enter into contracts with other State agencies and subdivisions of government.**

The Commissioner may enter into contracts with the Department of Health and Human Services or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this Article. (1973, c. 295, s. 24; 1989, c. 727, s. 24; 1997-443, s. 11A.35.)

**§ 95-150. Assurance of adequate funds to enforce Article.**

The Commissioner shall submit to the General Assembly a budget and request for appropriations to adequately administer this Article which shall be sufficient to give satisfactory assurance that this State will devote adequate funds to the administration and enforcement of the standards herein provided and the proper administration of this Article as required by federal standards. (1973, c. 295, s. 25.)

**§ 95-151. Discrimination.**

No employer, employee, or any other person related to the administration of this Article shall be discriminated against in any work, procedure, or employment by reason of sex, race, ethnic origin, or by reason of religious affiliation. (1973, c. 295, s. 26.)

**§ 95-152. Confidentiality of trade secrets.**

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article which contains or which might reveal a trade secret shall be considered confidential, as provided by section 1905 of Title 18 of U.S.C., except as to carrying out this Article or when it is relevant in any proceeding under this Article. In any such proceeding the Commissioner, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1973, c. 295, s. 27; 2005-133, s. 9.)

**§ 95-153. Reserved for future codification purposes.**

**§ 95-154. Authorization for similar safety and health federal-state programs.**

Consistent with the requirements and conditions provided in this Article the State, upon the recommendation of the Commissioner of Labor and approval of the Governor, may enter into agreements or arrangements with other federal agencies for the purpose of administering

occupational safety and health measures for such employees and employers within the State of North Carolina as may be covered by such federal safety and health statutes. (1973, c. 295, s. 29.)

**§ 95-155. Construction of Article and severability.**

This Article shall receive a liberal construction to the end that the safety and health of the employees of the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1973, c. 295, s. 30.)

**§ 95-156. Handling of dangerous antineoplastic agents.**

(a) The Commissioner of Labor shall adopt rules to establish requirements for the handling of antineoplastic agents in facilities where there is occupational exposure to antineoplastic agents.

(b) The rules adopted pursuant to this section shall be consistent with, but not exceed, the recommendations issued by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), as contained in the Alert: Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings, as published in 2004 and including subsequent amendments and editions. The Department's adoption of the rules may incorporate updates and changes to NIOSH's guidelines as made by CDC.

(c) Rules adopted pursuant to this section shall not apply to an entity that has obtained a permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A.

(d) The Commissioner shall enforce these rules and investigate complaints in accordance with the provisions of this Article. (2014-76, s. 4.)

**§ 95-157. Carolina Star Program.**

(a) The Commissioner may adopt rules for the operation of the Carolina Star Program in a manner that will promote safe and healthy workplaces throughout the State. The rules for the Carolina Star Program adopted by the Commissioner shall pertain to the following matters:

- (1) Upper management leadership and active and meaningful employee involvement.
- (2) Systematic assessment of occupational hazards.
- (3) Comprehensive hazard prevention, control, and mitigation programs.
- (4) Employee safety and health training.
- (5) Annual safety and health program evaluation.
- (6) Star Annual Report.
- (7) Attendance and active participation on Carolina Star Safety Conference Regional Teams and conference related activities.

(b) Applications for participation in the Carolina Star Program shall be submitted by the workplace's management. Applications shall include documentation establishing to

the satisfaction of the Commissioner that the employer meets all standards for Carolina Star Program participation.

(c) The Department shall provide for on-site evaluations, as resources allow, by Carolina Star Program evaluation teams of each workplace that has applied to participate in the Carolina Star Program to determine if the applicant's workplace complies with the standards for Carolina Star Program participation.

(d) A workplace's continued participation in the Carolina Star Program shall be conditioned on meeting the requirements and expectations established by the Carolina Star Program Policies and Procedures Manual, Star Annual Report, and successful completion of periodic on-site evaluations conducted by the Carolina Star Program evaluation team.

(e) During periods in which a workplace is a participant in the Carolina Star Program, the workplace shall be exempt from inspections under G.S. 95-136; however, this exception shall not apply to inspections or investigations of the workplace arising from complaints, referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases. (2017-211, s. 15(b).)

**§ 95-158:** Reserved for future codification purposes.

**§ 95-159:** Reserved for future codification purposes.

**§ 95-160:** Reserved for future codification purposes.

#### Article 17.

The Uniform Wage Payment Law of North Carolina.

**§§ 95-161 through 95-172. Repealed by Session Laws 1979, c. 839, s. 2.**

#### Article 18.

Identification of Toxic or Hazardous Substances.

Part 1. General Provisions.

**§ 95-173. Short title.**

This Article shall be cited as the Hazardous Chemicals Right to Know Act. (1985, c. 775, s. 1.)

**§ 95-174. Definitions.**

(a) "Chemical manufacturer" means a manufacturing facility classified in North American Industry Classification System (NAICS) Codes 31 through 33 where chemicals are produced for use or distribution in North Carolina.

(b) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC), or the Chemical Abstracts Service (CAS) rules of nomenclature or a



name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(c) "Common name" means any designation or identification such as a code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

(d) "Distributor" means any business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to purchasers.

(e) "Employee" means any person who is employed by an employer under normal operating conditions.

(f) "Employer" means a person engaged in business who has employees, including the State and its political subdivisions but excluding an individual whose only employees are domestic workers or casual laborers who are hired to work at the individual's residence.

(g) "Facility" means one or more establishments, factories, or buildings located at one contiguous site in North Carolina.

(h) "Fire Chief" means Fire Chief or Fire Marshall, or Emergency Response Coordinator in the absence of a Fire Chief or Fire Marshall for the appropriate local fire department.

(i) Repealed by Session Laws 1987, c. 489, s. 1.

(j) "Fire Department" means the fire department having jurisdiction over the facility.

(k) "Hazardous chemical" means any element, chemical compound or mixture of elements and/or compounds which is a physical hazard or health hazard as defined in subsection (c) of the OSHNC Standard or a hazardous substance as defined in standards adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

(l) "Hazardous Substance List" means the list required by G.S. 95-191.

(m) "Hazardous substance trade secret" means any formula, plan, pattern, device, process, production information, or compilation of information, which is not patented, which is known only to the employer, the employer's licensees, the employer's employees, and certain other individuals, and which is used or developed for use in the employer's business, and which gives the employer possessing it the opportunity to obtain a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the federal government as necessary for national defense purposes. The chemical name and Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the identity or composition of the substance cannot be readily ascertained without undue expense by analytical techniques, laboratory procedures, or other lawful means available to a competitor.

(n) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(o) "Manufacturing facility" means a facility classified in NAICS Code 31 through 33 which manufactures or uses a hazardous chemical or chemicals in North Carolina.

(p) Recodified as subsection (t) at the direction of the Revisor of Statutes.

(q) "Nonmanufacturing facility" means any facility in North Carolina other than a facility in NAICS Code 31 through 33, the State of North Carolina (and its political subdivisions) and volunteer emergency service organizations whose members may be exposed to chemical hazards during emergency situations.

(r) "OSHNC Standard" means the current Hazard Communication Standard adopted by the Occupational Safety and Health Division of North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

(s) "Storage and Container" has the ordinary meaning however it does not include pipes used in the transfer of substances or the fuel tanks of self-propelled internal combustion vehicles.

(t) "Safety Data Sheets" or "SDS" means chemical information sheets adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7). (1985, c. 775, s. 1; 1987, c. 489, ss. 1, 2; 1998-217, ss. 28-30; 2017-211, s. 14(d).)

**§§ 95-175 through 95-190. Reserved for future codification purposes.**

Part 2. Public Safety and Emergency Response Right to Know.

**§ 95-191. Hazardous Substance List.**

(a) All employers who manufacture, process, use, store, or produce hazardous chemicals, shall compile and maintain a Hazardous Substance List which shall contain all of the following information for each hazardous chemical stored in the facility in quantities of 55 gallons or 500 pounds, whichever is greater:

- (1) The chemical name or the common name used on the SDS or container label.
- (2) The maximum amount of the chemical stored at the facility at any time during a year, using the following ranges:
  - Class A, which includes quantities of less than 55 gallons or 500 pounds.
  - Class B, which includes quantities of between 55 gallons to 550 gallons, and quantities of between 500 pounds and 5,000 pounds.
  - Class C, which includes quantities of between 550 gallons and 5500 gallons, and quantities between 5,000 pounds and 50,000 pounds.
  - Class D, which includes quantities of greater than 5500 gallons or 50,000 pounds.
- (3) The area in the facility in which the hazardous chemical is normally stored and to what extent the chemical may be stored at altered temperature or pressure.

(b) The Hazardous Substance List shall be updated quarterly if necessary, but not less often than annually; however, if a chemical is deleted from, or added to, the Hazardous Substance List, or if the quantity changes sufficiently to cause the chemical to be in a different class as defined in subsection (a) of this section, the employer shall update the Hazardous Substance List to reflect those changes as soon as practicable, but in any event within 30 days of such change.

(b1) In lieu of the information required by subdivisions (a)(1) through (a)(3), employers may substitute the information specified in section 312(d)(2) of the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499.

(c) The Hazardous Substance List may be prepared for the facility as a whole, or for each area in a facility where hazardous chemicals are stored, at the option of the employer but shall include only chemicals used or stored in North Carolina. (1985, c. 775, s. 1; 1987, c. 489, s. 3; 2017-211, s. 14(e).)

**§ 95-192. Safety data sheets.**

(a) Chemical manufacturers and distributors shall provide safety data sheets (SDSs) to manufacturing and nonmanufacturing purchasers of hazardous chemicals in North Carolina for each hazardous chemical purchased.

(b) Employers shall maintain the most current SDS received from manufacturers or distributors for each hazardous chemical purchased. If an SDS has not been provided by the manufacturer or distributor for chemicals on the Hazardous Substance List at the time the chemicals are received at the facility, the employer shall request one in writing from the manufacturer or distributor within 30 days after receipt of the chemical. If the employer does not receive an SDS within 30 days after his written request, he shall notify the Commissioner of Labor of the failure by manufacturer or distributor to provide the SDS. (1985, c. 775, s. 1; 2017-211, s. 14(f).)

**§ 95-193. Labels.**

Existing labels on incoming containers of hazardous chemicals shall not be removed or defaced. All containers of hazardous substances must be clearly designated as hazardous. (1985, c. 775, s. 1.)

**§ 95-194. Emergency information.**

(a) An employer who normally stores at a facility any hazardous chemical in an amount of at least 55 gallons or 500 pounds, whichever is greater, shall provide the Fire Chief of the Fire Department having jurisdiction over the facility, in writing, (i) the name(s) and telephone number(s) of knowledgeable representative(s) of the employer who can be contacted for further information or in case of an emergency and (ii) a copy of the Hazardous Substance List.

(b) Each employer shall provide a copy of the Hazardous Substance List to the Fire Chief. The employer shall notify the Fire Chief in writing of any updates that occur in the previously submitted Hazardous Substance List as provided in G.S. 95-191(b).

(c) The Fire Chief or his representative, upon request, shall be permitted on-site inspections at reasonable times of the chemicals located at the facility on the Hazardous Substance List for the sole purpose of preplanning Fire Department activities in the case of an emergency and insuring by inspection the usefulness and accuracy of the Hazardous Substance List and labels.

(d) Employers shall provide to the Fire Chief, upon written request of the Fire Chief, a copy of the SDS for any chemical on the Hazardous Substance List.

(e) Upon written request of the Fire Chief, an employer shall prepare an emergency response plan for the facility that includes facility evacuation procedures, a list of emergency equipment available at the facility, and copies of other emergency response

plans, such as the contingency plan required under rules governing the management of hazardous waste adopted pursuant to Article 9 of Chapter 130A of the General Statutes. A copy of the emergency response plan or any prefire plan or emergency response plan required under applicable North Carolina or federal statute or rule or regulation shall, upon written request by the Fire Chief, be given to the Fire Chief.

(f) The Fire Chief shall make information from the Hazardous Substance List, the emergency response plan, and SDSs available to members of the Fire Department having jurisdiction over the facility and to personnel responsible for preplanning emergency response, police, medical or fire activities, but shall not otherwise distribute or disclose (or allow the disclosure of) information not available to the public under G.S. 95-208. Such persons receiving such information shall not disclose the information received and shall use such information only for the purpose of preplanning emergency response, police, medical or fire activities.

(g) Any knowing distribution or disclosure (or permitted disclosure) of any information referred to in subsection (f) of this section in any manner except as specifically permitted under that subsection (f) shall be punishable as a Class 1 misdemeanor. Restrictions concerning confidentiality or nondisclosure of information under this Article 18 shall be exemptions from the Public Records Act contained in Chapter 132 of the General Statutes, and such information shall not be disclosed notwithstanding the provisions of Chapter 132 of the General Statutes. (1985, c. 775, s. 1; 1987, c. 489, ss. 4-6; 1993, c. 539, s. 672; 1994, Ex. Sess., c. 24, s. 14(c); 2002-165, s. 1.2; 2017-211, s. 14(g).)

#### **§ 95-195. Complaints, investigations, penalties.**

(a) Complaints of violations of this Part shall be filed in writing with the Commissioner of Labor. Such complaints received in writing from any Fire Chief relating to alleged violations of this Part shall be investigated in a timely manner by the Commissioner of Labor or his designated representative.

(b) Duly designated representatives of the Commissioner of Labor, upon presentation of appropriate credentials to the employer, shall have the right of entry into any facility at reasonable times to inspect and investigate complaints within reasonable limits, and in a reasonable manner. Following the investigation, the Commissioner shall make appropriate findings. Either the employer or the person complaining of a violation may request an administrative hearing pursuant to Chapter 150B of the General Statutes. This request for an administrative hearing shall be submitted to the Commissioner of Labor within 14 days following the Commissioner making his findings. The Commissioner shall within 30 days of receiving the request hold an administrative hearing in accordance with Article 3 of Chapter 150B of the General Statutes.

(c) If the Commissioner of Labor finds that the employer violated this Article, the Commissioner shall order the employer to comply within 14 days following receipt of written notification of the violation. Employers not complying within 14 days following receipt of written notification of a violation shall be subject to civil penalties of not more than one thousand dollars (\$1,000) per violation imposed by the Commissioner of Labor. There shall be a separate offense for each day the violation continues. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Any order by the Commissioner under subsection (b) or (c) of this section shall be subject to judicial review as provided under Article 4 of Chapter 150B of the General Statutes. (1985, c. 775, s. 1; 1987, c. 489, s. 7; 1998-215, s. 112.)

**§ 95-196. Employee rights.**

No employer shall discharge, or cause to be discharged, or otherwise discipline or in any manner discriminate against an employee at the facility because the employee has assisted the Commissioner of Labor or his representative or the Fire Chief or his representative who may make or is making an inspection under G.S. 95-194(c) or G.S. 95-195(b), or has testified or is about to testify in any proceeding under this Article, or has used the provisions of G.S. 95-208. (1985, c. 775, s. 1.)

**§ 95-197. Withholding hazardous substance trade secret information.**

(a) An employer who believes that all or any part of the information required under G.S. 95-191, 95-192, 95-194(b) or 95-194(d) is a hazardous substance trade secret may withhold the information, provided that (i) hazard information on chemicals the identity of which is claimed as a hazardous substance trade secret is provided to the Fire Chief who shall hold it in confidence and (ii) the employer claims that the information is a hazardous substance trade secret.

(b) Any person in North Carolina may request in writing that the Commissioner of Labor review in camera an employer's hazardous substance trade secret claim. If the Commissioner of Labor finds that the claim is other than completely valid, this finding shall be appealable under subsection (d) of this section. If the Commissioner of Labor finds that the claim is valid, he shall then determine whether the nonconfidential information is sufficient for the Fire Chief to fulfill the responsibilities of his office. If the Commissioner of Labor finds that the information is not sufficient, he shall direct the employer to supplement the information with such other information as will provide the Fire Chief with sufficient information to fulfill the responsibilities of his office, but this finding shall be appealable under subsection (d) of this section.

(c) The Commissioner of Labor and the Fire Chief shall protect from disclosure any or all information coming into either or both of their possession when such information is marked by the employer as confidential, and they shall return all information so marked to the employer at the conclusion of their determination by the Commissioner of Labor. Any person who has access to any hazardous substance trade secret solely pursuant to this section and who discloses it knowing it to be a hazardous substance trade secret to any person not authorized to receive it shall be guilty of a Class I felony, and if knowingly or negligently disclosed to any person not authorized, shall be subject to civil action for damages and injunction by the owner of the hazardous substance trade secret, including, without limitation, actions under Article 24 of Chapter 66 of the General Statutes.

(d) The employer, Fire Chief, or person making the original request who is an aggrieved party shall have 30 days after receipt of notification by the Commissioner of his findings under subsection (b) to request an administrative hearing on the determination. Any such hearing shall be held in a manner similar to that provided for in G.S. Chapter 150B, Article 3 and the decision upon the request of any aggrieved party shall be subject to the judicial review provided for by G.S. Chapter 150B, Article 4, provided that these administrative and judicial hearings shall be conducted in camera to assure the confidentiality of the information being reviewed. (1985, c. 775, s. 1; 1987, c. 827, s. 1; 1993, c. 539, s. 1290; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 95-198. Medical emergency and nonemergency situations.**

(a) Where a treating health care provider determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a hazardous substance trade secret substance to that treating physician or nurse, regardless of the existence of written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and a confidentiality agreement as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the health purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(b) In nonemergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under this section, to a responsible party, as defined in the standards adopted in Title 13, Subchapter 7F of the North Carolina Administrative Code (13 NCAC 7F), providing medical or other occupational health services to exposed persons if the request is in writing and states the medical need for the information. The employer may require that the responsible party sign a confidentiality agreement prior to release of the information. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(c) If the chemical manufacturer, importer or employer denies a written request for hazardous substance trade secret release, or does not provide this information within 30 days, the Department of Labor shall initiate the trade secret claim determination process under G.S. 95-197. (1985, c. 775, s. 1; 1998-217, s. 31.)

**§§ 95-199 through 95-207. Reserved for future codification purposes.**

### Part 3. Community Right to Know.

#### **§ 95-208. Community information on hazardous chemicals.**

(a) Any person in North Carolina may request in writing from the employer a list of chemicals used or stored at the facility. The request shall include the name and address of the person making the request and a statement of the purpose for the request. If the person is requesting the list on behalf of or for the use of an organization, partnership, or corporation, he shall also disclose the name and business address of such organization, partnership, or corporation. The request may include, at the option of the employer, a statement to the effect that the information will be used only for the purpose stated. The employer shall furnish to the person making the request a list containing, at a minimum, all chemicals included on the Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an SDS for each chemical for which an SDS is available and is requested. Whenever an employer has withheld a chemical under the provisions of G.S. 95-197 from the information provided under G.S. 95-208, the employer must state that the information is being withheld and, upon request, must provide the SDS for the chemical. Additional information may be furnished to the person making the request at the option of the employer. The employer shall provide, at a fee not to exceed the cost of

reproducing the materials, the materials requested within 10 working days of the date the employer receives the written request for information.

(b) If the employer fails or refuses to provide the information required under subsection (a) of this section, the person requesting the information may request in writing that the Commissioner of Labor review the request. The Commissioner of Labor may conduct an investigation in the same manner as provided in G.S. 95-195(b). Following the investigation, the Commissioner shall make appropriate findings. Either the employer or the person making the initial request may request an administrative hearing pursuant to Chapter 150B of the General Statutes. This request for an administrative hearing shall be submitted to the Commissioner of Labor within 30 days following the Commissioner making his findings. The Commissioner of Labor shall within 30 days of receiving the request hold an administrative hearing to consider the request for information under subsection (a) of this section. This hearing shall be held as provided for in G.S. Chapter 150B, Article 3. If the Commissioner of Labor finds that the request complies with the requirements of subsection (a) of this section, the Commissioner of Labor shall direct that the employer provide to the person making the request a list containing, at a minimum, all chemicals used or stored at the facility included on the Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an SDS for each chemical for which an SDS is available and is requested and may in his discretion assess civil penalties as provided in G.S. 95-195(c); provided that it shall be a defense to such disclosure if the employer proves that the information has been requested directly or indirectly by, or in behalf of, a competitor of the employer, or that such information is a Hazardous Substance Trade Secret, or that the request did not comply with the requirements of subsection (a) of this section.

(c) Any order by the Commissioner of Labor under subsection (b) of this section shall be subject to judicial review as provided under G.S. Chapter 150B, Article 4. (1985, c. 775, s. 1; 1987, c. 827, s. 1; 2017-211, s. 14(h).)

**§§ 95-209 through 95-215. Reserved for future codification purposes.**

#### Part 4. Implementation.

#### **§ 95-216. Exemptions.**

Notwithstanding any language to the contrary, the provisions of this Article shall not apply to chemicals in or on any of the following:

- (1) Hazardous substances while being transported in interstate commerce into or through this State.
- (2) Products intended for personal consumption by employees in the facilities.
- (3) Retail food sale establishments and all other retail trade establishments in North American Industry Classification System Codes 44 through 45, exclusive of processing and repair areas, except that the employer must comply with the provisions of G.S. 95-194(a)(i).
- (4) Any food, food additive, color additive, drug or cosmetic as such terms are defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301, et seq.).

- (5) A laboratory under the direct supervision or guidance of a technically qualified individual provided that:
  - a. Labels on containers of incoming chemicals shall not be removed or defaced;
  - b. SDSs received by the laboratory shall be maintained and made accessible to employees and students;
  - c. The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes; and
  - d. The laboratory operator complies with the provisions of G.S. 95-194(a)(i).
- (6) Any farming operation which employs 10 or fewer full-time employees, except that if any hazardous chemical in an amount in excess of 55 gallons or 500 pounds, whichever is greater, is normally stored at the farming operation, the employer must comply with the provisions of G.S. 95-194(a)(i).
- (7) Any distilled spirits, tobacco, and untreated wood products.
- (8) Medicines used directly in patient care in health care facilities and health care facility laboratories. (1985, c. 775, s. 1; 1987, c. 489, s. 8; 2017-211, s. 14(i).)

**§ 95-217. Preemption of local regulations.**

It is the intent of the General Assembly to prescribe this uniform system for the disclosure of information regarding the use or storage of hazardous chemicals. To that end, all units of local government in the State are preempted from exercising their powers to require disclosure, directly or indirectly, of information regarding the use or storage of hazardous chemicals by employers to any members of the public, or to any branch or agent of State or local government in any manner other than as provided for in this Article. This section does not preempt the enforcement of the provisions of any nationally recognized fire code that may be adopted by a unit of local government. (1985, c. 775, s. 1; 1987, c. 489, s. 9.)

**§ 95-218. Severability.**

The provisions of this Article are severable, and if any phrase, clause, sentence, or provision of this Article, or the application of any such phrase, clause, sentence or provision to any person, business entity or circumstances, other than those to which it was held invalid shall not be affected thereby. (1985, c. 775, s. 1.)

**§ 95-219. Reserved for future codification purposes.**

**§ 95-220. Reserved for future codification purposes.**

**§ 95-221. Reserved for future codification purposes.**

Article 19.

Migrant Housing Act of North Carolina.

**§ 95-222. Short title; legislative purpose.**



(a) This Article may be cited as the "Migrant Housing Act of North Carolina."

(b) It is the purpose and policy of the General Assembly to conform migrant housing standards to, as much as reasonably possible, the Occupational Safety and Health Act of North Carolina, and to ensure safe and healthy migrant housing conditions. The General Assembly finds that the general welfare of the State requires the enactment of this law under the police power of the State. (1989, c. 91, s. 2.)

#### **§ 95-223. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, or section 3121(g) of the Internal Revenue Code of 1986; and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state and including the harvesting of Christmas trees, and the harvesting of saltwater crabs;
- (2) "Commissioner" means the Commissioner of Labor of North Carolina;
- (3) "Day" means a calendar day;
- (3a) "Director" means the Director of the Agricultural Safety and Health Bureau, who is the agent designated by the Commissioner to assist in the administration of this Article.
- (4) "Established federal standard" means those standards as set out in, and interpretations issued by, the Secretary of the United States Department of Labor in 29 C.F.R. 1910.142, as amended;
- (5) "Migrant" means an individual, and his dependents, who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence;
- (6) "Migrant housing" means any facility, structure, real property, or other unit that is established, operated, or used as living quarters for migrants;
- (7) "Operator" means any person who owns or controls migrant housing; and
- (8) "Person" means an individual, partnership, association, joint stock company, corporation, trust, or legal representative;
- (9) "Substantive violation" means a violation of a safety and health standard, including those that provide fire prevention, and adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protection for inhabitants from insects and rodents. A substantive violation does not include technical or procedural violations of safety and health standards. (1989, c. 91, s. 2; 1993, c. 300, s. 3; 2007-548, s. 1.)

#### **§ 95-224. Scope; powers and duties.**

(a) The provisions of this Article shall apply to all operators and migrants except:

- (1) Any person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public; and who provides

- housing to migrants of the same character and on the same or comparable terms and conditions as those provided to the general public; or
- (2) A housing unit owned by one or more of the occupants and occupied solely by a family unit.
- (b) The Commissioner shall have the following powers and duties under this Article:
- (1) To delegate to the Director the powers, duties, and responsibilities necessary to ensure safe and healthy migrant housing conditions.
  - (2) To supervise the Director.
  - (3) To issue preoccupancy certificates to certify that housing for migrant workers has been found to be in compliance with this Article.
  - (4) To conduct postoccupancy inspections of migrant housing in accordance with the provisions of G.S. 95-226(g). (1989, c. 91, s. 2; 2007-548, s. 2.)

**§ 95-225. Adoption of standards and interpretations.**

(a) Unless otherwise provided, all established federal standards are adopted and shall be enforced by the Department of Labor of North Carolina.

(b) The Commissioner shall provide for publication in the North Carolina Register any modification by the federal government of the established federal standards within 30 days of their adoption.

(c) For the protection of the public health, the Commission for Public Health shall adopt and the Department of Environmental Quality shall enforce rules that establish water quality and water sanitation standards for migrant housing under this Article.

(d) The requirements for the collection, treatment, and disposal of sewage, as provided in Article 11 of Chapter 130A, and the rules adopted pursuant to that Article shall apply to migrant housing.

(e) Whenever the outside temperature falls below 50 degrees Fahrenheit and the migrant housing is occupied, heating equipment shall be provided and operable. Regardless of outside temperature, this equipment must be capable of maintaining living areas of 65 degrees Fahrenheit. If housing is to be occupied from May 15 until September 1 only, no heating equipment shall be required at the time of preoccupancy inspection.

(f) All migrant housing shall comply with the standards regarding fire safety for migrant housing as adopted by the Commission for Public Health and in effect on January 1, 1989.

(g) For purposes of this Article, the established federal standard provided in 29 C.F.R. 1910.142(i) does not apply. The following standards shall apply to migrant housing:

- (1) Food preparation facilities and eating areas shall be provided and maintained in a clean and sanitary manner;
- (2) A kitchen facility shall be provided with an operable stove with at least one burner per five people, and in no event with less than two burners; an operable refrigerator with .75 cubic feet per person minimum; a table; and a sink with running hot and cold water;
- (3) Surfaces with which food or drink come in contact shall be easily accessible for cleaning, and shall be nontoxic, resistant to corrosion, nonabsorbent, and free of open crevices;

- (4) Acceptable storage facilities shall be provided and shall be kept clean and free of vermin; and
- (5) All food service facilities, other than those where migrants procure and prepare food for their own or their family's consumption, shall comply with the standards regarding kitchen and dining room facilities for migrant housing, as adopted by the Commission for Public Health and in effect on January 1, 1989.

(h) Each migrant shall be provided with a bed that shall include a mattress in good repair with a clean cover. The Department of Labor of North Carolina inspector shall determine the condition of the mattress and cover during the preoccupancy inspection. If the mattress or cover is damaged beyond normal wear and tear during the migrant's occupancy of the housing, the operator may charge the migrant the reasonable cost of replacing the mattress or cover. (1989, c. 91, s. 2; c. 727, s. 220; 1997-443, s. 11A.36; 2007-182, s. 2; 2007-548, s. 3; 2015-241, s. 14.30(u).)

**§ 95-226. Application for inspection.**

(a) Except as provided in subsection (f) of this section, every operator shall request a preoccupancy inspection at least 45 days prior to the anticipated date of occupancy by applying directly to the Department of Labor of North Carolina or to the local health department. Upon receipt of an application by the Department of Labor of North Carolina, the Department of Labor of North Carolina shall immediately notify, in writing, the appropriate local health department; and the local health department shall inspect the migrant housing for compliance with G.S. 95-225(c) and (d). Upon receipt of the application by the local health department, the local health department shall immediately notify, in writing, the Department of Labor of North Carolina and shall inspect the migrant housing for compliance with G.S. 95-225(c) and (d).

The local health department shall forward the results of its inspection to the Department of Labor of North Carolina and to the operator. The Department of Labor of North Carolina shall inspect the migrant housing and certify to the operator the results of the inspection.

At the time the Department of Labor of North Carolina conducts a preoccupancy inspection, the Department of Labor of North Carolina shall provide the operator with a copy of the guide for employers on compliance with the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., as amended, prepared by the United States Department of Justice.

(b) The Department of Labor of North Carolina shall provide local health departments and Agricultural Extension offices with blank copies of forms for applying for preoccupancy inspections.

(c) The application for inspection shall include:

- (1) The name, address, and telephone number of the operator;
- (2) The location of the migrant housing;
- (3) The anticipated number of migrants to be housed in the migrant housing; and
- (4) The anticipated dates of occupancy of the migrant housing.

(d) Except as provided in subsections (e) and (f) of this section, an operator may allow the migrant housing to be occupied only if the migrant housing has been certified by the Department of Labor of North Carolina or the United States Department of Labor to be in compliance with all of the standards under this Article, except that an operator may allow migrant housing to be occupied on a provisional basis if the operator applied for a preoccupancy inspection at least 45 days prior to occupancy and the preoccupancy inspection was not conducted by the Department of Labor of North Carolina at least four days prior to the anticipated occupancy. Upon subsequent

inspection by the Department of Labor of North Carolina, the provisional occupancy shall be revoked if any deficiencies have not been corrected within the period of time specified by the Department of Labor of North Carolina, or within two days after receipt of written notice provided on-site to the operator. No penalties may be assessed for any violation of this Article which are found during the preoccupancy inspection, unless substantive violations exist during provisional occupancy.

(e) If an operator has applied for an inspection pursuant to this Article and one or more migrants arrives in advance of the arrival date stated in the application, the operator shall notify the Department of Labor of North Carolina within two working days of the occupancy of the migrant housing.

(f) If an operator receives a preoccupancy inspection rating from the Department of Labor of North Carolina of one hundred percent (100%) compliance for a particular migrant housing unit for two consecutive years, in the third year the operator shall have the right to conduct the preoccupancy inspection for that particular migrant housing unit himself or herself. Operators conducting their own preoccupancy inspections pursuant to this subsection shall, at least 45 days prior to occupancy, register the migrant housing with the Department of Labor of North Carolina and notify in writing the appropriate local health department. The local health department shall inspect the migrant housing for compliance with G.S. 95-225(c) and (d). The operator shall request a preoccupancy inspection under subsection (a) of this section in the year following a year when the operator conducted a self-inspection under this subsection.

(g) In addition to any other applicable federal or State law or regulation, the Department may only conduct a postoccupancy inspection of operators:

- (1) Who were subject to an annual preoccupancy inspection by the Department of Labor of North Carolina and found not to be in one hundred percent (100%) compliance at that inspection.
- (2) Who were assessed a civil penalty by the Department of Labor of North Carolina during the previous calendar year for violations of this Article or pursuant to G.S. 95-136(a)(3).
- (3) Who did not undergo a preoccupancy inspection, unless the operator conducted a self-inspection pursuant to subsection (f) of this section.
- (4) In response to a referral from a federal, State, county, or local government official or any person with firsthand knowledge of an alleged violation of this Article or of an alleged safety or health hazard whom the Department of Labor of North Carolina deems to have provided a credible referral. (1989, c. 91, s. 2; 2007-548, ss. 3.1, 3.2, 4.)

### **§ 95-227. Enforcement.**

(a) For the purpose of enforcing the standards provided by this Article, the provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall apply under this Article in a similar manner as they apply to places of employment under OSHANC; however, G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to migrant housing. For the purposes of this Article, the term:

- (1) "Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall be construed to mean an operator.
- (2) "Employee" shall be construed to mean a migrant.
- (3) Repealed by Session Laws 2007-548, s. 5, effective August 31, 2007.

(b) The Commissioner may establish a new division to enforce this Article.

(c) The Department of Labor of North Carolina shall maintain a list of operators and the physical address of their migrant housing units, number of beds, and the date of the annual preoccupancy inspection and certification.

(d) The Department of Labor of North Carolina shall maintain a summary of any inspections filed annually with the Division that enforce this Article, including the number and type of citations issued and the violations found, if any.

(e) The Commissioner shall report no later than May 1 of each year to the Chairpersons of the Senate Appropriations Committee on Natural and Economic Resources, the Chairpersons of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division regarding the number of annual preoccupancy certifications issued, the number of operators with one hundred percent (100%) compliance at the preoccupancy inspection, the number of postoccupancy inspections conducted by the Department of Labor of North Carolina, the number and type of citations and fines issued, the total number of migrant worker beds in the State, and the identification of operators who fail to apply for or obtain permits to operate migrant housing pursuant to this Article. (1989, c. 91, s. 2; 1997-35, s. 1; 2007-548, s. 5; 2017-57, s. 14.1(pp).)

**§ 95-228. Waiver of rights.**

Agreements entered into by migrants to waive or to modify their rights under this Article shall be deemed void as contrary to public policy. A waiver or modification of rights by the Department of Labor of North Carolina shall be valid under this Article. (1989, c. 91, s. 2.)

**§ 95-229. Construction of Article; severability.**

This Article shall be liberally construed to the end that the safety and health of the migrants of this State may be effectuated and protected.

The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity may not affect other provisions of the Article, which can be given effect without the invalid provision. (1989, c. 91, s. 2.)

**§ 95-229.1. Actions upon finding uninhabitable migrant housing.**

If the Department of Labor of North Carolina determines that housing provided to migrants under this Article is uninhabitable, but is not reasonably expected to cause death or serious physical harm, the migrants shall be allowed to remain in the housing for a reasonable period, not to exceed 14 days, while the operator locates alternative housing or makes necessary repairs to make the housing habitable. No additional civil penalties arising from the condition of the housing shall be levied against the operator during the 14-day period after the housing has been determined to be uninhabitable in which the migrants are allowed to remain in the housing. The alternative housing shall be provided at the same rate or less than the rate paid by the migrants for the uninhabitable housing. If the Director determines, after recommendation by an inspector, that housing provided to migrants could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, the migrants shall not be allowed to stay

in the housing, and alternative housing shall be provided by the operator at the same rate or less than the rate paid by the migrants for the uninhabitable housing. (2007-548, s. 5.1.)

**§ 95-229.2. Reserved for future codification purposes.**

**§ 95-229.3. Reserved for future codification purposes.**

**§ 95-229.4. Reserved for future codification purposes.**

#### Article 19A.

#### Overhead High-Voltage Line Safety Act.

**§ 95-229.5. Purpose; scope.**

The purpose of this Article is to promote the safety and protection of persons engaged in work in the vicinity of high-voltage overhead lines. This Article defines the conditions under which work may be carried on safely and provides for the precautionary safety arrangements to be taken when any person engages in work in proximity to overhead high-voltage lines. (1995 (Reg. Sess., 1996), c. 587, s. 1.)

**§ 95-229.6. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Covered equipment" or "covered items" means any mechanical equipment, hoisting equipment, antenna, or rigging; any part of which is capable of vertical, lateral, or swinging motion that could cause any portion of the equipment or item to come closer than 10 feet to a high-voltage line during erection, construction, operation, or maintenance; including, but not limited to, equipment such as cranes, derricks, power shovels, backhoes, dump trucks, drilling rigs, pile drivers, excavating equipment, hay-loaders, haystackers, combines, irrigation equipment, portable grain augers or elevators, and mechanical cotton pickers. These terms also include items such as handheld tools, ladders, scaffolds, antennas, and outriggers, houses or other structures in transport, and gutters, siding, and other construction materials, the motion or manipulation of which could cause them to come closer than 10 feet to a high-voltage line.
- (2) "High-voltage line" means all aboveground electrical conductors of voltage in excess of 600 volts measured between conductor and ground.
- (3) "Person" means natural person, firm, business association, company, partnership, corporation, or other legal entity.
- (4) "Person responsible for the work to be done" means the person performing or controlling the work that necessitates the precautionary safety measures required by this Article, unless the person performing or controlling the work is under contract or agreement with a governmental entity, in which case "person responsible for the work to be done" means that governmental entity.
- (5) "Warning sign" means a weather-resistant sign of not less than five inches by seven inches with at least two panels: a signal panel and a message panel. The signal panel shall contain the signal word "WARNING" in black lettering and

a safety alert symbol consisting of a black triangle with an orange exclamation point, all on an orange background. The message panel shall contain the following words, either in black letters on a white background or white letters on a black background: "UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF OVERHEAD HIGH-VOLTAGE LINES – Contact with power lines can result in death or serious burns." A symbol or pictorial panel may also be added. Such warning sign language, lettering, style, colors, size, and format shall meet the requirements of the American National Standard ANSI Z535.4-1991, Product Safety Signs and Labels, or its successor or such equally effective standard as may be approved for use by the Commissioner of Labor. In the event of a conflict with regard to the appearance or content of the warning sign, the standard approved by the Commissioner of Labor shall take precedence over any description or standard set out in this subdivision. (1995 (Reg. Sess., 1996), c. 587, s. 1; 1998-193, s. 2.)

**§ 95-229.7. Prohibited activities.**

(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.8, 95-229.9, and 95-229.10, the following actions are prohibited:

- (1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work upon any land, building, highway, or other premises that will cause:
  - a. Such individual, agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee, or other person to be brought within six feet of any overhead high-voltage line, or
  - b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.
- (2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:
  - a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,
  - b. Refuse collection equipment is operating, or
  - c. Agricultural equipment is operating.
- (3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.

- (4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.
- (5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any overhead utility electric lines or (ii) pulling or pushing any pole, guy, or other structural appurtenance.
- (6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead utility electric lines.

(b) If the high-voltage line has been insulated or de-energized and grounded, in accordance with G.S. 95-229.10, the required clearances specified in subdivisions (1), (2), and (4) of subsection (a) of this section may be reduced to not less than two feet. Under no circumstances shall the line or its covering be contacted. If the line is temporarily raised or moved to accommodate the expected work, without also being insulated or de-energized and grounded, the required clearances from the line, specified in subsection (a) of this section, shall not be reduced. (1995 (Reg. Sess., 1996), c. 587, s. 1; 1998-193, s. 3.)

#### **§ 95-229.8. Warning signs.**

(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

- (1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and
- (2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

This subsection shall not apply to handheld tools, handheld equipment, and other items which by their size or configuration cannot accommodate the warning signs specified in G.S. 95-229.6(5).

(b) If the Commissioner of Labor determines that a successor, substitute, or additional sign standard may or shall be used in place of the requirements listed in G.S. 95-229.6, a period of not less than 18 months from such determination shall be allowed for any required replacement of signs. (1995 (Reg. Sess., 1996), c. 587, s. 1; 1998-193, s. 4.)

#### **§ 95-229.9. Notification.**

(a) When any person desires to carry on any work in closer proximity to any high-voltage line than permitted by G.S. 95-229.7(a), the person responsible for the work to be done shall notify the owner or operator of the high-voltage line prior to the time the work is to be commenced. Such notification shall occur at the earliest practical time; however, such notification shall occur not less than 48 hours, excluding Saturday, Sunday, and legal State and federal holidays, prior to the intended work. In emergency situations, including police, fire, and rescue emergencies, such notification shall occur as soon as possible under the circumstances. In cases where the person or business entity responsible for doing the work is doing so under contract or agreement with a government entity, and the government entity and the owner or operator of the lines have already



made satisfactory mutual arrangements, further arrangements for that particular work are not required.

(b) Every notice served by any person on an owner or operator of a high-voltage line shall contain the following information:

- (1) The name, address, and telephone number of the individual serving such notice;
- (2) The location of the proposed work;
- (3) The name, address, and telephone number of the person responsible for the work;
- (4) The field telephone number of the site of such work, if one is available;
- (5) The type, duration, and extent of the proposed work;
- (6) The name of the person for whom the proposed work is being performed;
- (7) The time and date of the notice; and
- (8) The approximate date and time when the work is to begin.

(c) If the notification required by this Article is made by telephone, a record of the information in subsection (b) of this section shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this Article.

(d) Owners or operators of high-voltage lines may form and operate an association providing for mutual receipt of notification of activities close to high-voltage lines in a specified area. In areas where an association is formed, the following shall occur:

- (1) Notification to the association shall be effected as set forth in this section.
- (2) Owners or operators of high-voltage lines in the area:
  - a. May become members of the association;
  - b. May participate in and receive the services furnished by the association; and
  - c. Shall pay their proportionate share of the cost for the services furnished.
- (3) The association whose members or participants have high-voltage lines within a county shall file a list containing the name, address, and telephone number of every member and participating owner or operator of high-voltage lines with the clerk of superior court.
- (4) If notification is made by telephone, an adequate record of the information required by subsection (b) of this section shall be maintained by the association to document compliance with the requirements of this Article. (1995 (Reg. Sess., 1996), c. 587, s. 1.)

#### **§ 95-229.10. Precautionary safety arrangements.**

(a) Installation or performance of precautionary safety arrangements shall be performed by the owner or operator of high-voltage lines only after mutually satisfactory arrangements have been negotiated between the owner or the operator of the lines, or both, and the person responsible for the work to be done. The negotiations shall proceed promptly and in good faith with the goal of accommodating the requested work consistent with the owner's or operator's service needs and the intent to protect the public from the danger of contact with high-voltage lines as far as is reasonable and cost-effective. The person responsible for the work may perform the work only after satisfactory mutual arrangements, including coordination of work and construction schedules, have been made between the owner or operator of the high-voltage lines and the person responsible for the work. The owners or operators of high-voltage lines shall make the final determination as to which arrangements are most feasible and appropriate under the circumstances; provided,

however, that the utility may determine that no arrangements can be made that would allow the proposed work to be carried out in a reasonably safe manner or at reasonable cost taking into account the cost to its customers, and the owner or operator of high-voltage lines may refuse to enter into an agreement on that basis.

(b) The precautionary safety measures shall be appropriate, reasonable, and cost-effective for the work of which the owner or operator of high-voltage lines has received notification. During mutual negotiations, the person responsible for the work may change the notification of intended work to include different or limited work so as to reduce the precautionary safety measures required to accommodate such work. The precautionary safety measures shall not violate the requirements of the current edition of the National Electrical Safety Code.

(c) The owner or operator of the high-voltage lines is not required to provide the precautionary safety arrangements until an agreement for payment has been made; except that, if the amount of payment is in dispute, the owner or operator shall commence with providing precautionary safety measures as if agreement had then been reached and the undisputed amount shall be paid according to the agreement reached as to that amount. If agreement for payment of the disputed amount has not been reached within 14 days from completion of precautionary safety measures, the owner or operator and the person or business entity responsible for doing the work may resolve the dispute by arbitration or other legal means.

(d) Unless otherwise agreed, the owner or operator of the high-voltage lines shall initiate the precautionary safety arrangements agreed upon within five working days after the agreement for payment has been reached as required in subsection (c) of this section, but no earlier than the agreed construction date coordinated between the parties. Once initiated, the owner or operator shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Should the owner or operator of the high-voltage lines fail to provide the precautionary safety measures agreed upon in a timely manner, the owner or operator of the high-voltage lines shall be liable for costs or loss of production of the person or business entity requesting assistance to work in close proximity to high-voltage lines, except that no such liability shall exist during times of emergency, such as storm repair and the like.

(e) Precautionary safety arrangements may include:

- (1) Placement of temporary mechanical barriers separating and preventing contact between material, equipment, other objects, or persons and high-voltage lines;
- (2) Temporary de-energization and grounding;
- (3) Temporary relocation or raising of the high-voltage lines; or
- (4) Other such measures found to be appropriate in the judgment of the owner or operator of the high-voltage lines.

(f) The actual expense incurred by any owner or operator of high-voltage lines in taking precautionary measures as set out in subsections (a) through (e) of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work to be done, except if:

- (1) Any owner or operator of an overhead high-voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county, or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high-voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility. However, if it is determined by the Department of Transportation or a city,

- county, or town that the temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be the responsibility of the contractor;
- (2) The owner or operator of the high-voltage lines has not installed the line in conformance with an applicable edition of the National Electrical Safety Code. In that case, the liability of the person responsible for the work shall be limited to the amount required to accommodate the work over and above the amount required to bring the installation into compliance with the National Electrical Safety Code; or
  - (3) In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of one thousand dollars (\$1,000). (1995 (Reg. Sess., 1996), c. 587, s. 1.)

**§ 95-229.11. Exemptions.**

(a) This Article shall not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of the following systems, provided that such work on any of the following systems is performed by the employees of the owner or operator of the systems or independent contractors engaged on behalf of the owner or operator of the systems to perform the work, and the owner of the system has a valid joint-use contract or agreement with the owner of the high-voltage lines:

- (1) Rail transportation systems;
- (2) Electrical generating, transmission, or distribution systems;
- (3) Communications systems, including cable television; or
- (4) Any other publicly or privately owned system, including traffic signals.

(b) This Article also shall not apply to electrical or communications circuits or conductors on the premises of coal or other mines which are subject to the provisions of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801, et seq.) and regulations adopted pursuant to that Act by the Mine Safety and Health Administration. (1995 (Reg. Sess., 1996), c. 587, s. 1.)

**§ 95-229.12. Application.**

Nothing in this Article shall relieve any person from complying with any safety rule, regulation, or statute not imposed by this Article. A violation of this Article shall not constitute negligence or contributory negligence, nor give rise to any cause of action based upon injury to persons or property. An action may be brought by an owner or operator of a high-voltage line to recover the cost of precautionary safety arrangements or for damage to its facilities. Nothing contained in this Article shall be construed to alter, amend, restrict, or limit the liability of any person for violation of that person's duty under law; nor shall any person be relieved from liability as a result of violations of standards under existing law where such violations of existing standards of care are found to be a cause of damage to property, personal injury, or death. (1995 (Reg. Sess., 1996), c. 587, s. 1.)

**§ 95-229.13. Severability.**

The provisions of this Article are severable. If any part of this Article is declared invalid or unconstitutional, such declaration shall not affect the remainder. (1995 (Reg. Sess., 1996), c. 587, s. 1.)

## Article 20.

### Controlled Substance Examination Regulation.

#### **§ 95-230. Purpose.**

The General Assembly finds that individuals should be protected from unreliable and inadequate examinations and screening for controlled substances. The General Assembly also finds that employers who test employees for controlled substances shall use reliable and minimally invasive examinations and screenings and be afforded the opportunity to select from a range of cost-effective and advanced drug testing technologies. The purpose of this Article is to establish procedural and other requirements for the administration of controlled substance examinations. (1991, c. 687, s. 1; 2001-487, s. 66(a).)

#### **§ 95-231. Definitions.**

As used in this Article, unless the context clearly requires otherwise:

- (1) "Approved laboratory" means a clinical chemistry laboratory which performs controlled substances testing and which has demonstrated satisfactory performance in the forensic urine drug testing programs of the United States Department of Health and Human Services or the College of American Pathologists for the type of tests and controlled substances being evaluated.
- (1a) "Controlled substance" is as defined in G.S. 90-87(5) or a metabolite thereof.
- (1b) "Controlled substance examination" means all actions related to drug testing for the purpose of determining if an examinee has used controlled substances.
- (2) "Examiner" means a person, firm, or corporation, doing business in the State, including State, county, and municipal employers, who is the employer or prospective employer of the examinee and who performs or has performed by an approved laboratory a controlled substance examination.
- (3) "Examinee" means an individual who is an employee of the examiner or an applicant for employment with the examiner and who is requested or required by an examiner to submit to a controlled substance examination.
- (4) "Screening" means initial controlled substance examination performed for the purpose of determining use of controlled substances by an examinee. (1991, c. 687; 1993, c. 213, s. 1.)

#### **§ 95-232. Procedural requirements for the administration of controlled substance examinations.**

(a) An examiner who requests or requires an examinee to submit to a controlled substance examination shall comply with the procedural requirements set forth in this section.

(b) Collection of samples: the collection of samples for examination or screening shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable. Samples shall be collected in a manner reasonably calculated to prevent substitution of samples and interference with the collection, examination, or screening of samples. Samples for prospective or current employees may be collected on-site or at an approved laboratory.

(c) Screening test of samples:

- (1) Prospective employees: a preliminary screening procedure that utilizes a single-use test device may be used for prospective employees.
- (2) Current employees: the screening test of samples for current employees shall only be performed by an approved laboratory.

(c1) Confirmation test of samples: if a screening test for a prospective employee produces a positive result, an approved laboratory shall confirm that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method, unless the examinee signs a written waiver at the time or after they receive the preliminary test result. All screening tests for current employees that produce a positive result shall be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

(d) Retention of samples: a portion of every sample that produces a confirmed positive examination result shall be preserved by the laboratory that conducts the confirmatory examination for a period of at least 90 days from the time the results of the confirmed positive examination are mailed or otherwise delivered to the examiner.

(e) Chain of custody: the examiner or his agent shall establish procedures regarding chain of custody for sample collection and examination to ensure proper record keeping, handling, labeling, and identification of examination samples.

(f) Retesting of positive samples: the examinee shall have the right to retest a confirmed positive sample at the same or another approved laboratory. The examiner, through the approved laboratory, shall make confirmed positive samples available to the affected examinee, or a designated agent, during the time which the sample is required to be retained. The examinee must request release of the sample in writing specifying to which approved laboratory the sample is to be sent. The examinee incurs all reasonable expenses for chain of custody procedures, shipping, and retesting of positive samples related to this request. (1991, c. 687, s. 1; 1993, c. 213, s. 2; 1995, c. 383, s. 1; 2006-264, s. 52(a); 2009-535, s. 1.)

#### **§ 95-233. No duty to examine.**

Nothing in this Article shall be construed to place a duty on examiners to conduct controlled substance examinations. (1991, c. 687.)

#### **§ 95-234. Violation of controlled substance examination regulations; civil penalty.**

(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, 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.

(b) The amount of the penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation.

(e) The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this Article. The rules adopted shall promote individual dignity and privacy while not posing an undue burden on employers. (1991, c. 687, s. 1; 1993, c. 213, s. 3; 1998-215, s. 113; 2003-308, s. 7; 2007-231, s. 11.)

#### **§ 95-235. Certain federal agencies exempted.**

The provisions of this Article shall not apply to a controlled substance examination required by the United States Department of Transportation or the United States Nuclear Regulatory Commission. (1993, c. 213, s. 4.)

#### **§§ 95-236 through 95-239. Reserved for future codification purposes.**

### Article 21.

#### Retaliatory Employment Discrimination.

#### **§ 95-240. Definitions.**

The following definitions apply in this Article:

- (1) "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.
- (2) "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

#### **§ 95-241. Discrimination prohibited.**

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
  - a. Chapter 97 of the General Statutes.
  - b. Article 2A or Article 16 of this Chapter.
  - c. Article 2A of Chapter 74 of the General Statutes.
  - d. G.S. 95-28.1.
  - e. Article 16 of Chapter 127A of the General Statutes.
  - f. G.S. 95-28.1A.
  - g. Article 52 of Chapter 143 of the General Statutes.

- h. Article 5F of Chapter 90 of the General Statutes.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter, by Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of the General Statutes.
- (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.
- (5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5.

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee. (1991 (Reg. Sess., 1992), c. 1021, s. 1; 1993, c. 423, s. 1; 1997-153, s. 7; 1997-350, s. 3; 1998-202, s. 7; 1999-423, s. 4; 2004-186, s. 18.2; 2008-212, s. 1; 2009-205, s. 2.)

#### **§ 95-242. Complaint; investigation; conciliation.**

(a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. If the Commissioner determines after the investigation that there is not reasonable cause to believe that the allegation is true, the Commissioner shall dismiss the complaint, promptly notify the employee and the respondent, and issue a right-to-sue letter to the employee that will enable the employee to bring a civil action pursuant to G.S. 95-243. If the Commissioner determines after investigation that there is reasonable cause to believe that the allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal methods which may consist of conference, conciliation, and persuasion. The Commissioner shall make a determination as soon as possible and, in any event, not later than 90 days after the filing of the complaint.

(b) If the Commissioner is unable to resolve the alleged violation through the informal methods, the Commissioner shall notify the parties in writing that conciliation efforts have failed. The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

(b1) The Commissioner may reopen an investigation under this Article for good cause shown within 30 days of receipt of the right-to-sue letter. If an investigation is reopened pursuant to this section, the 90-day time limit set forth in G.S. 95-243(b) shall not commence until the new investigation is complete and either a new right-to-sue letter is issued or the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) An employee may make a written request to the Commissioner for a right-to-sue letter after 90 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action pursuant to G.S. 95-242.

(d) Nothing said or done during the use of the informal methods described in subsection (a) of this section may be made public by the Commissioner or used as evidence in a subsequent proceeding under this Article without the written consent of the persons concerned.

(e) The Commissioner's files and the Commissioner's other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are open or pending in the trial court division.

(f) In making inspections and investigations under this Article, the Commissioner or his duly authorized agents may, in addition to exercising the authority granted in G.S. 95-4, issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel reimbursement requirements of the State. In the case of failure or refusal of any person to obey a subpoena under this Article, the district court judge or superior court judge of the county in which the inspection or investigation is conducted shall, upon the application of the Commissioner, have jurisdiction to issue an order requiring compliance. (1991 (Reg. Sess., 1992), c. 1021, s. 1; 1993, c. 423, s. 2; 2011-366, ss. 9, 10.)

### **§ 95-243. Civil action.**

(a) An employee who has been issued a right-to-sue letter or the Commissioner of Labor may commence a civil action in the superior court of the county where the violation occurred, where the complainant resides, or where the respondent resides or has his principal place of business.

(b) A civil action under this section shall be commenced by an employee within 90 days of the date upon which the right-to-sue letter was issued or by the Commissioner within 90 days of the date on which the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) The employee or the Commissioner may seek and the court may award any or all of the following types of relief:

- (1) An injunction to enjoin continued violation of this Article.
- (2) Reinstatement of the employee to the same position held before the retaliatory action or discrimination or to an equivalent position.
- (3) Reinstatement of full fringe benefits and seniority rights.
- (4) Compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.

If in an action under this Article the court finds that the employee was injured by a willful violation of G.S. 95-241, the court shall treble the amount awarded under subdivision (4) of this subsection.

The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it may award to the defendant and



assess against the plaintiff the reasonable costs and expenses, including attorneys' fees, of the defendant in defending the action brought pursuant to this section.

(d) Parties to a civil action brought pursuant to this section shall have the right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure.

(e) An employee may only bring an action under this section when he has been issued a right-to-sue letter by the Commissioner. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

**§ 95-244. Effect of Article on other rights.**

Nothing in this Article shall be deemed to diminish the rights or remedies of any employee under any collective bargaining agreement, employment contract, other statutory rights or remedies, or at common law. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

**§ 95-245. Rules.**

The Commissioner may adopt rules needed to implement this Article pursuant to the provisions of Chapter 150B of the General Statutes. (1993, c. 423, s. 3.)

**§§ 95-246 through 95-249. Reserved for future codification purposes.**

Article 22.

Safety and Health Programs and Committees.

**§ 95-250. Definitions.**

The following definitions shall apply in this Article:

- (1) "Experience rate modifier" means the numerical modification applied by the Rate Bureau to an experience rating for use in determining workers' compensation premiums.
- (2) "Worksite" means a single physical location where business is conducted or where operations are performed by employees of an employer.

The definitions of Article 16 of this Chapter shall also apply to this Article, except that "employee" for the purposes of G.S. 95-252(a), 95-252(c)(1)b., 95-255, and 95-256 means an employee employed for some portion of a working day in each of 20 or more calendar weeks in the current or preceding calendar year. (1991 (Reg. Sess., 1992), c. 962, s. 1.)

**§ 95-251. Safety and health programs.**

- (a) Establishment of safety and health programs.
  - (1) Except as provided in subdivision (2) of this subsection, each employer with an experience rate modifier of 1.5 or greater shall, in accordance with this section, establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees.
  - (2) Employers with an experience rate modifier of 1.5 or greater which provide temporary help services shall, in accordance with this section, establish and implement a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to its full-time employees permanently located at the employer's worksite. Employers which provide temporary help services shall not be required to establish and implement a safety and health program

under this section for its employees assigned to a client's worksite. This subdivision shall not apply to employee leasing companies.

- (3) The Commissioner may modify the application of the requirements of this section to classes of employers where the Commissioner determines that, in light of the nature of the risks faced by the employees of these employers, such a modification would not reduce the employees' safety and health protection.

(b) Safety and health program requirements. A safety and health program established and implemented under this section shall be a written program that shall include at least all of the following:

- (1) Methods and procedures for identifying, evaluating, and documenting safety and health hazards.
- (2) Methods and procedures for correcting the safety and health hazards identified under subdivision (1) of this subsection.
- (3) Methods and procedures for investigating work-related fatalities, injuries, and illnesses.
- (4) Methods and procedures for providing occupational safety and health services, including emergency response and first aid procedures.
- (5) Methods and procedures for employee participation in the implementation of the safety and health program.
- (6) Methods and procedures for responding to the recommendations of the safety and health committee, where applicable.
- (7) Methods and procedures for providing safety and health training and education to employees and to members of any safety and health committee established under G.S. 95-252.
- (8) The designation of a representative of the employer who has the qualifications and responsibility to identify safety and health hazards and the authority to initiate corrective action where appropriate.
- (9) In the case of a worksite where employees of two or more employers work, procedures for each employer to protect employees at the worksite from hazards under the employer's control, including procedures to provide information on safety and health hazards to other employers and employees at the worksite.
- (10) Any other provisions as the Commissioner requires to effectuate the purposes of this section.

(c) No loss of pay. The time during which employees are participating in training and education activities under this section shall be considered as hours worked for purposes of wages, benefits, and other terms and conditions of employment. The training and education shall be provided by an employer at no cost to the employees of the employer. (1991 (Reg. Sess., 1992), c. 962, s. 1.)

#### **§ 95-252. Safety and health committees required.**

(a) Establishment of safety and health committees. Except as provided in subsection (b) of this section, each employer with 11 or more employees and an experience rate modifier of 1.5 or greater shall provide for the establishment of safety and health committees and the selection of employee safety and health representatives in accordance with this section.

(b) Temporary help services. Temporary employees of employers which provide temporary help services shall not be counted as part of the 11 or more employees needed to

establish a safety and health committee under this section, and employers which provide temporary help services shall not be required to establish a safety and health committee under this section for its employees assigned to a client's worksite. This subsection shall not apply to employee leasing companies.

(c) Safety and health committee requirements.

- (1) In general. Each employer covered by this section shall establish a safety and health committee at each worksite of the employer, except as provided as follows:
  - a. An employer covered by this section whose employees do not primarily report to or work at a fixed location is required to have only one safety and health committee to represent all employees.
  - b. A safety and health committee is not required at a covered employer's worksite with less than 11 employees.
  - c. The Commissioner may, by rule, modify the application of this subdivision to worksites where employees of more than one employer are employed.
- (2) Membership. Each safety and health committee shall consist of:
  - a. The employee safety and health representatives selected or appointed under subsection (d) of this section.
  - b. As determined appropriate by the employer, employer representatives, the number of which may not exceed the number of employee representatives.
- (3) Chairpersons. Each safety and health committee shall be cochaired by:
  - a. A representative selected by the employer.
  - b. A representative selected by the employee members of the committee.
- (4) Rights. Each safety and health committee shall, within reasonable limits and in a reasonable manner, exercise the following rights:
  - a. Review any safety and health program established by the employer under G.S. 95-251.
  - b. Review incidents involving work-related fatalities, injuries and illnesses, and complaints by employees regarding safety or health hazards.
  - c. Review, upon the request of the committee or upon the request of the employer representatives or employee representatives of the committee, the employer's work injury and illness records, other than personally identifiable medical information, and other reports or documents relating to occupational safety and health.
  - d. Conduct inspections of the worksite at least once every three months and in response to complaints by employees or committee members regarding safety or health hazards.
  - e. Conduct interviews with employees in conjunction with inspections of the worksite.
  - f. Conduct meetings, at least once every three months, and maintain written minutes of the meetings.
  - g. Observe the measurement of employee exposure to toxic materials and harmful physical agents.

- h. Establish procedures for exercising the rights of the committee.
  - i. Make recommendations on behalf of the committee, and in making recommendations, permit any members of the committee to submit separate views to the employer for improvements in the employer's safety and health program and for the correction of hazards to employee safety or health, except that recommendations shall be advisory only and the employer shall retain full authority to manage the worksite.
  - j. Accompany, upon request, the Commissioner or the Commissioner's representative during any physical inspection of the worksite.
- (5) Time for committee activities. The employer shall permit members of the committee established under this section to take the time from work reasonably necessary to exercise the rights of the committee without suffering any loss of pay or benefits for time spent on duties of the committee.
- (d) Employee safety and health representatives.
- (1) In general. Safety and health committees established under this section shall include:
    - a. One employee safety and health representative where the average number of nonmanagerial employees of the employer at the worksite during the preceding year was more than 10, but less than 50.
    - b. Two employee safety and health representatives where the average number of nonmanagerial employees of the employer at the worksite during the preceding year was 50 or more, but less than 100.
    - c. An additional employee safety and health representative for each additional 100 such employees at the worksite, up to a maximum of six employee safety and health representatives.
    - d. Where an employer's employees do not primarily report to or work at a fixed location or at worksites where employees of more than one employer are employed, a number of employee safety and health representatives as determined by the Commissioner by rule.
  - (2) Selection. Employee safety and health representatives shall be selected by and from among the employer's nonmanagerial employees in accordance with rules adopted by the Commissioner. The rules adopted by the Commissioner may provide for different methods of selection of employee safety and health representatives at worksites with no bargaining representative, worksites with one bargaining representative, and worksites with more than one bargaining representative. (1991 (Reg. Sess., 1992), c. 962, s. 1.)

**§ 95-253. Additional rights.**

The rights and remedies provided to employees and employee safety and health representatives under this Article are in addition to, and not in lieu of, any other rights and remedies provided by contract or by other applicable law and are not intended to alter or affect those other rights and remedies. (1991 (Reg. Sess., 1992), c. 962, s. 1.)

**§ 95-254. Rules.**

(a) Safety and health programs. Not later than one year after July 15, 1992, the Commissioner shall adopt final rules concerning the establishment and implementation of

employer safety and health programs under G.S. 95-251. Rules adopted shall include provisions for the training and education of employees and safety and health committee members. These rules shall include at least all of the following:

- (1) Provision for the training and education of employees, including safety and health committee members, in a manner that is readily understandable by the employees, concerning safety and health hazards, control measures, the employer's safety and health program, employee rights, and applicable laws and regulations.
- (2) Provision for the training and education of the safety and health committee concerning methods and procedures for hazard recognition and control, the conduct of worksite safety and health inspections, the rights of the safety and health committee, and other information necessary to enable the members to carry out the activities of the committee under G.S. 95-252.
- (3) Requirement that training and education be provided to new employees at the time of employment and to safety and health committee members at the time of selection.
- (4) Requirement that refresher training be provided on at least an annual basis and that additional training be provided to employees and to safety and health committee members when there are changes in conditions or operations that may expose employees to new or different safety or health hazards or when there are changes in safety and health rules or standards under Article 16 of this Chapter that apply to the employer.

(b) Safety and health committees. Not later than one year after July 15, 1992, the Commissioner shall adopt final rules for the establishment and operation of safety and health committees under G.S. 95-252. The rules shall include provisions concerning at least the following:

- (1) The establishment of such committees by an employer whose employees do not primarily report to or work at a fixed location.
- (2) The establishment of committees at worksites where employees of more than one employer are employed.
- (3) The employer's obligation to enable the committee to function properly and effectively, including the provision of facilities and materials necessary for the committee to conduct its activities, and the maintenance of records and minutes developed by the committee.
- (4) The provision for different methods of selection of employee safety and health representatives at worksites with no bargaining representative, worksites with one bargaining representative, and worksites with more than one bargaining representative. (1991 (Reg. Sess., 1992), c. 962, s. 1.)

#### **§ 95-255. Reports.**

(a) Upon the final adoption of all rules required to be adopted by the Commissioner under this Article, the Commissioner shall determine, based on information provided by the North Carolina Rate Bureau, the employers with an experience rate modifier of 1.5 or greater and shall notify these employers of the applicability of G.S. 95-251 and the potential applicability of G.S. 95-252.

(b) Within 60 days of notification by the Commissioner, the employer shall certify on forms provided by the Commissioner that he meets the requirements of G.S. 95-251 and, if applicable, the requirements of G.S. 95-252.

(c) The Commissioner shall notify an employer when his experience rate modifier falls below 1.5. An employer subject to the provisions of G.S. 95-252 shall notify the Commissioner if he no longer employs 11 or more employees and has discontinued or will discontinue the safety and health committee. (1991 (Reg. Sess., 1992), c. 962, s. 1.)

**§ 95-255.1. Technical assistance.**

Employers notified pursuant to G.S. 95-255(a) shall be offered technical assistance from the Division of Occupational Safety and Health to reduce injuries and illnesses in their workplaces. (1997-443, s. 17(a).)

**§ 95-256. Penalties.**

(a) The Commissioner may levy a civil penalty, not to exceed the amounts listed as follows, for a violation of this Article:

Employers with 10 or less employees	\$ 2,000
Employers with 11-50 employees	\$ 5,000
Employers with 51-100 employees	\$10,000
Employers with more than 100 employees	\$25,000.

(b) The Commissioner, in determining the amount of the penalty, shall consider the nature of the violation, whether it is a first or subsequent violation, and the steps taken by the employer to remedy the violation upon discovery of the violation.

(c) An employer may appeal a penalty levied by the Commissioner pursuant to this section to the North Carolina Occupational Safety and Health Review Commission subject to the procedures and requirements applicable to contested penalties under Article 16 of this Chapter. The determination of the Commission shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes.

(d) All civil penalties and interest recovered by the Commissioner, together with any costs, shall be paid into the General Fund of the State. (1991 (Reg. Sess., 1992), c. 962, s. 1; 2005-133, s. 1; 2006-226, s. 30.)

**§ 95-257:** Reserved for future codification purposes.

**§ 95-258:** Reserved for future codification purposes.

**§ 95-259:** Reserved for future codification purposes.

Article 23.

Workplace Violence Prevention.

**§ 95-260. Definitions.**

The following definitions apply in this Article:

- (1) Civil no-contact order. – An order granted under this Article, which includes a remedy authorized by G.S. 95-264.

- (2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.
- (3) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:
  - a. Attempting to cause bodily injury or intentionally causing bodily injury.
  - b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3A, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.
  - c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out. (2004-165, s. 1; 2009-58, s. 7.)

**§ 95-261. Civil no-contact orders; persons protected.**

An action for a civil no-contact order may be filed as a civil action in district court by an employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Article in order to determine whether any safety concerns exist in relation to the employee's participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Article shall not face disciplinary action based on their level of participation or cooperation. (2004-165, s. 1.)

**§ 95-262. Commencement of action; venue.**

- (a) An action for a civil no-contact order is commenced by filing a verified complaint for a civil no-contact order in any civil district court or by filing a motion in any existing civil action.
- (b) A complaint or motion for a civil no-contact order shall be filed in the county where the unlawful conduct took place. (2004-165, s. 1.)

**§ 95-263. Process for action for no-contact order.**

- (a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Article shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the verified complaint for the civil no-contact order and any temporary civil no-contact order that has been issued and the notice of hearing on the temporary civil no-contact order.
- (b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.
- (c) The court may enter a civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as

directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court. (2004-165, s. 1.)

**§ 95-264. Civil no-contact order; remedy.**

(a) Upon a finding that the employee has suffered unlawful conduct committed by the respondent, the court may issue a temporary or permanent civil no-contact order. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the employee or injury to the employer's property.

(b) The court may grant one or more of the following forms of relief in its orders under this Article:

- (1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.
- (2) Order the respondent to cease stalking the employer's employee at the employer's workplace.
- (3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.
- (4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.
- (5) Order the respondent not to contact by telephone, written communication, or electronic means the employer or the employer's employee at the employer's workplace.
- (6) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: "A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment." (2004-165, s. 1.)

**§ 95-265. Temporary civil no-contact order; court holidays and evenings.**

(a) A temporary civil no-contact order may be granted ex parte, without written or oral notice to the respondent, only if both of the following are shown:

- (1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the complainant, or the complainant's employee before the respondent can be heard in opposition.
- (2) Either one of the following:
  - a. The complainant certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.
  - b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

(b) Every temporary civil no-contact order granted without notice shall:

- (1) Be endorsed with the date and hour of issuance.
- (2) Be filed immediately in the clerk's office and entered of record.
- (3) Define the injury, state why it is irreparable and why the order was granted without notice.



- (4) Expire by its terms within such time after entry, not to exceed 10 days.
- (5) Give notice of the date of hearing on the temporary order as provided in G.S. 95-267(a).

(c) If the respondent appears in court for the hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 95-266 have been met, the court may issue a permanent order.

(d) When the court is not in session, the complainant may file a complaint for a temporary order before any judge or magistrate designated to grant relief under this Article. If the judge or magistrate finds that there is an immediate and present danger of abuse against the complainant or employee of the complainant and that the complainant has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order. The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders when the court is not in session. (2004-165, s. 1; 2006-264, s. 9.)

#### **§ 95-266. Permanent civil no-contact order.**

Upon a finding that the employee has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent. (2004-165, s. 1.)

#### **§ 95-267. Duration; extension of orders.**

(a) A temporary civil no-contact order shall be effective for not more than 10 days as the court fixes, unless within the time so fixed the temporary civil no-contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension shall be stated in the temporary order. In case a temporary civil no-contact order is granted without notice and a motion for a permanent civil no-contact order is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion for a permanent civil no-contact order comes on for hearing, the complainant may proceed with a motion for a permanent civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two days' notice to the complainant or on such shorter notice to that party as the judge may prescribe, the respondent may appear and move its dissolution or modification. In that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) A permanent civil no-contact order shall be effective for a fixed period of time not to exceed one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 95-265 or G.S. 95-266, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may

be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 95-265(d).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day. (2004-165, s. 1.)

**§ 95-268. Notice of orders.**

(a) The clerk of court shall deliver on the same day that a civil no-contact order is issued a certified copy of that order to the sheriff.

(b) Unless the respondent was present in court when the order was issued, the sheriff shall serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the employer's workplace. If the employer's workplace is not located in a municipality or in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the employer's workplace is located.

(d) Any order extending, modifying, or revoking any civil no-contact order shall be recorded, issued, and served in accordance with the provisions of this Article. (2004-165, s. 1.)

**§ 95-269. Violation of valid order.**

A violation of an order entered pursuant to this Article is punishable as contempt of court. (2004-165, s. 1.)

**§ 95-270. Employment discrimination unlawful.**

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under Chapter 50B or Chapter 50C. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article. (2004-165, s. 1.)

**§ 95-271. Scope of Article; other remedies available.**

This Article does not expand, diminish, alter, or modify any duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to

change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act. (2004-165, s. 1; 2004-199, s. 58.)