

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 400

Short Title: Omnibus Labor Law Changes. (Public)

Sponsors: Representative McElraft.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce, if favorable, Judiciary, if favorable, Rules, Calendar, and Operations of the House

March 21, 2019

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

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.1.** Article 7 of Chapter 95 of the General Statutes is amended by adding
6 a new section to read:

7 "**§ 95-69.18.1. Investigation reports and records.**

8 (a) The Commissioner may compile, analyze, and publish, in summary or detailed form,
9 the reports or information obtained under this Article.

10 (b) Files and other records relating to investigations and enforcement proceedings
11 pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the
12 investigations and proceedings are pending, except that a person cited under the provisions of
13 this Article is entitled to receive a copy of the official inspection report, which is the basis for
14 citations received by the person following the issuance of citations."

15 **SECTION 1.2.** G.S. 95-110.9 reads as rewritten:

16 "**§ 95-110.9. ~~Reports~~ Investigations; reports required.**

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

20 (1) The occurrence results in death or injury requiring medical treatment, other
21 than first aid, by a physician. First aid means the one time treatment or
22 observation of scratches, cuts not requiring stitches, burns, splinters and
23 contusions or a diagnostic procedure, including examination and x-rays,
24 which does not ordinarily require medical treatment even though provided by
25 a physician or other licensed personnel; or

26 (2) The occurrence results in damage to the device indicating a substantial defect
27 in design, mechanics, structure or equipment, affecting the future safe
28 operation of the device. No reporting is required in the case of normal wear
29 and tear.

30 (b) The Commissioner, without delay, after notification and determination that an
31 occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a
32 complete and thorough investigation of the occurrence. The report of the investigation shall be
33 placed on file in the office of the division and shall give in detail all facts and information



1 available. The owner may submit for inclusion in the file results of investigations independent of
2 the department's investigation.

3 (b1) Files and other records relating to investigations and enforcement proceedings
4 pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the
5 investigations and proceedings are pending, except that a person cited under the provisions of
6 this Article is entitled to receive a copy of the official inspection report, which is the basis for
7 citations received by the person following the issuance of citations.

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

11 (d) No person, following an occurrence as specified in subsection (a), shall remove or
12 attempt to remove from the premises any damaged or undamaged part of such device or
13 equipment or repair or attempt to repair any damaged part necessary to a complete and thorough
14 investigation. The department must initiate its investigation within 24 hours of being notified."

15 **SECTION 1.3.** G.S. 95-111.10 reads as rewritten:

16 "**§ 95-111.10. ~~Reports- Investigations; reports required.~~**

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

20 (1) The occurrence results in death or injury requiring medical treatment, other
21 than first aid, by a physician. First aid means the one time treatment or
22 observation of scratches, cuts not requiring stitches, burns, splinters and
23 contusions or a diagnostic procedure, including examination and x-rays,
24 which does not ordinarily require medical treatment even though provided by
25 a physician or other licensed personnel; or

26 (2) The occurrence results in damage to the device indicating a substantial defect
27 in design, mechanics, structure or equipment, affecting the future safe
28 operation of the device. No reporting is required in the case of normal wear
29 and tear.

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

36 (b1) Files and other records relating to investigations and enforcement proceedings
37 pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the
38 investigations and proceedings are pending, except that a person cited under the provisions of
39 this Article is entitled to receive a copy of the official inspection report, which is the basis for
40 citations received by the person following the issuance of citations.

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

44 (d) No person, following an occurrence as specified in subsection (a), shall remove or
45 attempt to remove from the premises any damaged or undamaged part of such device or repair
46 or attempt to repair any damaged part necessary to a complete and thorough investigation. The
47 department must initiate its investigation within 24 hours of being notified."

48 **SECTION 1.4.** G.S. 95-125.2 reads as rewritten:

49 "**§ 95-125.2. ~~Reports- Investigations; reports required.~~**

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

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

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

19 (b1) Files and other records relating to investigations and enforcement proceedings
20 pursuant to this Article are not subject to inspection and examination under G.S. 132-6 while the
21 investigations and proceedings are pending, except that a person cited under the provisions of
22 this Article is entitled to receive a copy of the official inspection report, which is the basis for
23 citations received by the person following the issuance of citations.

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

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

33 **SECTION 2.1.** G.S. 95-111.3(a) reads as rewritten:

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

- 39 (1) Devices operated on a river, lake, or any other natural body of water.
40 (2) Wavepools.
41 (3) Roller skating rinks.
42 (4) Ice skating rinks.
43 (5) Skateboard ramps or courses.
44 (6) Mechanical bulls.
45 (7) Buildings or concourses used in laser games.
46 (8) All-terrain vehicles.
47 (9) Motorcycles.
48 (10) Bicycles.
49 (11) Mopeds.
50 (12) Rock walls that are in a fixed, permanent location.
51 (13) Zip-lines.

- 1 (14) Funhouses, haunted houses, and similar walk-through devices that are erected
2 temporarily on a seasonal basis and do not have mechanical components.
- 3 (15) Playground equipment, including but not limited to soft contained play
4 equipment, swings, seesaws, slides, stationary spring-mounted animal
5 features, jungle gyms, rider-propelled merry-go-rounds, and trampolines.
- 6 (16) A locomotive, train, series of railroad cars, or other mechanical devices that
7 operate on any United States standard railroad gauge of four feet, eight and
8 one-half inches."

9 **SECTION 3.1.** G.S. 95-133(b) is amended by adding a new subdivision to read:

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

- 14 ...
- 15 (13) Obtain medical records compiled and maintained by the Department of Health
16 and Human Services, by hospitals participating in the statewide trauma
17 system, or by emergency management services providers in connection with
18 the dispatch, response, treatment, or transport of individual patients relating
19 to investigations and enforcement proceedings under this Article. The medical
20 records obtained by the Department shall be strictly confidential, are not
21 public records within the meaning of G.S. 132-1, and shall not be released or
22 made public."

23 **SECTION 4.1.** Article 16 of Chapter 95 of the General Statutes is amended by
24 adding a new section to read:

25 "**§ 95-153. Third-party litigation.**

26 Employees of the Department who are charged with compliance duties, including the Deputy
27 Commissioner, shall not be compelled to appear at any deposition, hearing, trial, or other legal
28 or administrative proceeding concerning a division inspection or investigation performed by the
29 Department unless the appearance is required for a hearing held pursuant to the enforcement of
30 this Article."

31 **SECTION 5.1.** G.S. 95-136 is amended by adding a new subsection to read:

32 "(e2) Except as provided in subsection (e1) of this section, information and reports
33 developed pursuant to any inspection or investigation performed pursuant to this Article by the
34 Department shall not be admissible in any court or before any administrative body except
35 pursuant to the enforcement of this Article."

36 **SECTION 6.1.** This act is effective when it becomes law.