



This Bill Analysis reflects the contents of the bill as it was presented in committee.

# SENATE BILL 407: Employee Misclassification/IC Changes.

2017-2018 General Assembly

<b>Committee:</b>	House Judiciary III	<b>Date:</b>	June 27, 2017
<b>Introduced by:</b>	Sen. Wells	<b>Prepared by:</b>	Brad Krehely Committee Co-Counsel
<b>Analysis of:</b>	PCS to First Edition S407-CSRN-24		

**OVERVIEW:** *The Proposed Committee Substitute (PCS) for Senate Bill 407 would enact the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section is authorized to receive complaints of employee misclassification, investigate complaints, coordinate investigations by other State agencies, exchange information among State agencies, and report the results of these investigations. The PCS would also require State occupational licensing boards to include on every application for a license: (1) a certification that the applicant has read a notice statement on employee misclassification and (2) disclosure of any investigations for employee misclassification. The PCS adds Sections 4-6 and makes technical changes.*

**CURRENT LAW:** Employee misclassification occurs when a business hires an individual to work under the business's control as an employee, but classifies the individual as an independent contractor. The misclassification allows the business to avoid income tax withholding, federal payroll taxes, State unemployment insurance (UI) taxes, State workers' compensation insurance coverage, minimum wage and overtime pay, and responsibility for the protection and conduct of employees.

Four State agencies independently investigate employee misclassification:

- Department of Labor (Chapter 95 – Wage and Hour Act)
- Department of Commerce's Division of Employment Security (Chapter 96 – UI taxes)
- Industrial Commission (Chapter 97 – workers' compensation insurance)
- Department of Revenue (Chapter 105 – withholding and payroll taxes)

On December 18, 2015, former Governor McCrory issued Executive Order No. 83 establishing the Employee Classification Section within the Industrial Commission. The Section currently operates.

### BILL ANALYSIS:

**Sections 1-3** would enact the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section would coordinate the investigation of employee misclassification.

The Section is specifically authorized to:

- Receive complaints of employee misclassification
- Investigate reports of employee misclassification and coordinate with other State agencies

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- Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties
- Provide information about each report of employee misclassification to the Department of Labor, the Division of Employment Security within the Department of Commerce, the Department of Revenue, and the Industrial Commission to facilitate investigation of potential statutory violations.
- Create a publicly available notice that includes the definition of employee misclassification as part of the poster summarizing the major provisions of North Carolina's labor laws.
- Develop methods to share information between State agencies to identify possible employee misclassification
- Educate employers, employees, and the public about employee misclassification
- Report annually to the Governor and to the Joint Legislative Commission on Governmental Operations
- Adopt rules

All State occupational licensing boards that are authorized to issue any license, permit, or certification must include on every application for licensure, permit, or certification, or application for renewal the following: (1) certification by the applicant that the applicant has read and understands the public notice statement on employee misclassification and (2) disclosure by the applicant of any investigations for employee misclassification and the result of the investigations for a time period determined by the occupational licensing board. The penalty for failure to supply the certification and disclosure is denial of the license, permit, or certification.

**Section 4** would require the Industrial Commission to adopt rules for the utilization of opioids and pain management treatment and would exempt the Industrial Commission from a fiscal note requirement to allow rules to be implemented more quickly.

**Section 5** would delete the requirement that the Industrial Commission study causes of injury in employment and recommend ways to prevent such injuries.

**Section 6-** Under current law, when an injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer *and approved by the Commission* and brought to the knowledge of the employee prior to the injury, compensation is be reduced by 10%.

Section 6 would remove the requirement that the rule or regulation must be approved by the Commission for purposes of reducing compensation.

**EFFECTIVE DATE:** The provisions dealing with employee misclassification would become effective October 1, 2017. The remainder of this act would be effective when it becomes law.

\*Greg Roney, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.