



SENATE BILL 208: Labor Law Changes.

2021-2022 General Assembly

Committee:	House State Government. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 16, 2021
Introduced by:	Sens. Hise, Galey, Woodard	Prepared by:	Brad Krehely
Analysis of:	PCS to Third Edition S208-CSR-N-23		Committee Co-Counsel

OVERVIEW: *Senate Bill 208 would do all of the following:*

- *Eliminate an advisory council created under the Mine Safety and Health Act.*
- *Clarify that trains previously or currently in use on the national rail transit system are not subject to regulation as amusement devices by the Department of Labor*
- *Authorize the Director of the Occupational Safety and Health Safety Division of the Department of Labor to obtain medical records in certain circumstances.*

The Proposed Committee Substitute (PCS) makes the following changes: (1) clarifies that the medical records obtained under G.S. 95-133(b)(13) must be kept separate from an investigative file and must not be released to an employer under investigation except as necessary to support the issuance of a citation in an OSHANC enforcement proceeding, (2) repeals the Article addressing regulation of job listing services, (3) makes clarifying changes to statutes addressing youth employment certificates and payment to separated employees, (4) requires employers to notify employees, in writing, at least one pay period prior to changes in wages, and (5) provides that the maximum penalty for employers who violate record keeping requirements must not exceed \$2,000 per violation.

CURRENT LAW: Under the Mine Safety and Health Act, the Commissioner of Labor appoints members to an advisory council charged with assisting the Commissioner in developing health and safety standards for mines and advising the Commissioner on matters relating to health and safety in mines.

The Amusement Device Safety Act authorizes the Commissioner of Labor to regulate "amusement devices," which include 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 for the purpose of giving such persons amusement, pleasure, thrills, or excitement. Certain devices are expressly excluded from the meaning of "amusement device."

The Director of the Occupational Safety and Health Division in the Department of Labor is charged with enforcing State and federal workplace safety requirements and with conducting investigations under the Occupational Safety and Health Act of North Carolina.

Article 5B of Chapter 95 of the General Statutes addresses regulation of job listing services. Subject to some exceptions, a job listing service includes: "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

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

Senate PCS 208

Page 2

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."

Other provisions in Article 5B include: a license requirement, civil and criminal penalties for violations, enforcement provisions (e.g. license revocations or suspensions), etc. This Article is enforced under the supervision of the Commissioner of Labor.

BILL ANALYSIS:

Section 1 would eliminate the advisory council created to advise the Commissioner of Labor on matters related to health and safety in mines.

Section 2 would expressly exempt any train or device previously or currently approved for use on the public rail transit system from regulation and inspection as an "amusement device" under the Amusement Device Safety Act.

Section 3 would authorize the Director of the Occupational Safety and Health Safety Division of the Department of Labor to obtain medical records in certain circumstances. The Commissioner of Labor, the Director of the Occupational Safety and Health Division, or their designees would be permitted to obtain medical records of injured or deceased employees to conduct investigations and enforcement proceedings under the Occupational Safety and Health Act of North Carolina. The records would be restricted to the evaluation, diagnosis, or treatment of an employee. The records would consist only of those compiled and maintained by: DHHS, hospitals participating in the stateside trauma system, or emergency medical service providers in connection with the dispatch, treatment, or transport of patients. The medical records must be kept separate from any investigative file, must be confidential, would not be public records, and would not be released to an employer under investigation except as necessary to support the issuance of a citation.

Section 4 would repeal Article 5B of Chapter 95 which deals with the regulation of job listing services.

Section 5 would clarify that the Commissioner of Labor issues youth employment certificates and would delete language stating that the issuance of certificates would be done "both directly and electronically."

Section 6 would provide that employees whose employment is discontinued must be paid all wages due on or before the next regular payday through the regular pay channels or by *trackable* mail if requested by the employee *in writing*.

Section 7 would require employers to notify employees, in writing, at least one pay period (was 24 hours) prior to any changes in wages. This section would delete language which allows employers to provide this notification through a posted notice.

Section 8 would amend the penalty for employers who violate record keeping requirements. Under current law, employers are subject to a civil penalty of up to \$250 per employee with a maximum not to exceed \$2,000 per investigation. This section would provide that the maximum penalty must not exceed \$2,000 per *violation*.

EFFECTIVE DATE: This act would be effective when it becomes law.

*Bill Patterson, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.