

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 208
Judiciary Committee Substitute Adopted 4/28/21
Third Edition Engrossed 5/6/21
House Committee Substitute Favorable 6/16/21

Short Title: Labor Law Changes.

(Public)

Sponsors:

Referred to:

March 10, 2021

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.(a)** G.S. 74-24.2 reads as rewritten:

6 **"§ 74-24.2. Definitions.**

7 ~~In this Article, unless the context otherwise requires:~~ The following definitions apply in this
8 Article:

- 9 (1) ~~The term "accident" means an Accident.~~ An unexpected event resulting in
10 injury to, illness of, or death of a person or persons as a result of mining
11 operations and any mine explosion, mine ignition, mine fire, mine inundation,
12 mine cave-in, or other event which could have readily resulted in serious
13 physical harm.
- 14 (2) ~~The term "Advisory Council" shall mean the Advisory Council or body~~
15 ~~authorized to be established under this Article.~~
- 16 (3) ~~The term "agent" means any Agent.~~ Any person charged by the operator
17 with responsibility for the operation of all or part of a mine or supervision of
18 the miners in a mine, and for the purposes of this Article includes contractors,
19 subcontractors, or independent contractors employed by the operator to
20 perform any work or services at, in, or on the mine.
- 21 (4) ~~The term "Commissioner" means the Commissioner.~~ The Commissioner of
22 Labor of North Carolina.
- 23 (5) ~~The term "Director" means the Director.~~ The person authorized under
24 G.S. 74-24.19 and appointed by the Commissioner for the purpose of assisting
25 in the administration of this Article.
- 26 (6) ~~The term "imminent danger" means the Imminent danger.~~ The existence of
27 any condition or practice in a mine which could reasonably be expected to
28 cause death or serious physical harm immediately to any miner if such
29 condition or practice is not abated at once.
- 30 (7) ~~The term "mine" means an Mine.~~ An area of land and all private ways and
31 roads appurtenant thereto, structures, facilities, machinery, tools, equipment,
32 shafts, slopes, tunnels, excavations, and other property, real or personal,
33 placed or constructed on, under, or above the surface of such land by any
34 person, used in, or to be used in, or resulting from (including the reclamation



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of mined areas or the storage of materials in mined areas), or to facilitate the work of exploring for, developing of, or extracting by any means or method in such area all minerals, inorganic and organic, from their natural deposits. The term "mine" also includes all mineral processing and milling facilities except those used in the processing of source materials as defined in the Atomic Energy Act of 1954, as amended.

(8) ~~The term "miner" means any Miner.~~ – Any individual, other than an operator or an agent, working in or about a mine.

(9) ~~The term "operator" means an Operator.~~ – An individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization owning, operating, leasing, controlling, or supervising a mining operation.

(10) ~~The term "repeated violation" means a Repeated violation.~~ – A violation for which an operator was issued a notice or an order on an inspection and which is found to exist again on the next regular inspection, even though the violation was abated within the time fixed for abatement.

(11) ~~The term "State" means the State.~~ – The State of North Carolina."

SECTION 1.(b) G.S. 74-24.4(a) reads as rewritten:

"(a) The Commissioner shall develop, adopt, revise, and promulgate safety and health standards for the purpose of the protection of life, the promotion of safety and health, and the prevention of "accidents" in mines which are subject to this Article. In the development of safety and health standards, the Commissioner shall consult with ~~the Advisory Council~~, interested federal agencies, appropriate representatives of other State agencies, appropriate representatives of mine operators and miners, and other interested persons and organizations whose participation would further the purposes of this Article."

SECTION 1.(c) G.S. 74-24.6 is repealed.

SECTION 2. G.S. 95-111.3(a) reads as rewritten:

"(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.

(16) Any train or device previously or currently approved for use on the public rail transit system."

SECTION 3. G.S. 95-133(b) reads as rewritten:

"(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:

...

(13) Obtain relevant medical records. The Occupational Safety and Health Division is a health oversight agency as defined in 45 C.F.R. § 164.501, Standards for Privacy of Individually Identifiable Health Information. A covered entity, as defined by the Health Insurance Portability and Accountability Act, may disclose protected health information to health oversight agencies, including the Occupational Safety and Health Division, as necessary for law enforcement, judicial, and administrative purposes. The Commissioner or the Director, or their authorized agents, may obtain medical records of injured or deceased employees that are both directly related to the investigation being conducted and are necessary to conduct investigations and enforcement proceedings under this Article. The medical records to be obtained shall be restricted to the evaluation, diagnosis, or treatment of an employee injury or fatality. Such records shall only consist of those compiled and maintained by the Department of Health and Human Services, by hospitals participating in the statewide trauma system, or by emergency medical services providers in connection with the dispatch, response, treatment, or transport of individual patients. The medical records obtained by the Department shall be kept separate from any investigative file, shall be strictly confidential, are not public records within the meaning of G.S. 132-1, and shall not be released to any employer under investigation except as necessary to support the issuance of a citation in an OSHANC enforcement proceeding."

SECTION 4.(a) Article 5B of Chapter 95 of the General Statutes is repealed.

SECTION 4.(b) G.S. 1-539.12(c) reads as rewritten:

"(c) The provisions of this section apply to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with the provisions of this section. For the purposes of this section, "employer" also includes a job placement service but does not include a private personnel service as defined in G.S. 95-47.1 ~~or a job-listing service as defined in G.S. 95-47.19~~ except as provided hereinafter. The provisions of this section apply to a private personnel service as defined in ~~G.S. 95-47.1 and a job-listing service as defined in G.S. 95-47.19~~ G.S. 95-47.1 only to the extent that the service conveys information derived from credit reports, court records, educational records, and information furnished to it by the employee or prior employers and the service identifies the source of the information."

SECTION 5. G.S. 95-25.5(a) reads as rewritten:

"(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.~~ Commissioner."

SECTION 6. G.S. 95-25.7 reads as rewritten:

"§ 95-25.7. Payment to separated employees.

1 Employees whose employment is discontinued for any reason shall be paid all wages due on
2 or before the next regular payday either through the regular pay channels or by trackable mail if
3 requested by the ~~employee~~ employee in writing. Wages based on bonuses, commissions or other
4 forms of calculation shall be paid on the first regular payday after the amount becomes calculable
5 when a separation occurs. Such wages may not be forfeited unless the employee has been notified
6 in accordance with G.S. 95-25.13 of the employer's policy or practice which results in forfeiture.
7 Employees not so notified are not subject to such loss or forfeiture."

8 **SECTION 7.** G.S. 95-25.13 reads as rewritten:

9 **"§ 95-25.13. Notification, posting, and records.**

10 Every employer ~~shall~~ shall do all of the following:

- 11 (1) Notify its employees, ~~orally or in writing~~ at the time of hiring, of the promised
12 wages and the day and place for ~~payment~~ payment.
- 13 (2) Make available to its employees, in writing or through a posted notice
14 maintained in a place accessible to its employees, employment practices and
15 policies with regard to promised ~~wages~~ wages.
- 16 (3) Notify employees, in ~~writing or through a posted notice maintained in a place~~
17 ~~accessible to its employees, at least 24 hours~~ writing, at least one pay period
18 prior to any changes in promised wages. Wages may be retroactively
19 increased without the prior notice required by this ~~subsection~~ and subsection.
- 20 (4) Furnish each employee with an itemized statement of deductions made from
21 that employee's wages under G.S. 95-25.8 for each pay period such deductions
22 are made."

23 **SECTION 8.** G.S. 95-25.23A(a) reads as rewritten:

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

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

34 The determination by the Commissioner shall be final, unless within 15 days after receipt of
35 notice thereof by certified mail with return receipt, by signature confirmation as provided by the
36 U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
37 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes
38 exception to the determination, in which event final determination of the penalty shall be made
39 in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial
40 proceeding pursuant to Article 4 of Chapter 150B."

41 **SECTION 9.** This act is effective when it becomes law.