

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1182
Committee Substitute Favorable 4/30/03

Short Title: OSHA Tech. Changes/Fatality Penalty.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE OCCUPATIONAL SAFETY
AND HEALTH ACT AND TO ENHANCE THE PENALTY IF A WILLFUL
VIOLATION OF THE ACT CAUSES AN EMPLOYEE'S DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-138 reads as rewritten:

"§ 95-138. Civil penalties.

(a) ~~Any employer who willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to this Article, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than seventy thousand dollars (\$70,000) and not less than five thousand dollars (\$5,000) for each willful violation. Any employer who has received a citation for a serious violation of the requirements of this Article or any standard, rule, or order promulgated under this Article or of any regulation prescribed pursuant to this Article, shall be assessed by the Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each serious violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each nonserious violation. Any employer who fails to correct a violation for which a citation has been issued under this Article within the period allowed for its correction (which period shall not begin to run until the date of the final order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than seven thousand dollars (\$7,000). The assessment shall be made to apply to each day during which the failure or violation continues. Any employer who violates any of the posting requirements, as prescribed under the provision[s] of this Article, shall be assessed a civil penalty of not more than seven thousand dollars (\$7,000) for the violation. The Commissioner upon recommendation of the Director, or the Board in case of an appeal, shall have authority to assess all civil penalties provided by this~~

1 ~~Article, giving due consideration to the appropriateness of the penalty with respect to~~
2 ~~the following factors:~~

- 3 ~~(1) Size of the business of the employer being charged,~~
- 4 ~~(2) The gravity of the violation,~~
- 5 ~~(3) The good faith of the employer, and~~
- 6 ~~(4) The record of previous violations; provided that for purposes of~~
7 ~~determining repeat violations, only the record within the previous three~~
8 ~~years is applicable.~~

9 ~~The Commissioner shall adopt uniform standards which the Commissioner, the~~
10 ~~Board, and the hearing examiner shall apply when considering the four factors for~~
11 ~~determining appropriateness of the penalty. The report of the hearing examiner and the~~
12 ~~report, decision, or determination of the Board on appeal shall specify the standards~~
13 ~~applied in determining the reduction or affirmation of the penalty assessed by the~~
14 ~~Commissioner.~~

15 ~~(b) The clear proceeds of all civil penalties and interest recovered by the~~
16 ~~Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and~~
17 ~~Forfeiture Fund in accordance with G.S. 115C 457.2.~~

18 (a) The Commissioner, upon recommendation of the Director, may assess
19 penalties against any employer who violates the requirements of this Article, or any
20 standard, rule, or order promulgated pursuant to this Article, as follows:

- 21 (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum
22 penalty of seventy thousand dollars (\$70,000) for each willful or repeat
23 violation;
- 24 (2) A maximum penalty of seven thousand dollars (\$7,000) for each
25 nonserious or serious violation;
- 26 (3) A maximum penalty of seven thousand dollars (\$7,000) for each day
27 that an employer fails to correct and abate a violation, within the
28 period allowed for its correction and abatement which period shall not
29 begin to run until the date of the final Order of the Board in the case of
30 any appeal proceedings in this Article initiated by the employer in
31 good faith and not solely for the delay of avoidance of penalties;
- 32 (4) A maximum penalty of seven thousand dollars (\$7,000) for violating
33 the posting requirements, as required under the provisions of this
34 Article; and
- 35 (5) A minimum penalty of five thousand dollars (\$5,000) to a maximum
36 penalty of one hundred thousand dollars (\$100,000) for each willful or
37 repeat violation which results in the death of an employee or
38 employees. The penalty for a fatality-related violation shall be in lieu
39 of any penalty under subdivision (1) of this subsection.

40 (b) The Commissioner shall adopt uniform standards which the Commissioner,
41 the Board, and the hearing examiner shall apply when determining appropriateness of
42 the penalty. The following factors shall be used in determining whether a penalty is
43 appropriate:

- 44 (1) Size of the business of the employer being charged,

- 1 (2) The gravity of the violation,
2 (3) The good faith of the employer, and
3 (4) The record of previous violations; provided that for purposes of
4 determining repeat violations, only the record within the previous three
5 years is applicable.

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

9 (c) The clear proceeds of all civil penalties and interest recovered by the
10 Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and
11 Forfeiture Fund in accordance with G.S. 115C-457.2."

12 **SECTION 2.** This act becomes effective January 1, 2004, and applies to
13 violations occurring on or after that date.