

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 23
Committee Substitute Favorable 3/12/09
Senate Finance Committee Substitute Adopted 6/30/09

Short Title: Strengthen Child Labor Violation Penalties.

(Public)

Sponsors:

Referred to:

February 2, 2009

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE
3 HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR
4 VIOLATIONS OF CHILD LABOR LAWS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 95-25.23(a) reads as rewritten:

7 "(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or
8 any regulation issued thereunder, shall be subject to a civil penalty not to exceed ~~two hundred~~
9 ~~fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) for ~~each violation. the first violation and~~
10 ~~not to exceed one thousand dollars (\$1,000) for each subsequent violation.~~ In determining the
11 amount of such penalty, the appropriateness of such penalty to the size of the business of the
12 person charged and the gravity of the violation shall be considered. The determination by the
13 Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified
14 mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a
15 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt,
16 or via hand delivery, the person charged with the violation takes exception to the determination,
17 in which event final determination of the penalty shall be made in an administrative proceeding
18 pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of
19 Chapter 150B."

20 **SECTION 2.** G.S. 95-25.15(b) reads as rewritten:

21 "(b) Except as otherwise provided in this Article, every employer subject to any
22 provision of this Article shall make, keep, and preserve such records of the persons employed
23 by the ~~employer~~ employer, including the ages of employees, and of the wages, hours, and other
24 conditions and practices of employment which are essential to the enforcement of this Article
25 and are prescribed by regulation of the Commissioner, except that the Commissioner shall have
26 no authority to prescribe records for the State of North Carolina, a city, town, county or other
27 municipality or agency or instrumentality of government."

28 **SECTION 3.** G.S. 95-25.23A(a) reads as rewritten:

29 "(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation
30 issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred
31 fifty dollars (\$250.00) per employee with the maximum not to exceed ~~one thousand dollars~~
32 ~~(\$1,000)~~ two thousand dollars (\$2,000) per investigation by the Commissioner or ~~his~~ the
33 Commissioner's authorized representative. In determining the amount of the penalty, the
34 Commissioner shall ~~consider~~ consider each of the following:

- 35 (1) The appropriateness of the penalty for the size of the business of the
36 employer ~~charged; and~~ charged.



1 (2) The gravity of the violation.

2 (3) Whether the violation involves an employee under 18 years of age.

3 The determination by the Commissioner shall be final, unless within 15 days after receipt of
4 notice thereof by certified mail with return receipt, by signature confirmation as provided by
5 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
6 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation
7 takes exception to the determination, in which event final determination of the penalty shall be
8 made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial
9 proceeding pursuant to Article 4 of Chapter 150B."

10 **SECTION 4.** G.S. 95-138 reads as rewritten:

11 "**§ 95-138. Civil penalties.**

12 (a) The Commissioner, upon recommendation of the Director, or the North Carolina
13 Occupational Safety and Health Review Commission in the case of an appeal, shall have the
14 authority to assess penalties against any employer who violates the requirements of this Article,
15 or any standard, rule, or order adopted under this Article, as follows:

16 (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty
17 of seventy thousand dollars (\$70,000) may be assessed for each willful or
18 repeat violation.

19 (2) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for each
20 serious ~~violation~~ violation, except that a penalty of up to fourteen thousand
21 dollars (\$14,000) shall be assessed for each serious violation that involves
22 injury to an employee under 18 years of age.

23 (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each
24 violation that is adjudged not to be of a serious nature.

25 (3) A penalty of up to seven thousand dollars (\$7,000) may be assessed against
26 an employer who fails to correct and abate a violation, within the period
27 allowed for its correction and abatement, which period shall not begin to run
28 until the date of the final Order of the Commission in the case of any appeal
29 proceedings in this Article initiated by the employer in good faith and not
30 solely for the delay of avoidance of penalties. The assessment shall be made
31 to apply to each day during which the failure or violation continues.

32 (4) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for
33 violating the posting requirements, as required under the provisions of this
34 Article.

35 (b) The Commissioner shall adopt uniform standards that the Commissioner, the
36 Commission, and the hearing examiner shall apply when determining appropriateness of the
37 penalty. The following factors shall be used in determining whether a penalty is appropriate:

38 (1) Size of the business of the employer being charged.

39 (2) The gravity of the violation.

40 (3) The good faith of the employer.

41 (4) The record of previous violations; provided that for purposes of determining
42 repeat violations, only the record within the previous three years is
43 applicable.

44 (5) Whether the violation involves injury to an employee under 18 years of age.

45 The report of the hearing examiner and the report, decision, or determination of the
46 Commission on appeal shall specify the standards applied in determining the reduction or
47 affirmation of the penalty assessed by the Commissioner.

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

51 **SECTION 5.** G.S. 95-139 reads as rewritten:

1 **"§ 95-139. Criminal penalties.**

2 (a) Any employer who willfully violates any standard, rule, regulation or order
3 promulgated pursuant to the authority of this Article, and ~~said the~~ violation causes the death of
4 any ~~employee, employee 18 years of age or older,~~ shall be guilty of a Class 2 misdemeanor,
5 which may include a fine of not more than ten thousand dollars-(\$10,000); ~~except that if the~~
6 ~~conviction is for a violation committed after a first conviction of such person, the employer~~
7 ~~shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty~~
8 ~~thousand dollars (\$20,000)-(\$10,000).~~

9 (b) Any employer who willfully violates any standard, rule, regulation, or order
10 promulgated pursuant to the authority of this Article, and the violation causes the death of any
11 employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a
12 fine of not more than twenty thousand dollars (\$20,000).

13 (c) If an employer is convicted of more than one violation of subsection (a) or (b) of
14 this section, the subsequent violation shall be penalized as follows:

15 (1) The employer shall be guilty of a Class 1 misdemeanor which may include a
16 fine of not more than twenty thousand dollars (\$20,000) if the subsequent
17 violation results in the death of an employee 18 years of age or older.

18 (2) The employer shall be guilty of a Class 1 misdemeanor which may include a
19 fine of not more than forty thousand dollars (\$40,000) if the subsequent
20 violation results in the death of an employee under 18 years of age.

21 (d) This section shall not prevent any prosecuting officer of the State of North Carolina
22 from proceeding against such employer on a prosecution charging any degree of willful or
23 culpable homicide. Any person who gives advance notice of any inspection to be conducted
24 under this Article, without authority from the Commissioner, Director, or any of their agents to
25 whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

26 (e) Whoever knowingly makes any false statement, representation, or certification in
27 any application, record, report, plan, or any other document filed or required to be maintained
28 pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of
29 (i) not more than ten thousand dollars ~~(\$10,000)-(\$10,000) for falsifications pertaining to~~
30 ~~employees 18 years of age or older or (ii) not more than twenty thousand dollars (\$20,000) for~~
31 ~~falsifications pertaining to employees under 18 years of age.~~

32 (f) Whoever shall commit any kind of assault upon or whoever kills a person engaged
33 in or on account of the performance of investigative, inspection, or law-enforcement functions
34 shall be subject to prosecution under the general criminal laws of the State and upon such
35 charges as the proper prosecuting officer shall charge or allege."

36 **SECTION 6.** This act becomes effective December 1, 2009, and applies to
37 violations occurring or offenses committed on or after that date.