

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

S

D

SENATE DRS75050-LR-7A\* (11/17)

Short Title: Strengthen Child Labor Violation Penalties.

(Public)

Sponsors: Senator Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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



- 1 (1) The appropriateness of the penalty for the size of the business of the  
2 employer ~~charged; and~~ charged.
- 3 (2) The gravity of the violation.
- 4 (3) Whether the violation involves an employee under 18 years of age.

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

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

13 **"§ 95-138. Civil penalties.**

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

- 18 (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty  
19 of seventy thousand dollars (\$70,000) may be assessed for each willful or  
20 repeat violation.
- 21 (1a) A penalty of up to fourteen thousand dollars (\$14,000) shall be assessed for  
22 each serious violation that involves injury to, or endangerment of, an  
23 employee under 18 years of age.
- 24 (2) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for each  
25 serious ~~violation~~ violation that does not involve injury to, or endangerment  
26 of, an employee under 18 years of age.
- 27 (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each  
28 violation that is adjudged not to be of a serious nature.
- 29 (3) A penalty of up to seven thousand dollars (\$7,000) may be assessed against  
30 an employer who fails to correct and abate a violation, within the period  
31 allowed for its correction and abatement, which period shall not begin to run  
32 until the date of the final Order of the Commission in the case of any appeal  
33 proceedings in this Article initiated by the employer in good faith and not  
34 solely for the delay of avoidance of penalties. The assessment shall be made  
35 to apply to each day during which the failure or violation continues.
- 36 (4) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for  
37 violating the posting requirements, as required under the provisions of this  
38 Article.

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

- 42 (1) Size of the business of the employer being charged.
- 43 (2) The gravity of the violation.
- 44 (3) The good faith of the employer.
- 45 (4) The record of previous violations; provided that for purposes of determining  
46 repeat violations, only the record within the previous three years is  
47 applicable.
- 48 (5) Whether the violation involves injury to, or endangerment of, an employee  
49 under 18 years of age.

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

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

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

8 "**§ 95-139. Criminal penalties.**

9 (a) Any employer who willfully violates any standard, rule, regulation or order  
10 promulgated pursuant to the authority of this Article, and said violation causes the death of any  
11 employee, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than  
12 ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a  
13 first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which  
14 may include a fine of not more than twenty thousand dollars (\$20,000). This section shall not  
15 prevent any prosecuting officer of the State of North Carolina from proceeding against such  
16 employer on a prosecution charging any degree of willful or culpable homicide. Any person  
17 who gives advance notice of any inspection to be conducted under this Article, without  
18 authority from the Commissioner, Director, or any of their agents to whom such authority has  
19 been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly makes any false  
20 statement, representation, or certification in any application, record, report, plan, or any other  
21 document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2  
22 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000).  
23 Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on  
24 account of the performance of investigative, inspection, or law-enforcement functions shall be  
25 subject to prosecution under the general criminal laws of the State and upon such charges as the  
26 proper prosecuting officer shall charge or allege.

27 (b) Any employer who willfully violates any standard, rule, regulation, or order  
28 promulgated pursuant to the authority of this Article, and the violation causes the death of any  
29 employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a  
30 fine of not more than twenty thousand dollars (\$20,000); except that if the conviction is for a  
31 subsequent violation committed after a first conviction of such person under this section, the  
32 employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than  
33 forty thousand dollars (\$40,000). This section shall not prevent any prosecuting officer of the  
34 State of North Carolina from proceeding against such employer on a prosecution charging any  
35 degree of willful or culpable homicide. Any person who gives advance notice of any inspection  
36 to be conducted under this Article, without authority from the Commissioner, Director, or any  
37 of their agents to whom such authority has been delegated, shall be guilty of a Class 2  
38 misdemeanor. Whoever knowingly makes any false statement, representation, or certification  
39 in any application, record, report, plan, or any other document filed or required to be  
40 maintained pursuant to this Article, and pertaining to an employee under 18 years of age, shall  
41 be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty  
42 thousand dollars (\$20,000)."

43 **SECTION 6.** This act becomes effective December 1, 2009.