

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 23 (Second Edition)

SHORT TITLE: Strengthen Child Labor Violation Penalties.

SPONSOR(S): Representatives Weiss, Luebke, Bryant, and Goodwin

	FISCAL IMPACT				
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES:					
Fines & Forfeitures Account	at least \$44,923	at least \$51,341	at least \$51,341	at least \$51,341	at least \$51,341
DOL Collection Costs	at least \$3,432	at least \$3,922	at least \$3,922	at least \$3,922	at least \$3,922
EXPENDITURES:					
Department of Labor	*Negligible administrative expense. See Assumptions & Methodology.*				
Administrative Office of the Courts	Indeterminate fiscal impact				
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Labor, Judicial Branch					
EFFECTIVE DATE: December 1, 2009					

BILL SUMMARY:

H.B. 23 provides for a doubling of several penalties related to child labor laws. The bill increases the penalty for violation of the youth employment statute from \$250 to \$500 for the first violation and increases the maximum to \$1,000 for subsequent violations. Section 3 revises G.S. 95-25.23A, which deals with record keeping, to include consideration of whether the violation involved an employee under the age of 18; the maximum penalty is increased to \$2,000 from \$1,000. Section 4 rewrites G.S. 95-138(b) to add that when assessing a penalty, the Commissioner should consider whether the violations involved injury to an employee under 18. Section 5 changes the criminal penalty related to violations involving death of a worker such that the associated fine is increased from \$10,000 to \$20,000 for any death involving a worker under 18 and up to \$40,000 for any subsequent violations. Likewise any person who makes false statements about such violations can be assessed a fine of up to \$20,000 if the violation involved the death of a worker under 18.

ASSUMPTIONS AND METHODOLOGY:

Revenues

Historical data on violations and penalties assessed was obtained from the North Carolina Department of Labor (DOL). Currently DOL uses a sliding scale to assess penalties for wage and hour violations. Fiscal Research, based on conversations with DOL, has made the assumption that if this legislation were enacted, DOL would double the penalties on this sliding scale. Thus, it is estimated that DOL will collect twice the amount they currently do for wage and hour violations involving youth. A breakdown of estimated revenue by each section of the bill is included below.

Section 1 – Violations and Penalties under G.S. 95-25.23(a) - Youth Employment

The Wage and Hour Bureau at DOL tracks youth employment violations. Fiscal Research used historical data from the past five years to estimate the number of future violations as well as the amount collected. As there were no discernible trends in the number of violations, Fiscal Research used an average figure to estimate the number of violations and the amount collected in future years. The amount collected was then doubled to reflect the new fees. For FY 2009-10 the amount is prorated to reflect the December 1, 2009 effective date of the bill.

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Violations	210	210	210	210	210
Total Penalties Collected	\$25,491	\$29,133	\$29,133	\$29,133	\$29,133
Amount of New Penalty Money	\$12,746	\$14,566	\$14,566	\$14,566	\$14,566
Collection Costs	\$905	\$1,034	\$1,034	\$1,034	\$1,034
Total New Penalty Money (less cost of collection)	\$11,841	\$13,533	\$13,533	\$13,533	\$13,533

Section 3 – Violations and Penalties under G.S. 95-25.23A(a) – Recordkeeping

The Wage and Hour Bureau at DOL tracks recordkeeping violations. As with youth employment violations, Fiscal Research used historical data to calculate the average number of violations as well as the amount collected. The amount collected was then doubled to reflect the new fees. For FY 2009-10 the amount is prorated to reflect the December 1, 2009 effective date of the bill.

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Violations	398	398	398	398	398
Total Penalties Collected	\$71,219	\$81,393	\$81,393	\$81,393	\$81,393
Amount of New Penalty Money	\$35,609	\$40,696	\$40,696	\$40,696	\$40,696
Collection Costs	\$2,527	\$2,888	\$2,888	\$2,888	\$2,888
Total New Penalty Money (less cost of collection)	\$33,082	\$37,808	\$37,808	\$37,808	\$37,808

Section 4 – Violations and Penalties under G.S. 95-138(b) – OSH Serious Violations

The DOL Occupational Safety and Health Division (OSH) does not currently collect data on employee age. Estimates are not available as to how many OSH violations occurred at facilities where an employee under the age of 18 was injured or endangered. On average, OSH assesses approximately 5,200 violations and collects \$2.44 million in penalties each year. It is not known how many of these violations involve employees under the age of 18 and how the Commissioner might change the penalty assessed based on youth involvement in the violation; thus, it is not possible to calculate the potential increase in penalties collected.

Section 5 – Violations and Penalties under G.S. 95-139 – OSH Criminal Penalties

In the past five years, OSH investigated only one fatality involving an employee under the age of 18; penalties associated with that fatality totaled \$12,000. Fiscal Research estimates that over the next five years, there may be one fatality, and that penalties, if this legislation is enacted, might total \$24,000.

Expenditures

This bill should have no appreciable increase in costs for DOL. Most of the data required to assess these penalties is already collected under current practices.

Administrative Office of the Courts

Fiscal Research requested information on the potential fiscal impact to the court system that may result from the passage of this proposed bill. The Administrative Office of the Courts (AOC) provided the following analysis. The table below compares current law to the proposed legislation.

	Current Law		Proposed Law	
	Maximum Fine*	Criminal Penalty (misdemeanor)	Maximum Fine*	Criminal Penalty (misdemeanor)
Youth Employment (G.S. 95-25.5)				
First Violation G.S. 95-25.23	\$250	n/a	\$500	n/a
Subsequent Violations	\$250	n/a	\$1,000	n/a
Violation G.S. 95-25.15(b)	\$1,000	n/a	\$2,000	n/a
NC OSH Act (G.S. Chapter 95, Article 16)				
First violation, death of employee age 18 or older:	\$10,000	Class 2	no change	no change
First violation, death of employee under age 18:	\$10,000	Class 2	\$20,000	no change
Subsequent violation, death of employee age 18 or older:	\$20,000	Class 1	no change	no change
Subsequent violation, death of employee under age 18:	\$20,000	Class 1	\$40,000	no change
Falsifications of records pertaining to employees 18 or older:	\$10,000	Class 2	no change	no change
Falsifications of records pertaining to employees under age 18:	\$10,000	Class 2	\$20,000	no change

Source: NC Administrative Office of the Courts

- Note: the fines for violations of G.S. 95-25.5 and 95-25.15(b) are civil penalties; no criminal penalties are assessed.

Section 1 of this proposed bill would increase the fine for violations of G.S. 95-25.5 (Youth Employment); Section 2 would expand employer record-keeping requirements in G.S. 95-25.15(b) to include the age of employees, thus expanding potential violations. Section 3 would increase the maximum fine for violating the (now expanded) record-keeping provisions in G.S. 95-25.15(b). These violations are subject to civil penalties, as determined by the Commissioner of Labor. Impact on the courts would come from any appeals made by employers regarding the Commissioner's decisions. AOC cannot project whether increasing the maximum fine would increase the number of appeals. Any additional appeals generated by this proposed bill would impact the court system.

The violations of the NC OSH Act outlined in G.S. 95-139 in Section 5 of the bill are punishable as Class 1 and Class 3 misdemeanors. The criminal penalties would not change under this bill, but the maximum fine included in the penalties would increase for violations involving employees under age 18. It is possible that the potential for higher fines will lead to a more vigorous defense in these cases.

In FY 2008, the NC Department of Labor investigated 47 workplace fatalities, one of which involved the death of an employee under age 18. In FY 2002 through 2007, the other years with data available, none of the workplace fatalities investigated involved deaths of employees under age 18. Therefore, it is unlikely that many cases will be impacted by this legislation.

AOC cannot project the number of cases involving the provisions of this bill that will be filed or the impact of the increased fines on the time required to dispose of these cases. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North Carolina Department of Labor, North Carolina Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

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