

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 23  
PROPOSED COMMITTEE SUBSTITUTE H23-PCS80136-MG-6

Short Title: Strengthen Child Labor Violation Penalties.

(Public)

Sponsors:

Referred to:

February 2, 2009

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:



\* H 2 3 - P C S 8 0 1 3 6 - S M G - 6 \*

- 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(b) reads as rewritten:

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

- 16 (1) Size of the business of the employer being charged.
- 17 (2) The gravity of the violation.
- 18 (3) The good faith of the employer.
- 19 (4) The record of previous violations; provided that for purposes of determining  
20 repeat violations, only the record within the previous three years is  
21 applicable.
- 22 (5) Whether the violation involves injury to an employee under 18 years of age.

23 The report of the hearing examiner and the report, decision, or determination of the  
24 Commission on appeal shall specify the standards applied in determining the reduction or  
25 affirmation of the penalty assessed by the Commissioner."

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

27 "**§ 95-139. Criminal penalties.**

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

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

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

- 41 (1) The employer shall be guilty of a Class 1 misdemeanor which may include a  
42 fine of not more than twenty thousand dollars (\$20,000) if the subsequent  
43 violation results in the death of an employee 18 years of age or older.
- 44 (2) The employer shall be guilty of a Class 1 misdemeanor which may include a  
45 fine of not more than forty thousand dollars (\$40,000) if the subsequent  
46 violation results in the death of an employee under 18 years of age.

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

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

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

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