

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1388\*

Short Title: Safety Programs and Committees.

(Public)

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Sponsors: Representatives Fitch, Barnes, Cunningham, Howard, Sam Hunt, McLaughlin, Payne, H. Hunter; Blue, Albertson, Barnhill, Beard, Black, Bowman, Brown, Buchanan, Chapin, Colton, N. J. Crawford, Dawkins, DeVane, Dial, Diamont, Easterling, Ethridge, Fletcher, Fussell, Gamble, Gist, Gottovi, Greenwood, Hackney, Hardaway, Hensley, Jeffus, Justus, Kennedy, Lilley, Lineberry, Luebke, McAllister, McLawhorn, Mercer, Michaux, Miller, Nesbitt, Oldham, Redwine, Stamey, Stewart, Wainwright, Warner, Wicker, Wilson, and Withrow.

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Referred to: Courts, Justice, Constitutional Amendments and Referenda.

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May 28, 1992

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN EMPLOYERS TO ESTABLISH SAFETY AND HEALTH PROGRAMS AND SAFETY AND HEALTH COMMITTEES IN THE WORKPLACE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding a new Article to read as follows:

**"ARTICLE 22.**

**"EMPLOYEE SAFETY AND HEALTH.**

**"PART 1.**

**"SAFETY AND HEALTH PROGRAMS.**

**"§ 95-250. Safety and health programs.**

(a) Establishment of program.—Each employer with an experience rate modifier of 1.5 or greater shall, in accordance with this Part, establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees.

(b) Modifications to safety and health programs.—The Commissioner may modify the application of the requirements of this section to classes of employers where the

1 Commissioner determines that, in light of the nature of the risks faced by the employees  
2 of such employers, such a modification would not reduce the employees' safety and  
3 health protection.

4 **"§ 95-251. Safety and health program requirements.**

5 A safety and health program established and carried out under this Part shall be a  
6 written program that shall include:

- 7 (1) Methods and procedures for identifying, evaluating, and documenting  
8 safety and health hazards;
- 9 (2) Methods and procedures for correcting the safety and health hazards  
10 identified under subdivision (1);
- 11 (3) Methods and procedures for investigating work-related fatalities,  
12 injuries, and illnesses;
- 13 (4) Methods and procedures for providing occupational safety and health  
14 services, including emergency response and first aid procedures;
- 15 (5) Methods and procedures for employee participation in the  
16 implementation of the safety and health program, including  
17 participation through any safety and health committee established  
18 under Part 2 of this Article;
- 19 (6) Methods and procedures for responding to the recommendations of the  
20 safety and health committee, where applicable;
- 21 (7) Methods and procedures for providing safety and health training and  
22 education to employees and to members of any safety and health  
23 committee established under Part 2 of this Article;
- 24 (8) The designation of a representative of the employer who has the  
25 qualifications and responsibility to identify safety and health hazards  
26 and the authority to initiate corrective action where appropriate;
- 27 (9) In the case of a worksite where employees of two or more employers  
28 work, procedures for each employer to protect employees at the  
29 worksite from hazards under the employer's control, including  
30 procedures to provide information on safety and health hazards to  
31 other employers and employees at the worksite; and
- 32 (10) Such other provisions as the Commissioner requires to effectuate the  
33 purposes of this Part.

34 **"§ 95-252. Safety and health program rules; compensation.**

35 (a) Not later than one year after the effective date of this Article, the  
36 Commissioner shall adopt final rules concerning the establishment and implementation  
37 of employer safety and health programs under this Part. Rules adopted under this Part  
38 shall include provisions for the training and education of employees and safety and  
39 health committee members. These rules shall:

- 40 (1) Provide for the training and education of employees, including safety  
41 and health committee members, in a manner that is readily  
42 understandable by such employees, concerning safety and health  
43 hazards, control measures, the employer's safety and health program,  
44 employee rights and applicable laws and regulations;



- 1           (2) Membership.—Each safety and health committee shall consist of:
- 2           a. The employee safety and health representatives elected or
- 3           appointed under G.S. 95-261; and
- 4           b. As determined appropriate by the employer, employer
- 5           representatives, the number of which may not exceed the
- 6           number of employee representatives.
- 7           (3) Chairpersons.—Each safety and health committee shall be cochaired by:
- 8           a. A representative selected by the employer; and
- 9           b. A representative selected by the employee members of the
- 10           committee.
- 11           (4) Rights.—Each safety and health committee may, within reasonable
- 12           limits and in a reasonable manner:
- 13           a. Review any safety and health program established by the
- 14           employer under Part 1 of this Article;
- 15           b. Review incidents involving work-related fatalities, injuries and
- 16           illnesses, and complaints regarding safety or health hazards by
- 17           employees;
- 18           c. Review, upon the request of the committee or upon the request
- 19           of the employer representatives or employee representatives of
- 20           the committee, the employer's work injury and illness records,
- 21           other than personally identifiable medical information, and
- 22           other reports or documents relating to occupational safety and
- 23           health;
- 24           d. Conduct inspections of the worksite at least once every three
- 25           months and in response to complaints regarding safety or health
- 26           hazards by employees or committee members;
- 27           e. Conduct interviews with employees in conjunction with
- 28           inspections of the worksite;
- 29           f. Conduct meetings, at least once every three months, and
- 30           maintain written minutes of such meetings;
- 31           g. Observe the measurement of employee exposure to toxic
- 32           materials and harmful physical agents;
- 33           h. Establish procedures for exercising the rights of the committee;
- 34           i. Make recommendations on behalf of the committee, and in
- 35           making recommendations, permit any members of the
- 36           committee to submit separate views to the employer for
- 37           improvements in the employer's safety and health program and
- 38           for the correction of hazards to employee safety or health,
- 39           except that recommendations shall be advisory only and the
- 40           employer shall retain full authority to manage the worksite; and
- 41           j. Accompany the Commissioner or the Commissioner's
- 42           representative during any physical inspection of the worksite.
- 43           (5) Time for committee activities.—The employer shall permit members of
- 44           the committee established under this Part to take the time from work

1 reasonably necessary to exercise the rights of the committee without  
2 suffering any loss of pay or benefits for time spent on duties of the  
3 committee.

4 (6) Rules.—Not later than one year after the effective date of this Article,  
5 the Commissioner shall adopt final rules for the establishment and  
6 operation of safety and health committees pursuant to this Part. The  
7 rules shall include provisions concerning:

8 a. The establishment of such committees by an employer whose  
9 employees do not primarily report to or work at a fixed  
10 location;

11 b. The establishment of committees at worksites where employees  
12 of more than one employer are employed; and

13 c. The employer's obligation to enable the committee to function  
14 properly and effectively, including the provision of facilities  
15 and materials necessary for the committee to conduct its  
16 activities, and the maintenance of records and minutes  
17 developed by the committee.

18 **"§ 95-261. Employee safety and health representatives.**

19 (a) In general.—Safety and health committees established under this Part shall  
20 include:

21 (1) One employee safety and health representative where the average  
22 number of nonmanagerial employees of the employer at the worksite  
23 during the year ending January 1 was more than 10, but less than 50;

24 (2) Two employee safety and health representatives where the average  
25 number of nonmanagerial employees of the employer at the worksite  
26 during the year ending January 1 was more than 50, but less than 100;

27 (3) An additional employee safety and health representative for each  
28 additional 100 such employees at the worksite, up to a maximum of six  
29 employee safety and health representatives; and

30 (4) Where an employer's employees do not primarily report to or work at a  
31 fixed location or at worksites where employees of more than one  
32 employer are employed, a number of employee safety and health  
33 representatives as determined by the Commissioner by rule.

34 (b) Selection.—Employee safety and health representatives shall be selected by  
35 and from among the employer's nonmanagerial employees, as follows:

36 (1) Where none of the employer's employees at a worksite are represented  
37 by an exclusive bargaining representative, the employees shall elect  
38 employee safety and health representatives in an election held in  
39 conformity with procedures pursuant to rules adopted by the  
40 Commissioner.

41 (2) Where the employer's employees are represented by a single exclusive  
42 bargaining representative, the bargaining representative shall designate  
43 the employee safety and health representatives.

1           (3) Where the employer's employees are represented by more than one  
2 exclusive representative or where some but not all of the employees  
3 are represented by an exclusive representative, each bargaining unit of  
4 represented employees (and any residual group of unrepresented  
5 employees) shall have a proportionate number of employee safety and  
6 health representatives based on the number of employees in each  
7 bargaining unit or group, except that each such unit or group of 11 or  
8 more employees shall have at least one representative. The selection  
9 process shall be conducted in accordance with the provisions of  
10 subdivisions (1) or (2) as applicable.

11           (4) Rules.—Not later than one year after the effective date of this Article,  
12 the Commissioner shall adopt rules concerning safety and health  
13 representatives. Such rules shall include provisions concerning:

14           a. The number of employee safety and health representatives  
15 where an employer's employees do not primarily report to work  
16 at a fixed location;

17           b. The number of employee safety and health representatives at  
18 worksites where employees of more than one employer are  
19 employed; and

20           c. The selection and election procedures for employee safety and  
21 health representatives, such election procedures to provide for a  
22 fair election by secret ballot and protect employee's equal rights  
23 to participate in the election without being subject to penalty,  
24 discipline, improper interference, or reprisal.

25 **§ 95-262. Additional rights.**

26 The rights and remedies provided to employees and employee safety and health  
27 representatives by this section are in addition to, and not in lieu of, any other rights and  
28 remedies provided by contract, by other provisions of this act or by other applicable  
29 law, and are not intended to alter or affect such rights and remedies.

30 **§ 95-263. Definitions.**

31 The following definitions shall apply to this Article:

32           (1) 'Experience rate modifier' means the numerical modification applied to  
33 an experience rating for use in determining workers compensation  
34 premiums.

35           (2) 'Worksite' means a single physical location where business is  
36 conducted or where operations are performed by employees of an  
37 employer.

38 The definitions of Article 16 of this Chapter shall also apply to this Article.

39 **§ 95-264. Reports.**

40 Upon the final adoption of all rules required to be adopted by the Commissioner  
41 under this Article, the Commissioner shall determine, based on information provided by  
42 the North Carolina Rate Bureau, the employers with an experience rate modifier of 1.5  
43 or greater and shall notify these employers of the applicability of Part 1 of this Article  
44 and the potential applicability of Part 2 of this Article.

1 Within 60 days of notification by the Commissioner, the employer shall certify on  
2 forms provided by the Commissioner that it meets the requirements of Part 1 of this  
3 Article and, if applicable, the requirements of Part 2 of this Article.

4 The Commissioner shall notify an employer when its experience rate modifier falls  
5 below 1.5. An employer subject to the provisions of Part 2 of this Article shall notify  
6 the Commissioner if it no longer employs 11 or more employees and has discontinued  
7 or will discontinue its safety and health committee.

8 **"§ 95-265. Penalties.**

9 The Commissioner may levy a civil penalty, not to exceed the amounts listed herein,  
10 for a violation of Parts 1 or 2 of this Article:

11 <u>Employers with 10 or less employees</u>	<u>\$ 2,000</u>
12 <u>Employers with 11-50 employees</u>	<u>\$ 5,000</u>
13 <u>Employers with 50-100 employees</u>	<u>\$10,000</u>
14 <u>Employers with more than 100 employees</u>	<u>\$25,000.</u>

15 The Commissioner, in determining the amount of the penalty, shall consider the  
16 nature of the violation, whether it is first or subsequent violation, and the steps taken by  
17 the employer to remedy the violation upon discovering the violation."

18 Sec. 2. This act is effective upon ratification and applies on the date of  
19 adoption of final rules by the Commissioner of Labor.