

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1388\*  
Committee Substitute Favorable 6/12/92  
Senate Judiciary II Committee Substitute Adopted 7/8/92

Short Title: Safety Programs and Committees.

(Public)

Sponsors:

Referred to:

May 28, 1992

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE CERTAIN EMPLOYERS TO ESTABLISH SAFETY AND  
3 HEALTH PROGRAMS AND SAFETY AND HEALTH COMMITTEES IN THE  
4 WORKPLACE.

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 22.**

9 **"SAFETY AND HEALTH PROGRAMS AND COMMITTEES.**

10 **"§ 95-250. Definitions.**

11 The following definitions shall apply in this Article:

12 (1) 'Experience rate modifier' means the numerical modification applied  
13 by the Rate Bureau to an experience rating for use in determining  
14 workers' compensation premiums.

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

18 The definitions of Article 16 of this Chapter shall also apply to this Article, except  
19 that 'employee' for the purposes of G.S. 95-252(a), 95-252(c)(1)b., 95-255, and 95-256  
20 means an employee employed for some portion of a working day in each of 20 or more  
21 calendar weeks in the current or preceding calendar year.

22 **"§ 95-251. Safety and health programs.**

1       (a)   Establishment of safety and health programs.

2           (1)   Except as provided in subdivision (2) of this subsection, each  
3           employer with an experience rate modifier of 1.5 or greater shall, in  
4           accordance with this section, establish and carry out a safety and  
5           health program to reduce or eliminate hazards and to prevent injuries  
6           and illnesses to employees.

7           (2)   Employers providing temporary help services with an experience rate  
8           modifier of 1.5 or greater shall, in accordance with this section,  
9           establish and carry out a safety and health program to reduce or  
10          eliminate hazards and to prevent injuries and illnesses to its full-time  
11          employees permanently located at the employer's worksite. Employers  
12          providing temporary help services shall not be required to establish  
13          and implement a safety and health program under this section for its  
14          temporary employees assigned to a client's worksite.

15          (3)   The Commissioner may modify the application of the requirements of  
16          this section to classes of employers where the Commissioner  
17          determines that, in light of the nature of the risks faced by the  
18          employees of these employers, such a modification would not reduce  
19          the employees' safety and health protection.

20       (b)   Safety and health program requirements. A safety and health program  
21       established and implemented under this section shall be a written program that shall  
22       include at least all of the following:

23           (1)   Methods and procedures for identifying, evaluating, and documenting  
24           safety and health hazards.

25           (2)   Methods and procedures for correcting the safety and health hazards  
26           identified under subdivision (1) of this subsection.

27           (3)   Methods and procedures for investigating work-related fatalities,  
28           injuries, and illnesses.

29           (4)   Methods and procedures for providing occupational safety and health  
30           services, including emergency response and first aid procedures.

31           (5)   Methods and procedures for employee participation in the  
32           implementation of the safety and health program.

33           (6)   Methods and procedures for responding to the recommendations of the  
34           safety and health committee, where applicable.

35           (7)   Methods and procedures for providing safety and health training and  
36           education to employees and to members of any safety and health  
37           committee established under G.S. 95-252.

38           (8)   The designation of a representative of the employer who has the  
39           qualifications and responsibility to identify safety and health hazards  
40           and the authority to initiate corrective action where appropriate.

41           (9)   In the case of a worksite where employees of two or more employers  
42           work, procedures for each employer to protect employees at the  
43           worksite from hazards under the employer's control, including

1 procedures to provide information on safety and health hazards to  
2 other employers and employees at the worksite.

3 (10) Any other provisions as the Commissioner requires to effectuate the  
4 purposes of this section.

5 (c) No loss of pay. The time during which employees are participating in  
6 training and education activities under this section shall be considered as hours worked  
7 for purposes of wages, benefits, and other terms and conditions of employment. The  
8 training and education shall be provided by an employer at no cost to the employees of  
9 the employer.

10 **"§ 95-252. Safety and health committees required.**

11 (a) Establishment of safety and health committees. Except as provided in  
12 subsection (b) of this section, each employer with 11 or more employees and an  
13 experience rate modifier of 1.5 or greater shall provide for the establishment of safety  
14 and health committees and the selection of employee safety and health representatives  
15 in accordance with this section.

16 (b) Temporary help services. Temporary employees of employers providing  
17 temporary help services shall not be counted as part of the 11 or more employees  
18 needed to establish a safety and health committee under this section, and employers  
19 providing temporary help services shall not be required to establish a safety and health  
20 committee under this section for its temporary employees assigned to a client's worksite.

21 (c) Safety and health committee requirements.

22 (1) In general. Each employer covered by this section shall establish a  
23 safety and health committee at each worksite of the employer, except  
24 as provided as follows:

25 a. An employer covered by this section whose employees do not  
26 primarily report to or work at a fixed location is required to  
27 have only one safety and health committee to represent all  
28 employees.

29 b. A safety and health committee is not required at a covered  
30 employer's worksite with less than 11 employees.

31 c. The Commissioner may, by rule, modify the application of this  
32 subdivision to worksites where employees of more than one  
33 employer are employed.

34 (2) Membership. Each safety and health committee shall consist of:

35 a. The employee safety and health representatives selected or  
36 appointed under subsection (d) of this section.

37 b. As determined appropriate by the employer, employer  
38 representatives, the number of which may not exceed the  
39 number of employee representatives.

40 (3) Chairpersons. Each safety and health committee shall be cochaired by:

41 a. A representative selected by the employer.

42 b. A representative selected by the employee members of the  
43 committee.

- 1           (4) Rights. Each safety and health committee shall, within reasonable  
2 limits and in a reasonable manner, exercise the following rights:  
3           a. Review any safety and health program established by the  
4 employer under G.S. 95-251.  
5           b. Review incidents involving work-related fatalities, injuries and  
6 illnesses, and complaints by employees regarding safety or  
7 health hazards.  
8           c. Review, upon the request of the committee or upon the request  
9 of the employer representatives or employee representatives of  
10 the committee, the employer's work injury and illness records,  
11 other than personally identifiable medical information, and  
12 other reports or documents relating to occupational safety and  
13 health.  
14           d. Conduct inspections of the worksite at least once every three  
15 months and in response to complaints by employees or  
16 committee members regarding safety or health hazards.  
17           e. Conduct interviews with employees in conjunction with  
18 inspections of the worksite.  
19           f. Conduct meetings, at least once every three months, and  
20 maintain written minutes of the meetings.  
21           g. Observe the measurement of employee exposure to toxic  
22 materials and harmful physical agents.  
23           h. Establish procedures for exercising the rights of the committee.  
24           i. Make recommendations on behalf of the committee, and in  
25 making recommendations, permit any members of the  
26 committee to submit separate views to the employer for  
27 improvements in the employer's safety and health program and  
28 for the correction of hazards to employee safety or health,  
29 except that recommendations shall be advisory only and the  
30 employer shall retain full authority to manage the worksite.  
31           j. Accompany, upon request, the Commissioner or the  
32 Commissioner's representative during any physical inspection  
33 of the worksite.  
34           (5) Time for committee activities. The employer shall permit members of  
35 the committee established under this section to take the time from  
36 work reasonably necessary to exercise the rights of the committee  
37 without suffering any loss of pay or benefits for time spent on duties of  
38 the committee.  
39       (d) Employee safety and health representatives.  
40           (1) In general. Safety and health committees established under this  
41 section shall include:  
42           a. One employee safety and health representative where the  
43 average number of nonmanagerial employees of the employer

1 at the worksite during the preceding year was more than 10, but  
2 less than 50.

3 b. Two employee safety and health representatives where the  
4 average number of nonmanagerial employees of the employer  
5 at the worksite during the preceding year was 50 or more, but  
6 less than 100.

7 c. An additional employee safety and health representative for  
8 each additional 100 such employees at the worksite, up to a  
9 maximum of six employee safety and health representatives.

10 d. Where an employer's employees do not primarily report to or  
11 work at a fixed location or at worksites where employees of  
12 more than one employer are employed, a number of employee  
13 safety and health representatives as determined by the  
14 Commissioner by rule.

15 (2) Selection. Employee safety and health representatives shall be  
16 selected by and from among the employer's nonmanagerial employees  
17 in accordance with rules adopted by the Commissioner. The rules  
18 adopted by the Commissioner may provide for different methods of  
19 selection of employee safety and health representatives at worksites  
20 with no bargaining representative, worksites with one bargaining  
21 representative, and worksites with more than one bargaining  
22 representative.

23 **"§ 95-253. Additional rights.**

24 The rights and remedies provided to employees and employee safety and health  
25 representatives under this Article are in addition to, and not in lieu of, any other rights  
26 and remedies provided by contract or by other applicable law and are not intended to  
27 alter or affect those other rights and remedies.

28 **"§ 95-254. Rules.**

29 (a) Safety and health programs. Not later than one year after the effective date of  
30 this Article, the Commissioner shall adopt final rules concerning the establishment and  
31 implementation of employer safety and health programs under G.S. 95-251. Rules  
32 adopted shall include provisions for the training and education of employees and safety  
33 and health committee members. These rules shall include at least all of the following:

34 (1) Provision for the training and education of employees, including safety  
35 and health committee members, in a manner that is readily  
36 understandable by the employees, concerning safety and health  
37 hazards, control measures, the employer's safety and health program,  
38 employee rights, and applicable laws and regulations.

39 (2) Provision for the training and education of the safety and health  
40 committee concerning methods and procedures for hazard recognition  
41 and control, the conduct of worksite safety and health inspections, the  
42 rights of the safety and health committee, and other information  
43 necessary to enable the members to carry out the activities of the  
44 committee under G.S. 95-252.

1           (3) Requirement that training and education be provided to new  
2 employees at the time of employment and to safety and health  
3 committee members at the time of selection.

4           (4) Requirement that refresher training be provided on at least an annual  
5 basis and that additional training be provided to employees and to  
6 safety and health committee members when there are changes in  
7 conditions or operations that may expose employees to new or  
8 different safety or health hazards or when there are changes in safety  
9 and health rules or standards under Article 16 of this Chapter that  
10 apply to the employer.

11           (b) Safety and health committees. Not later than one year after the effective date  
12 of this Article, the Commissioner shall adopt final rules for the establishment and  
13 operation of safety and health committees under G.S. 95-252. The rules shall include  
14 provisions concerning at least the following:

15                 (1) The establishment of such committees by an employer whose  
16 employees do not primarily report to or work at a fixed location.

17                 (2) The establishment of committees at worksites where employees of  
18 more than one employer are employed.

19                 (3) The employer's obligation to enable the committee to function  
20 properly and effectively, including the provision of facilities and  
21 materials necessary for the committee to conduct its activities, and the  
22 maintenance of records and minutes developed by the committee.

23                 (4) The provision for different methods of selection of employee safety  
24 and health representatives at worksites with no bargaining  
25 representative, worksites with one bargaining representative, and  
26 worksites with more than one bargaining representative.

27 **"§ 95-255. Reports.**

28           (a) Upon the final adoption of all rules required to be adopted by the  
29 Commissioner under this Article, the Commissioner shall determine, based on  
30 information provided by the North Carolina Rate Bureau, the employers with an  
31 experience rate modifier of 1.5 or greater and shall notify these employers of the  
32 applicability of G.S. 95-251 and the potential applicability of G.S. 95-252.

33           (b) Within 60 days of notification by the Commissioner, the employer shall  
34 certify on forms provided by the Commissioner that he meets the requirements of G.S.  
35 95-251 and, if applicable, the requirements of G.S. 95-252.

36           (c) The Commissioner shall notify an employer when his experience rate  
37 modifier falls below 1.5. An employer subject to the provisions of G.S. 95-252 shall  
38 notify the Commissioner if he no longer employs 11 or more employees and has  
39 discontinued or will discontinue the safety and health committee.

40 **"§ 95-256. Penalties.**

41           (a) The Commissioner may levy a civil penalty, not to exceed the amounts listed  
42 as follows, for a violation of this Article:

|   |                 |
|---|-----------------|
| 43 <u>Employers with 10 or less employees</u> | <u>\$ 2,000</u> |
| 44 <u>Employers with 11-50 employees</u>      | <u>\$ 5,000</u> |

1 Employers with 51-100 employees \$10,000

2 Employers with more than 100 employees \$25,000.

3 (b) The Commissioner, in determining the amount of the penalty, shall consider  
4 the nature of the violation, whether it is a first or subsequent violation, and the steps  
5 taken by the employer to remedy the violation upon discovery of the violation.

6 (c) An employer may appeal a penalty levied by the Commissioner pursuant to  
7 this section to the Safety and Health Review Board subject to the procedures and  
8 requirements applicable to contested penalties under Article 16 of this Chapter. The  
9 determination of the Board shall be final unless further appeal is made to the courts  
10 under the provisions of Chapter 150B of the General Statutes.

11 (d) All civil penalties and interest recovered by the Commissioner, together with  
12 any costs, shall be paid into the General Fund of the State."

13 Sec. 2. This act is effective upon ratification, provided that all provisions  
14 requiring employer compliance apply only upon the effective date of the rules adopted  
15 by the Commissioner of Labor pursuant to this act.