

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 109\*

Short Title: OSHA Rev. Bd. Decisions.

(Public)

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Sponsors: Senators Plyler, Plexico, and Martin of Guilford.

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Referred to: Judiciary II.

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February 10, 1993

A BILL TO BE ENTITLED

AN ACT REQUIRING CERTAIN DETAIL IN THE DECISIONS AND REPORTS OF  
THE OSHA REVIEW BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-135(i) reads as rewritten:

"(i) A hearing examiner appointed by the chairman of the Board shall hear, and make a determination upon, any proceeding instituted before the Board and may hear any motion in connection therewith, assigned to ~~such the~~ hearing examiner, and shall make a report of ~~any such the~~ determination which constitutes ~~his the~~ hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for ~~his the~~ hearing examiner's determination. The report of the hearing examiner shall become the final order of the Board 30 days from the date of ~~said the~~ report as determined by the hearing examiner, unless within ~~such the~~ 30-day period any member of the Board had directed that ~~such the~~ report shall be reviewed by the entire Board as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the Board shall schedule the matter for hearing, on the record, except the Board may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of ~~such the~~ hearing and shall be allowed to appear in person or by attorney at ~~such the~~ hearing. Upon review of ~~said the~~ report and determination by the hearing examiner the Board may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report of the

1 hearing examiner, and the report, decision, or determination of the Board upon review  
2 shall be in writing and shall include findings of fact, conclusions of law, and the reasons  
3 or bases for them, on all the material issues of fact, law, or discretion presented on the  
4 record. The report, decision or determination of the Board upon review shall be final  
5 unless further appeal is made to the courts under the provisions of Chapter 150B of the  
6 General Statutes, as amended, entitled: 'Judicial Review of Decisions of Certain  
7 Administrative Agencies.'"

8 Sec. 2. G.S. 95-138(a) reads as rewritten:

9 "(a) Any employer who willfully or repeatedly violates the requirements of this  
10 Article, any standard, rule or order promulgated pursuant to this Article, or regulations  
11 prescribed pursuant to this Article, may upon the recommendation of the Director to the  
12 Commissioner be assessed by the Commissioner a civil penalty of not more than  
13 seventy thousand dollars (\$70,000) and not less than five thousand dollars (\$5,000) for  
14 each willful violation. Any employer who has received a citation for a serious violation  
15 of the requirements of this Article or any standard, rule, or order promulgated under this  
16 Article or of any regulation prescribed pursuant to this Article, shall be assessed by the  
17 Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each ~~such~~  
18 serious violation. If the violation is adjudged not to be of a serious nature, then the  
19 employer may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for  
20 each ~~such~~-nonserious violation. Any employer who fails to correct a violation for which  
21 a citation has been issued under this Article within the period allowed for its correction  
22 (which period shall not begin to run until the date of the final order of the Board in the  
23 case of any appeal proceedings in this Article initiated by the employer in good faith  
24 and not solely for the delay or avoidance of penalties), may be assessed a civil penalty  
25 of not more than seven thousand dollars (\$7,000). ~~Such~~-The assessment shall be made  
26 to apply to each day during which ~~such~~-the failure or violation continues. Any employer  
27 who violates any of the posting requirements, as prescribed under the provision of this  
28 Article, shall be assessed a civil penalty of not more than seven thousand dollars  
29 (\$7,000) for ~~such~~-the violation. The Commissioner upon recommendation of the  
30 Director, or the Board in case of an appeal, shall have authority to assess all civil  
31 penalties provided by this Article, giving due consideration to the appropriateness of the  
32 penalty with respect to the following factors:

- 33 (1) Size of the business of the employer being charged,
- 34 (2) The gravity of the violation,
- 35 (3) The good faith of the ~~employer~~-employer, and
- 36 (4) The record of previous violations.

37 The Commissioner and the Board shall jointly adopt uniform standards which the  
38 Commissioner, the Board, and the hearing examiner shall apply when considering the  
39 four factors for determining appropriateness of the penalty. The report of the hearing  
40 examiner and the report, decision, or determination of the Board on appeal shall specify  
41 the standards applied in determining the reduction or affirmation of the penalty assessed  
42 by the Commissioner."

43 Sec. 3. This act is effective upon ratification and applies to citations issued on  
44 or after that date.