

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 244

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor)

Economic Matters

Finance

Maryland Occupational Safety and Health Act - Civil Penalties - Alterations

This departmental bill increases the maximum civil penalty for a violation of the Maryland Occupational Safety and Health (MOSH) program from \$7,000 to \$16,131 for each violation. If an employer does not correct a violation within the period allowed for correction, the bill increases the maximum civil penalty that may be applied for each day that the violation continues from \$7,000 to \$16,131. A civil penalty of up to \$161,323 (instead of \$70,000 under current law) may be assessed for willful or repeated violations, and for willful violations, the penalty must be at least \$11,162 (instead of \$5,000 under current law). These penalties are indexed to inflation beginning July 15, 2025, as set by the Commissioner of Labor and Industry beginning January 1, 2025, and annually thereafter. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Increasing civil penalty provisions of MOSH and indexing them to inflation do not have a material impact on State finances or operations. State agencies are not subject to the penalty provisions of the MOSH Act.

Local Effect: None. Local governments are not subject to the penalty provisions of the MOSH Act.

Small Business Effect: The Maryland Department of Labor (MDL) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: The Division of Labor and Industry within MDL administers the MOSH program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards.

Employers must provide each employee with employment and a place of employment that is safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.

A civil penalty must be assessed against an employer when the Commissioner of Labor and Industry determines that the employer has committed a serious violation. Under most circumstances, a violation is considered a serious violation when there is a substantial probability that death or serious physical harm could result from a condition that exists at a site. A civil penalty must also be assessed against an employer who fails to post notices as required by the commissioner. However, the penalty provisions of MOSH do not apply to a public body.

The commissioner may assess a civil penalty for employers who (1) willfully or repeatedly violate MOSH; (2) receive a citation for a nonserious violation of MOSH; or (3) fail to correct a violation within the timeframe specified by the citation.

In general, civil penalties may not exceed \$7,000 per violation. However, if an employer does not correct a violation within the period allowed for correction, a civil penalty of up to \$7,000 may be applied for each day that the violation continues. A civil penalty of up to \$70,000 may be assessed for willful or repeated violations, and for willful violations, the penalty must be at least \$5,000.

Before the Commissioner of Labor and Industry assesses a civil penalty, the commissioner must consider the appropriateness of the penalty in relation to:

- the size of the business of the employer against whom the penalty is to be assessed;
- the gravity of the violation for which the penalty is to be assessed;
- the good faith of the employer;
- the history of violations by the employer;
- the injury and illness experience of the employer;
- the existence and quality of a safety and training program;

- the actual harm to human health including injury or illness;
- the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation; and
- the extent to which the existence of the violation was known to the employer but remained not corrected.

Civil penalties assessed under MOSH must be deposited into the general fund.

Background: On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 was enacted to advance the effectiveness of civil money penalties and to strengthen their deterrent effect. The federal law requires agencies across the federal government to adjust their penalties for inflation no later than January 15 of every year. Thus, [OSHA](#) increased their maximum civil penalty amounts to be \$16,131 after January 15, 2024, except the penalties for willful or repeated violations are \$161,323 after January 15, 2024.

MDL notes that currently fewer than 1% of all MOSH violations are classified as “willful”.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; U.S. Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - January 22, 2024
rh/mcr Third Reader - March 13, 2024
Revised - Amendment(s) - March 13, 2024

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Occupational Safety and Health Act - Civil Penalties - Alterations

BILL NUMBER: HB0244

PREPARED BY: Devki Virk, Commissioner Labor & Industry

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

OR

 WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have an impact on small businesses in Maryland insofar that the penalties for small business may increase if the regulations on calculating penalties are changed by the Division of Labor and Industry.