

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 441

(First Reading File Bill)

AMENDMENT NO. 1

In line 5, after “may” insert “issue citations and”; in the same line, strike “and issue”; in the same line, after “penalties;” insert “requiring the Commissioner to ensure that the authorized representative receives a certain training; providing for the effective date of this Act;”; in line 9, strike “5-101(b)” and substitute “5-213, 5-809, and 5-810”.

AMENDMENT NO. 2

Strike in their entirety lines 15 through 21, inclusive, and substitute:

“5-213.

(a) Within a reasonable time after issuance of a citation under § 5-212 of this subtitle to an employer, the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER shall send by certified mail to the employer a notice that:

(1) states the civil penalty, if any, that the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER proposes to assess under this title; and

(2) informs the employer that, within 15 work days after receipt of the notice, the employer may submit to the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER a written notice of contest on the citation or civil penalty.

(b) A citation and any penalty that the Commissioner proposes to assess shall be considered a final order of the Commissioner unless:

(1) within 15 work days after receipt of a notice under subsection (a) of this section the employer notifies the Commissioner of an intent to contest the citation or any penalty; or

(Over)

(2) within 15 work days after issuance of a citation, an employee or representative of an employee submits a written notice to the Commissioner that alleges that the period of time set in the citation for abatement of the violation is unreasonable.

(c) (1) An employer shall correct each violation for which the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER issues a citation within the period set for correction in a final order under this subtitle.

(2) If the request of an employer for a hearing is made in good faith and not solely to delay or avoid payment of a penalty, the period for correction begins on the day when the order passed as a result of the hearing becomes final.

(d) If the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER has reason to believe that an employer has failed to correct a violation within the time allowed, the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER shall send by certified mail to the employer a notice that:

(1) states that the employer has failed to correct the violation;

(2) states the civil penalty, if any, that the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER intends to assess under this title for the failure; and

(3) informs the employer that, within 15 work days after receipt of the notice, the employer may submit to the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER a notice of contest on the notice or civil penalty.

(e) Unless an employer notifies the Commissioner of an intent to contest as provided in subsection (b) of this section, the notice, including any civil penalty, is a final order.

(F) THE COMMISSIONER SHALL ENSURE THAT AN AUTHORIZED REPRESENTATIVE IS TRAINED IN THE POLICY AND PROCEDURES FOR THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES BEFORE THE AUTHORIZED REPRESENTATIVE MAY CARRY OUT THE DUTIES UNDER SUBSECTIONS (A), (C), AND (D) OF THIS SECTION.

5-809.

(a) (1) For the purpose of this subsection, a violation is considered to be a serious violation if there is a substantial probability that death or serious physical harm could result from a condition that exists or a practice, means, method, operation, or process that has been adopted or is in use, unless the employer did not and with the exercise of reasonable diligence could not know of the violation.

(2) The Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER shall assess a civil penalty against an employer who receives a citation for a serious violation of this title, an order passed under this title, or a regulation adopted to carry out this title.

(b) The Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER shall assess a civil penalty against an employer who violates a requirement for posting imposed under this title.

(c) The Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER may assess a civil penalty against an employer who:

(1) willfully or repeatedly violates this title, an order passed under this title, or a regulation adopted to carry out this title; or

(2) receives a citation for a violation of a provision of this title, an order passed under this title, or a regulation adopted to carry out this title and there is a specific determination that the violation is not of a serious nature.

(d) The Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER may assess a civil penalty against an employer who does not correct a violation for which a citation is issued within the period set under this title for correction.

(E) THE COMMISSIONER SHALL ENSURE THAT AN AUTHORIZED REPRESENTATIVE IS TRAINED IN THE POLICY AND PROCEDURES FOR THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES BEFORE THE AUTHORIZED REPRESENTATIVE MAY CARRY OUT THE DUTIES UNDER THIS SECTION.

(Over)

5-810.

(a) (1) Except as provided in paragraph (2) of this subsection, a civil penalty under § 5-809 of this subtitle may not exceed:

(i) \$7,000 for each violation; and

(ii) if an employer does not correct a violation within the period allowed for correction, \$7,000 for each day that the violation continues.

(2) A civil penalty for a willful or repeated violation of a provision of this title, an order passed under this title, or a regulation adopted to carry out this title may not exceed \$70,000 for each violation.

(3) A civil penalty for a willful violation of a provision of this title, an order passed under this title, or a regulation adopted to carry out this title may not be less than \$5,000.

(b) Before the Commissioner OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER assesses a civil penalty under § 5-809 of this subtitle, the Commissioner OR THE AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER shall consider the appropriateness of the penalty in relation to:

(1) the size of the business of the employer against whom the penalty is to be assessed;

(2) the gravity of the violation for which the penalty is to be assessed;

(3) the good faith of the employer;

(4) the history of violations by the employer;

(5) The injury and illness experience of the employer;

(6) The existence and quality of a safety and training program;

(7) The actual harm to human health including injury or illness;

(8) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation; and

(9) The extent to which the existence of the violation was known to the employer but remained not corrected.

(C) THE COMMISSIONER SHALL ENSURE THAT AN AUTHORIZED REPRESENTATIVE IS TRAINED IN THE POLICY AND PROCEDURES FOR THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES BEFORE THE AUTHORIZED REPRESENTATIVE MAY CARRY OUT THE DUTIES UNDER THIS SECTION.”.