
By: Chairman, Economic Matters Committee (Departmental - Labor, Licensing and Regulation)

Introduced and read first time: January 29, 1996
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
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CHAPTER ____

1 AN ACT concerning

2 **Occupational Safety and Health - Enforcement - Citations and Penalties - Authorized**
3 **Representative**

4 FOR the purpose of specifying that an authorized representative of the Commissioner of
5 Labor and Industry may issue citations and assess ~~and issue~~ proposed penalties;
6 requiring the Commissioner to ensure that the authorized representative receives a
7 certain training; providing for the effective date of this Act; and generally relating to
8 citations and penalties under the Maryland Occupational Safety and Health Act.

9 BY repealing and reenacting, with amendments,
10 Article - Labor and Employment
11 Section ~~5-401(b)~~ 5-213, 5-809, and 5-810
12 Annotated Code of Maryland
13 (1991 Volume and 1995 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Labor and Employment**

17 ~~5-401.~~

18 ~~(b) "Commissioner" means:~~

19 ~~(1) EXCEPT AS PROVIDED IN ITEM (2) OF THIS SUBSECTION, the~~
20 ~~Commissioner of Labor and Industry; AND~~

1 ~~(2) IN §§ 5-213(A), 5-213(C), 5-213(D), 5-809, AND 5-810 OF THIS SUBTITLE,~~
2 ~~THE COMMISSIONER OF LABOR AND INDUSTRY OR THE COMMISSIONER'S~~
3 ~~AUTHORIZED REPRESENTATIVE.~~

4 5-213.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 5-809.

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

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

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

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

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

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

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

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

37 5-810.

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

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

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

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

6 (3) A civil penalty for a willful violation of a provision of this title, an order
7 passed under this title, or a regulation adopted to carry out this title may not be less than
8 \$5,000.

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

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

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

16 (3) the good faith of the employer;

17 (4) the history of violations by the employer;

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

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

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

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

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

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

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 June 1, 1996.

