
By: Delegates Eckardt, Edwards, Hutchins, Stull, Baldwin, Leopold, Beck, Harkins, Snodgrass, McKee, Mossburg, M. Burns, Jacobs, Greenip, Brinkley, Walkup, D. Hughes, Holt, O'Donnell, Kelly, McClenahan, Kach, Donoghue, Boston, Love, Goldwater, Crumlin, Harrison, Schisler, Kirk, and Krysiak

Introduced and read first time: February 5, 1996

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Occupational Safety and Health - Assessment of Civil Penalties**

3 FOR the purpose of prohibiting the Commissioner of Labor and Industry from assessing
4 a civil penalty against an employer who receives a citation for certain violations of
5 the Maryland Occupational Safety and Health Act, certain orders passed under the
6 Act, or certain regulations adopted to carry out the Act, if the Commissioner of
7 Labor and Industry has not previously notified the employer of the violation, the
8 violation is a nonserious violation, and the employer corrects the violation within a
9 certain time; providing for a certain contingency; and generally relating to civil
10 penalties for certain violations of the Maryland Occupational Safety and Health
11 Act, orders passed under the Act, or regulations adopted to carry out the Act.

12 BY repealing and reenacting, with amendments,
13 Article - Labor and Employment
14 Section 5-809
15 Annotated Code of Maryland
16 (1991 Volume and 1995 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - Labor and Employment
19 Section 5-810
20 Annotated Code of Maryland
21 (1991 Volume and 1995 Supplement)

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

24 **Article - Labor and Employment**

25 5-809.

26 (a) (1) For the purpose of this subsection, a violation is considered to be a
27 serious violation if there is a substantial probability that death or serious physical harm
28 could result from a condition that exists or a practice, means, method, operation, or

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1 process that has been adopted or is in use, unless the employer did not and with the
2 exercise of reasonable diligence could not know of the violation.

3 (2) The Commissioner shall assess a civil penalty against an employer who
4 receives a citation for a serious violation of this title, an order passed under this title, or
5 a regulation adopted to carry out this title.

6 (b) The Commissioner shall assess a civil penalty against an employer who violates
7 a requirement for posting imposed under this title.

8 (c) (1) [The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
9 Commissioner may assess a civil penalty against an employer who:

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

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

15 (2) THE COMMISSIONER MAY NOT ASSESS A CIVIL PENALTY AGAINST
16 AN EMPLOYER UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION IF:

17 (I) THE COMMISSIONER HAS NOT PREVIOUSLY NOTIFIED THE
18 EMPLOYER OF THE VIOLATION;

19 (II) THE VIOLATION IS NOT A SERIOUS VIOLATION; AND

20 (III) THE EMPLOYER CORRECTS THE VIOLATION WITHIN 10 DAYS
21 AFTER THE ISSUANCE OF THE CITATION.

22 (d) The Commissioner may assess a civil penalty against an employer who does
23 not correct a violation for which a citation is issued within the period set under this title
24 for correction.

25 5-810.

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

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

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

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

34 (3) A civil penalty for a willful violation of a provision of this title, an order
35 passed under this title, or a regulation adopted to carry out this title may not be less than
36 \$5,000.

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1 (b) Before the Commissioner assesses a civil penalty under § 5-809 of this
2 subtitle, the Commissioner shall consider the appropriateness of the penalty in relation
3 to:

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

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

7 (3) the good faith of the employer;

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

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

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

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

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

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this
17 Act would result in the loss of the authority of the State, under the provisions of § 18(b)
18 of the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, to
19 administer a State occupational safety and health program, this Act shall be abrogated
20 and of no further force and effect. If the federal Occupational Safety and Health
21 Administration determines that any provision of this Act will result in the loss of the
22 authority of the State to administer the State occupational safety and health program, the
23 Commissioner of Labor and Industry, within 5 days from receiving notice from the federal
24 Occupational Safety and Health Administration, shall forward a copy of the
25 determination to the Director of the Department of Legislative Reference, 90 State
26 Circle, Annapolis, Maryland 21401.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 1996.