

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 187\*  
Second Edition Engrossed 4/21/93

Short Title: OSHA Rev. Bd. Decisions.

(Public)

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Sponsors: Representatives Fitch, Barnes, Cunningham, H. Hunter, McLaughlin; Luebke and Colton.

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Referred to: Business and Labor.

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February 18, 1993

A BILL TO BE ENTITLED

1 AN ACT REQUIRING CERTAIN DETAIL IN THE DECISIONS AND REPORTS OF  
2 THE OSHA REVIEW BOARD.  
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4 The General Assembly of North Carolina enacts:

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

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

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

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

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

- 35 (1) Size of the business of the employer being charged,  
36 (2) The gravity of the violation,  
37 (3) The good faith of the ~~employer~~ employer, and  
38 (4) The record of previous ~~violations~~ violations within the previous three  
39 years with respect to repeat offenders.

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

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