### **GENERAL ASSEMBLY OF NORTH CAROLINA**

#### **SESSION 1993**

S

### 2

(Public)

# SENATE BILL 109\* Judiciary II Committee Substitute Adopted 4/7/93

Short Title: OSHA Rev. Bd. Decisions.

Sponsors:

Referred to:

5

February 10, 1993

- A BILL TO BE ENTITLED
  AN ACT REQUIRING CERTAIN DETAIL IN THE DECISIONS AND REPORTS OF
  THE OSHA REVIEW BOARD.
  - 4 The General Assembly of North Carolina enacts:
    - Section 1. G.S. 95-135(i) reads as rewritten:

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

# GENERAL ASSEMBLY OF NORTH CAROLINA

determination by the hearing examiner the Board may adopt, modify or vacate the 1 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 shall be in writing and shall include findings of fact, conclusions of law, and the reasons 4 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.' Review."

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 each willful violation. Any employer who has received a citation for a serious violation 16 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 Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each such 19 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 each such-nonserious violation. Any employer who fails to correct a violation for which 22 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 case of any appeal proceedings in this Article initiated by the employer in good faith 25 and not solely for the delay or avoidance of penalties), may be assessed a civil penalty 26 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 The Commissioner upon recommendation of the 31 (\$7,000) for such the violation. 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 penalty with respect to the following factors: 34

- 36
- (1) Size of the business of the employer being charged,
  (2) The gravity of the violation,
- 37

35

- (3) The good faith of the employer employer, and
- 38 39
- (4) The record of previous violations. violations within the previous three years.

40 The Commissioner and the Board shall jointly adopt uniform standards which the

41 Commissioner, the Board, and the hearing examiner shall apply when considering the

- 42 four factors for determining appropriateness of the penalty. The report of the hearing
- 43 examiner and the report, decision, or determination of the Board on appeal shall specify

# 1993

- 1 the standards applied in determining the reduction or affirmation of the penalty assessed
- 2 <u>by the Commissioner.</u>"
- 3 Sec. 3. This act is effective upon ratification and applies to citations issued on 4 or after that date.