

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 104
Economic Matters

(Delegate McDermott, *et al.*)

Occupational Safety and Health - Good Faith Actions by Business Owners -
Penalty Forgiveness

This bill prohibits the Commissioner of Labor and Industry from assessing a civil penalty against an employer who receives a citation for a violation of Maryland’s Occupational Safety and Health Act (MOSH) that is not willful or repetitive if (1) the commissioner has not previously issued a MOSH citation to the employer; (2) the violation is not serious; and (3) the employer corrects the violation within the timeframe specified in the citation.

The bill abrogates if any of its provisions cause the State to lose its authority under federal law to administer its occupational safety and health program.

Fiscal Summary

State Effect: None. State revenues and expenditures are not affected because the bill does not change the standard practice of the Commissioner of Labor and Industry.

Local Effect: None.

Small Business Effect: None. Small businesses are not affected because the bill does not change the standard practice of the Commissioner of Labor and Industry.

Analysis

Current Law: The Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970 requires the U.S. Department of Labor to establish a program “to assure so far as possible every working man and woman in the nation with safe and healthful working

conditions.” The Act specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards.

The Commissioner of Labor and Industry may inspect a place of employment where work is performed and may investigate all pertinent devices, equipment, materials, and structures at the location. If the commissioner witnesses violations at a place of employment, the commissioner must issue a citation to document violations.

A civil penalty must be assessed against an employer when the commissioner determines that the employer has committed a serious violation. Under most circumstances, a violation is considered a serious violation when there is a substantial probability that death or serious physical harm could result from a condition that exists at a site. A civil penalty must also be assessed against an employer who fails to post notices as required by the commissioner.

The commissioner may assess a civil penalty for employers who (1) willfully or repeatedly violate MOSH; (2) receive a citation for a nonserious violation of MOSH; or (3) fail to correct a violation within the timeframe specified by the citation.

In general, civil penalties may not exceed \$7,000 per violation. A civil penalty of up to \$70,000 may be assessed for willful or repeated violations.

Background: The Department of Labor, Licensing, and Regulation (DLLR) advises that its MOSH unit does not assess monetary penalties for nonserious violations unless at least 10 such violations have been identified during an inspection of a construction site. MOSH does not assess monetary penalties for nonserious violations of manufacturers.

State Fiscal Effect: DLLR advises that, by eliminating authority to assess civil penalties for some nonserious violations, the bill makes MOSH less effective than OSHA and could necessitate the initiation of a plan withdrawal action under federal OSHA laws. If Maryland’s plan were withdrawn, the federal government would assume responsibility for issuing citations to Maryland employers for occupational safety and health violations and collect revenues from any penalties imposed. However, since the bill provides for abrogation if any provision of the bill causes Maryland to lose authority to administer the MOSH program, it is assumed that the bill would abrogate. Thus, there is no fiscal impact.

Even if the bill were to remain in effect, State revenues and expenditures would not be affected. The bill merely takes away the commissioner’s authority, which the commissioner does not currently use, to assess civil penalties on nonserious violations that are not willful or repetitive.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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