

1 SENATE BILL 229

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Gay G. Kernan and Carroll H. Leavell

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10 AN ACT

11 RELATING TO OCCUPATIONAL HEALTH AND SAFETY; ADJUSTING THE  
12 PENALTIES FOR VIOLATIONS OF THE OCCUPATIONAL HEALTH AND SAFETY  
13 ACT TO CONFORM WITH FEDERAL LAW; REQUIRING THE DEPARTMENT OF  
14 ENVIRONMENT TO ADJUST PENALTIES ON AN ANNUAL BASIS TO ACCOUNT  
15 FOR INFLATION; DECLARING AN EMERGENCY.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 50-9-24 NMSA 1978 (being Laws 1975,  
19 Chapter 290, Section 14, as amended) is amended to read:

20 "50-9-24. PENALTIES.--

21 A. Any employer who willfully or repeatedly  
22 violates any provision of the Occupational Health and Safety  
23 Act or any regulation or order promulgated pursuant to that act  
24 may be assessed a civil penalty not to exceed [~~seventy thousand~~  
25 ~~dollars (\$70,000)~~] one hundred twenty-four thousand seven

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1 hundred nine dollars (\$124,709) for each violation; provided  
2 that a civil penalty shall not be less than [~~five thousand~~  
3 ~~dollars (\$5,000)~~] eight thousand nine hundred eight dollars  
4 (\$8,908) for each willful violation.

5 B. Any employer who has received a citation for a  
6 serious violation of any provision of the Occupational Health  
7 and Safety Act or any regulation or order promulgated pursuant  
8 to that act shall be assessed a civil penalty not to exceed  
9 [~~seven thousand dollars (\$7,000)~~] twelve thousand four hundred  
10 seventy-one dollars (\$12,471) for each [~~such~~] violation.

11 C. Any employer who has received a citation for a  
12 violation of any provision of the Occupational Health and  
13 Safety Act or any regulation or order promulgated pursuant to  
14 that act that is determined not to be of a serious nature may  
15 be assessed a civil penalty of up to [~~seven thousand dollars~~  
16 ~~(\$7,000)~~] twelve thousand four hundred seventy-one dollars  
17 (\$12,471) for each [~~such~~] violation.

18 D. Any employer who fails to correct a violation  
19 for which a citation has been issued within the period  
20 permitted for its correction, which period shall not begin to  
21 run until the date of the final order of the commission in the  
22 case of any review proceeding [~~under~~] provided for in Section  
23 50-9-17 NMSA 1978 initiated by the employer in good faith and  
24 not solely for delay or avoidance of penalties, may be assessed  
25 a civil penalty not to exceed [~~seven thousand dollars (\$7,000)~~]

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1 twelve thousand four hundred seventy-one dollars (\$12,471) for  
2 each day during which the failure or violation continues.

3 E. Any civil penalty assessed against the state, a  
4 political subdivision of the state or any agency of either  
5 pursuant to Subsection B, C or G of this section shall not be  
6 collected during the time permitted for correction of the  
7 violation, and if the violation is corrected within such time,  
8 the civil penalty shall be deemed paid without further action  
9 of the state, political subdivision or agency.

10 F. For purposes of this section, a serious  
11 violation shall be deemed to exist in a place of employment if  
12 there is a substantial probability that death or serious  
13 physical harm could result from a condition that exists or from  
14 one or more practices, means, methods, operations or processes  
15 that have been adopted or are in use in the place of employment  
16 unless the employer did not and could not with the exercise of  
17 reasonable diligence know of the presence of the violation.

18 G. Any employer who violates any of the posting  
19 requirements as prescribed by the Occupational Health and  
20 Safety Act shall be assessed a civil penalty not to exceed  
21 [~~seven thousand dollars (\$7,000)~~] twelve thousand four hundred  
22 seventy-one dollars (\$12,471) for each violation.

23 H. The commission has authority to assess all civil  
24 penalties provided in this section, giving due consideration to  
25 the appropriateness of the penalty with respect to the size of

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1 the business of the employer being charged, the gravity of the  
2 violation, the good faith of the employer and the history of  
3 previous violations.

4 I. Civil penalties imposed ~~[under]~~ pursuant to the  
5 provisions of this section shall be paid into the general fund.

6 J. On January 1 of each year, the secretary shall  
7 adjust as necessary the minimum and maximum penalty amounts  
8 established in Subsections A through D and G of this section to  
9 account for inflation. The amounts shall be increased by the  
10 percentage of the preceding calendar year's increase of the  
11 consumer price index for all urban consumers, United States  
12 city average for all items, published by the United States  
13 department of labor. The amount of the increase, if any, shall  
14 be rounded to the nearest dollar, but shall not exceed one  
15 hundred fifty percent of the current penalty amount. The  
16 secretary may issue rules to carry out the provisions of this  
17 subsection that conform with the federal Occupational Safety  
18 and Health Act of 1970.

19 ~~[J-]~~ K. Any employer who willfully violates any  
20 provision of the Occupational Health and Safety Act or any  
21 regulation or order promulgated pursuant to that act causing  
22 death to any employee by that violation shall, upon conviction,  
23 be punished by a fine of not more than ten thousand dollars  
24 (\$10,000) or by imprisonment for not more than six months or by  
25 both; except that if the conviction is for a violation

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1 committed after a first conviction of [~~such~~] the person,  
2 punishment shall be by a fine of not more than twenty thousand  
3 dollars (\$20,000) or by imprisonment for less than one year or  
4 by both.

5 [~~K-~~] L. Any person who gives advance notice of any  
6 inspection to be conducted under the Occupational Health and  
7 Safety Act without authority of the secretary shall, upon  
8 conviction, be punished by a fine of not more than one thousand  
9 dollars (\$1,000) or by imprisonment for not more than six  
10 months or by both.

11 [~~L-~~] M. Whoever knowingly makes any false  
12 statement, representation or certification in any application,  
13 record, report, plan or other document filed or required to be  
14 maintained pursuant to the Occupational Health and Safety Act  
15 shall, upon conviction, be punished by a fine of not more than  
16 ten thousand dollars (\$10,000) for each such violation or by  
17 imprisonment for not more than six months or by both.

18 [~~M-~~] N. A person who reveals a trade secret in  
19 violation of Section 50-9-21 NMSA 1978 violates this subsection  
20 and shall, upon conviction, be punished by a fine of not more  
21 than ten thousand dollars (\$10,000) or by imprisonment for less  
22 than one year or both."

23 **SECTION 2. EMERGENCY.**--It is necessary for the public  
24 peace, health and safety that this act take effect immediately.