

# Bill as Introduced

SB 86 - AS AMENDED BY THE SENATE

03/30/11 1182s

2011 SESSION

11-0213  
06/05

SENATE BILL **86**

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

SPONSORS: Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Morse, Dist 22; Sen. Odell, Dist 8; Sen. Prescott, Dist 23; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4

COMMITTEE: Commerce

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ANALYSIS

This bill requires the department of labor to issue one warning to employers for certain violations before a fine may be imposed.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Civil Penalties. RSA 273:11-a is repealed and reenacted to read as follows:  
2 273:11-a Civil Penalties.

3 I. In addition to any criminal penalty provided under this chapter, the commissioner may,  
4 after hearing, impose a civil penalty not to exceed \$2,500, as determined by the commissioner, for  
5 any violation of any of the provisions of this chapter or of any rule adopted pursuant to this chapter.  
6 All moneys collected under this section shall be deposited in the general fund.

7 II. Except as provided in paragraph III, the commissioner shall issue one written warning to  
8 the employer. The employer shall have 30 days from receipt of the warning to cure the defect  
9 causing the violation.

10 III. No warning shall be issued if, in the opinion of the commissioner, the employer intends  
11 to cause harm, the violation poses a threat to public safety, or the violation involves any of the  
12 following:

- 13 (a) Failure to pay an employee in full and on time under RSA 275:43.
- 14 (b) Payment of wages by checks on a financial institution that is not convenient to the  
15 place of employment as required by RSA 275:43, I(e).
- 16 (c) Failure to pay final wages in full as required by RSA 275:44.
- 17 (d) Failure to pay amounts withheld for court ordered child support to the custodial  
18 parent.
- 19 (e) Continuation of wage withholding for insurance benefits that have been cancelled.
- 20 (f) Illegal withholding of wages to compensate employer for employee actions resulting in  
21 loss or damage.
- 22 (g) Failure to comply with RSA 275-A:4-a regarding illegal aliens.
- 23 (h) Requiring that employees to perform any illegal activities under threat of job loss.

24 IV. Any person on whom a penalty is imposed under this section may appeal as provided in  
25 RSA 273:11-c and 273:11-d.

26 V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conduct of  
27 hearings under paragraph IV.

28 2 Civil Penalties. Amend RSA 157-A:10-a, II to read as follows:

29 II. The commissioner shall conduct hearings in the manner required under rules adopted

SB 86 - AS AMENDED BY THE SENATE

- Page 2 -

1 pursuant to RSA 541-A and 273:11-a, [H] V.

2 3 Civil Penalties. Amend RSA 157-B:13-a to read as follows:

3 II. The commissioner shall conduct hearings in the manner required under rules adopted  
4 pursuant to RSA 541-A and 273:11-a, [H] V.

5 4 Effective Date. This act shall take effect 60 days after its passage.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON SB 86

**BILL TITLE:** requiring the department of labor to warn employers of certain violations prior to imposing a fine.

**DATE:** April 12, 2011

**LOB ROOM:** 307      **Time Public Hearing Called to Order:** 10:45 a.m.

**Time Adjourned:** 11:30 a.m.

(please circle if present)

**Committee Members:** Reps. Daniels, Infantine, Richardson, Pellegrino, Sedensky, Flanagan, Lawars, Seaworth, Simmons, S. Smith, K. Sullivan, Ward, Peckham, Goley, Weed, Rice and White.

**Bill Sponsors:** Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Morse, Dist 22; Sen. Odell, Dist 8; Sen. Prescott, Dist 23; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Senator Luther** - Prime sponsor of the bill. Supports the bill.

\* **Rep. Lambert** - Co-sponsor of the bill. Supports the bill. See attached letter.

**Peter Suprey** - Supports the bill. Business man being fined \$148,500 (see letter attached). Did not know the difference between workers compensation and unemployment insurance.

**Henry Veilleux, NH Lodging and Restaurant Association** - Supports the bill. Give warning before fine. Willing to work with Subcommittee.

\* **Chris Williams, Greater Nashua Chamber of Commerce** - Supports the bill. Written testimony - see attached.

**Dave Juvet, Business Industry Association (BIA)** - Supports the bill. No malice intended.



**Rep. Karen Umberger** - Co-sponsor of the bill. Supports the bill. Comm. Was in North Conway with two bus. Fined newspaper, restaurant fine get decreased, not rescinded.

Respectfully submitted,

Rep. John B. Sedensky  
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

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TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

SEN. LUTHER PRIME SPONSOR. IS IN FAVOR OF THE BILL.

REP LAMBERT SUPPORT OF BUS. SEE ATTACHED.

\* LETTER.

PETER SUPVA MERRIMACK NH 03054 BUS MAN. BEING FINED \$148,000 (SEE LETTER) ATTACHED) DID NOT KNOW THE DIFFERENCE BETWEEN WORKERS COMP & UNEMPLOYMENT INS.

HENRY VEILLEUX NH Logging + REST ASSOC. SUPPORTS THE BILL GIVE WARNING BEFORE FINE WILLING TO WORK WITH SUB COMMIT.

CHRIS WILLIAMS SUPPORTS THE BILL REPRESENTS  
CHAMBER OF COMMERCE SEE ATTACHED DOOR, NASHUA NH  
(WRITTEN TESTIMONY)

DAVE TAVET BIA SUPPORTS THE BILL.  
NO MALICE INTENDED

KAREN UMBERGER. SUPPORTS THE BILL

REP DIST 2 NO CONWAY

COMM. WAS IN NO CONWAY WITH

TWO B.W. FINED NEWSPAPER, REST.

FINE GETS DECREASED NOT RECORDED

# Testimony



April 12, 2011

The Honorable Gary Daniels, Chair  
House Ways & Means Committee  
LOB 307  
Concord, NH 03301

142 MAIN STREET, 5<sup>TH</sup> FLOOR  
NASHUA, NEW HAMPSHIRE 03060  
TEL 603.881.8333 • FAX 603.881.7323  
www.nashuachamber.com

**Re: SB 86 - requiring the department of labor to warn employers of certain violations prior to imposing a fine**

Dear Representative Daniels:

On behalf of the Greater Nashua Chamber of Commerce and its 700 business members, I am writing to register the Chamber's support for Senate Bill 86. As introduced, this bill would require the Department of Labor to issue one warning to employers for certain violations before a fine may be imposed.

Passage of this bill allows the State Of New Hampshire to bolster its image as a state that understands the intricacies of trying to run a business that is in full compliance with state regulations, and is willing to be a partner with those businesses rather than an obstacle. Oftentimes, companies that are lacking dedicated H.R. or Legal staff can inadvertently violate a state law with absolutely no intention to do so. Once made aware of such violations, the overwhelming number of companies in NH would seek to rectify the violation in question and also take steps to ensure that it doesn't occur again.

In such circumstances, we believe companies should be given a fair warning rather than slapped with a fine or civil penalty.

This bill allows for fair business practice in NH, and promotes the NH Department of Labor as more of a partner with those many companies who only wish to follow the law and be good corporate citizens. The bill still retains a healthy balance on behalf of employees by ensuring that certain violations would still receive an automatic penalty, aside from this bill.

We believe this bill is a very large step forward in repairing NH's image as a business-friendly state, and applaud its supporters for moving it forward.

Sincerely,

J. Christopher Williams  
President & CEO

cc: Members of the Committee



# State of New Hampshire

## Department of Labor

Hugh J. Galen  
State Office Park  
Sparkling Building  
95 Pleasant Street  
Concord, NH 03301  
603/271-3176  
TDD Access, Relay NH  
1-800-735-2964  
FAX: 603/271-6149  
<http://www.labor.state.nh.us>

George N. Copadis  
Commissioner of Labor

David M. Wibby  
Deputy Labor  
Commissioner

April 5, 2011

ERGOSOFT US LLC  
34 TECHNOLOGY WAY STE 2W7  
NASHUA NH 03060-3245

Re: Notification of informal conference due to proposed civil penalty for failure to secure/maintain workers Comp in the amount of \$148,500.00.

Federal Id #: 020530514

Dear Sir or Madam:

On your workers' compensation coverage terminated. According to the notice filed by your insurance company with this department, new coverage did not become effective until:

X On January 21, 2011 we sent letter requesting workers' compensation coverage information for your business. We have received a notice of coverage from your workers' compensation carrier, THE HARTFORD effective January 28, 2011. The proposed civil penalty for the period when there was no workers compensation coverage, from January 28, 2011 to January 28, 2011 is \$148,500.00 assessed pursuant to RSA 281-A: 7, I due to non-compliance with RSA 281-A: 5.

On a decision was rendered against you and your company for failure to secure workers' compensation coverage. We received information that the new coverage has been obtained effective. This has resulted in a lapse in coverage from to. The proposed civil penalty is assessed pursuant to RSA 281 A:7,I and RSA 273:11-a due to non-compliance with RSA 281-A:5.

Inspector performed an inspection on. We received information that workers' compensation coverage has been obtained effective. This has resulted in a lapse in coverage from to. The proposed civil penalty is assessed pursuant to RSA 281-A:7,I due to non-compliance with RSA 281-A:5.

An informal conference has been scheduled for May 5, 2011 at 10:00 am. This conference will be held at the Department of Labor, 95 Pleasant St, Concord NH 0331. If we are able to negotiate a compromise agreement, payment will be expected immediately at the informal conference.

If you do not attend the informal conference, further action will be taken by this department to collect the proposed civil penalty. Please note a civil penalty may be collected through the powers of RSA 281-A: 57a, by filing a lien on your real estate or personal property.

If you wish to pay the proposed civil as currently assessed, please issue a check prior to the date of the informal conference. The check should be made payable to: Treasurer, State of New Hampshire and forwarded to the Department of Labor, PO Box 2160, Concord NH 03302-2080.

Please direct any questions you have regarding the contents of this letter to (603) 271-2042. Thank you for your time and cooperation in this regard.

Very Truly Yours

  
Amy Caswell  
Workers' Compensation Division

# Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on SB 86

**BILL TITLE:** requiring the department of labor to warn employers of certain violations prior to imposing a fine.

**DATE:** May 10, 2011

**LOB ROOM:** 307

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Infantine

Seconded by Rep. Sullivan

Vote: 13-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

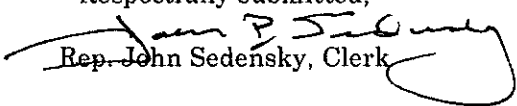
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

  
Rep. John Sedensky, Clerk



HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

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DATE: May 10, 2011

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OLS Document #:

Motions: OTP OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *INFANTINE*

Seconded by Rep. *SULLIVAN*

Vote: *13 - 3* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. John Sedensky, Clerk

**LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES**

Bill #: \_\_\_\_\_ Title: \_\_\_\_\_

PH Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Exec Session Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Motion: \_\_\_\_\_ Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Daniels, Gary L, Chairman	✓	
Infantine, William J, V Chairman	✓	
<del>Richardson, Herbert D</del> <i>Gionet</i>	✓	
Pellegrino, Tony J	✓	
<del>Sedensky, John B, Clerk</del> <i>Fields</i>	✓	
Flanagan, Jack B	✓	
Laware, Thomas W	✓	
Seaworth, G. Brian	✓	
Simmons, Tammy A	✓	
Smith, Steven D	✓	
Sullivan, Kevin P	✓	
Ward, Joanne A	✓	
Peckham, Michele S	✓	
Goley, Jeffrey P		✓
Weed, Charles F		✓
Rice, Chip L		
White, Andrew A <i>PORTER</i>		✓
TOTAL VOTE:		

# Committee Report

**REGULAR CALENDAR**

**May 12, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Committee on LABOR, INDUSTRIAL AND  
REHABILITATIVE SERVICES to which was referred  
SB86,

AN ACT requiring the department of labor to warn  
employers of certain violations prior to imposing a fine.  
Having considered the same, report the same with the  
recommendation that the bill OUGHT TO PASS.

**Rep. William J Infantine**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES</b>
Bill Number:	<b>SB86</b>
Title:	<b>requiring the department of labor to warn employers of certain violations prior to imposing a fine.</b>
Date:	<b>May 12, 2011</b>
Consent Calendar:	<b>NO</b>
Recommendation:	<b>OUGHT TO PASS</b>

### STATEMENT OF INTENT

This legislation requires the New Hampshire Department of Labor to issue one warning for certain violations of law instead of a fine. Violations of laws that pose a threat to public safety or where the employer intends to cause harm will not be afforded a written warning. All warnings require the employer to correct the violation within a thirty day period. The Department of Labor worked closely with the Senate to craft this bill so as not to allow serious violations to go unpunished.

Vote 13-3.

Rep. William J Infantine  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

**SB86**, requiring the department of labor to warn employers of certain violations prior to imposing a fine. **OUGHT TO PASS.**

Rep. William J Infantine for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. This legislation requires the New Hampshire Department of Labor to issue one warning for certain violations of law instead of a fine. Violations of laws that pose a threat to public safety or where the employer intends to cause harm will not be afforded a written warning. All warnings require the employer to correct the violation within a thirty day period. The Department of Labor worked closely with the Senate to craft this bill so as not to allow serious violations to go unpunished. **Vote 13-3.**

Original: House Clerk  
Cc: Committee Bill File

SB 86

OTP

Majority

This legislation requires the New Hampshire Department of Labor to issue one warning for certain violations of law instead of a fine. Violations of laws that pose a threat to public safety or where the employer intends to cause harm will not be afforded a written warning. All warnings require the employer to correct the violation within a thirty day period. The Department of Labor worked closely with the Senate to craft this bill so as not to allow serious violations to go unpunished.

Will Infantine

# COMMITTEE REPORT

COMMITTEE: Labor Industrial + Rehabilitative

BILL NUMBER: SB 86

TITLE: Requiring the Department of Labor to warn employers of certain violations prior to imposing a fine

DATE: 5/10/11 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No. _____
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## STATEMENT OF INTENT:

This legislation requires the U.H. Department of Labor to issue ~~one~~ <sup>only</sup> warning for certain violations of law instead of a fine. Violations of laws that pose a threat to public safety or where the employer intends to cause harm will not be afforded a written warning. All warnings require the employer to correct the violation within ~~the~~ a thirty day period. The Department of Labor worked closely with the Senate to craft this bill so as not to allow serious violations to go unpunished.

COMMITTEE VOTE: 13-3

RESPECTFULLY SUBMITTED,

<ul style="list-style-type: none"><li>• Copy to Committee Bill File</li><li>• Use Another Report for Minority Report</li></ul>
--

Rep. Alan J. Parks  
For the Committee

OK  
JD