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**HOUSE BILL 1745**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Schmick, Dufault, and Graham

AN ACT Relating to providing discretion to the director of the department of labor and industries to waive or modify penalties and violations when action is taken to avoid imminent danger of loss of life or serious injury; amending RCW 49.17.180; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature has adopted various laws regarding employee health and safety standards and employers' responsibilities to provide a safe and healthy workplace. These laws include provisions for what constitutes a safety or health violation and under what circumstances an employer may or must be assessed a civil penalty due to a safety or health violation. The legislature further finds that there are rare, unanticipated circumstances which require immediate action due to imminent danger of loss of life or serious injury that require employees or employers to take actions they would otherwise not take due to specific requirements in laws or rules. The legislature therefore intends to provide the director of the department of labor and industries with the authority to waive a penalty or violation in limited circumstances that required immediate action due to imminent danger of loss of life or serious injury and no other practical option was immediately available.

**Sec.**  RCW 49.17.180 and 2021 c 253 s 4 are each amended to read as follows:

(1) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard adopted under the authority of this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration. A minimum penalty of five thousand dollars shall be assessed for a willful violation; unless set to a specific higher amount by the federal occupational safety and health administration and this state is required to equal the higher penalty amount to qualify a state plan.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard adopted under the authority of this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (7) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard adopted under this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (7) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis or, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(5) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the workplace, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, may be assessed a civil penalty of not more than the maximum penalty for a serious violation under this section for each day the employer continues such condition, practice, method, process, or means, or continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached.

(6) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules adopted by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(7) For the purposes of this section, a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(8)(a) The director, or his or her authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(b) The director, or his or her authorized representatives, may, in a manner that the United States department of labor would find consistent with the approval terms of state plan status, waive or modify the finding of any violation for an action that would otherwise constitute a violation of this chapter and may waive all or part of any civil penalty provided in this section for an action that constitutes a violation of this chapter. The director may reassume jurisdiction in order to exercise this discretion under the following limited circumstances:

(i) Immediate action was required to be taken due to imminent danger of loss of life or serious injury;

(ii) The action was taken after assessment of the situation, in reliance on training, and determining the best possible course of action or where no other practical option was immediately available;

(iii) Appropriate safety equipment immediately available was used;

(iv) Responding employees were trained as first responders and acting within the scope of their official duties as first responders; and

(v) In circumstances where the director exercises discretion to waive the violation under this section, timely abatement is still required.

(9) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

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