
HOUSE BILL 2597

State of Washington

54th Legislature

1996 Regular Session

By Representatives Clements, Chappell, Chandler, Boldt, Honeyford, McMorris and Delvin

Read first time 01/15/96. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to civil penalties for subsequent violations of the
2 industrial safety and health act; amending RCW 49.17.180; and adding a
3 new section to chapter 49.17 RCW.

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

5 **Sec. 1.** RCW 49.17.180 and 1995 c 403 s 629 are each amended to
6 read as follows:

7 (1) Except as provided in RCW 43.05.090 and section 2 of this act,
8 any employer who willfully or repeatedly violates the requirements of
9 RCW 49.17.060, of any safety or health standard promulgated under the
10 authority of this chapter, of any existing rule or regulation governing
11 the conditions of employment promulgated by the department, or of any
12 order issued granting a variance under RCW 49.17.080 or 49.17.090 may
13 be assessed a civil penalty not to exceed seventy thousand dollars for
14 each violation. A minimum penalty of five thousand dollars shall be
15 assessed for a willful violation.

16 (2) Any employer who has received a citation for a serious
17 violation of the requirements of RCW 49.17.060, of any safety or health
18 standard promulgated under the authority of this chapter, of any
19 existing rule or regulation governing the conditions of employment

1 promulgated by the department, or of any order issued granting a
2 variance under RCW 49.17.080 or 49.17.090 as determined in accordance
3 with subsection (6) of this section, shall be assessed a civil penalty
4 not to exceed seven thousand dollars for each such violation.

5 (3) Any employer who has received a citation for a violation of the
6 requirements of RCW 49.17.060, of any safety or health standard
7 promulgated under this chapter, of any existing rule or regulation
8 governing the conditions of employment promulgated by the department,
9 or of any order issued granting a variance under RCW 49.17.080 or
10 49.17.090, where such violation is specifically determined not to be of
11 a serious nature as provided in subsection (6) of this section, may be
12 assessed a civil penalty not to exceed seven thousand dollars for each
13 such violation, unless such violation is determined to be de minimis.

14 (4) Any employer who fails to correct a violation for which a
15 citation has been issued under RCW 49.17.120 or 49.17.130 within the
16 period permitted for its correction, which period shall not begin to
17 run until the date of the final order of the board of industrial
18 insurance appeals in the case of any review proceedings under this
19 chapter initiated by the employer in good faith and not solely for
20 delay or avoidance of penalties, may be assessed a civil penalty of not
21 more than seven thousand dollars for each day during which such failure
22 or violation continues.

23 (5) Any employer who violates any of the posting requirements of
24 this chapter, or any of the posting requirements of rules promulgated
25 by the department pursuant to this chapter related to employee or
26 employee representative's rights to notice, including but not limited
27 to those employee rights to notice set forth in RCW 49.17.080,
28 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
29 be assessed a penalty not to exceed seven thousand dollars for each
30 such violation. Any employer who violates any of the posting
31 requirements for the posting of informational, educational, or training
32 materials under the authority of RCW 49.17.050(7), may be assessed a
33 penalty not to exceed seven thousand dollars for each such violation.

34 (6) For the purposes of this section, a serious violation shall be
35 deemed to exist in a work place if there is a substantial probability
36 that death or serious physical harm could result from a condition which
37 exists, or from one or more practices, means, methods, operations, or
38 processes which have been adopted or are in use in such work place,

1 unless the employer did not, and could not with the exercise of
2 reasonable diligence, know of the presence of the violation.

3 (7) Except as provided in section 2 of this act, the director, or
4 his or her authorized representatives, shall have authority to assess
5 all civil penalties provided in this section, giving due consideration
6 to the appropriateness of the penalty with respect to the number of
7 affected employees of the employer being charged, the gravity of the
8 violation, the size of the employer's business, the good faith of the
9 employer, and the history of previous violations.

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

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17 RCW
18 to read as follows:

19 If an employer has been assessed a civil penalty under this chapter
20 for a violation of this chapter or of a rule or order adopted or issued
21 under this chapter and the employer is to be assessed a civil penalty
22 for a subsequent violation of this chapter or of a rule or order
23 adopted or issued under this chapter, the former penalty and violation
24 may not be considered by the director or department in determining
25 under RCW 49.17.180 the employer's history of previous violations or
26 repeated violations under the following circumstances:

27 (1) The former violation had been caused by the handling or use of
28 a pesticide by an employee of the employer; and

29 (2) That handling or use of the pesticide by the employee had been
30 negligent or had not been authorized by the employer.

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