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SENATE BILL 5743

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State of Washington

65th Legislature

2017 Regular Session

By Senators Conway, Keiser, and Hasegawa; by request of Department of Labor & Industries

1 AN ACT Relating to maximum penalties under the Washington  
2 industrial safety and health act; amending RCW 49.17.180; and  
3 providing an effective date.

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

5 **Sec. 1.** RCW 49.17.180 and 2010 c 8 s 12015 are each amended to  
6 read as follows:

7 (1) Except as provided in RCW 43.05.090, any employer who  
8 willfully or repeatedly violates the requirements of RCW 49.17.060,  
9 of any safety or health standard (~~(promulgated)~~) adopted under the  
10 authority of this chapter, of any existing rule or regulation  
11 governing the conditions of employment (~~(promulgated)~~) adopted by the  
12 department, or of any order issued granting a variance under RCW  
13 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed  
14 seventy thousand dollars for each violation. However, if the state is  
15 required to have a higher maximum penalty to qualify a state plan  
16 under the occupational safety and health administration, then the  
17 maximum civil penalty is the higher maximum penalty required under  
18 the occupational safety and health administration. A minimum penalty  
19 of five thousand dollars shall be assessed for a willful violation;  
20 unless set to a specific higher amount by the federal occupational

1 safety and health administration and this state is required to equal  
2 the higher penalty amount to qualify a state plan.

3 (2) Any employer who has received a citation for a serious  
4 violation of the requirements of RCW 49.17.060, of any safety or  
5 health standard (~~(promulgated)~~) adopted under the authority of this  
6 chapter, of any existing rule or regulation governing the conditions  
7 of employment (~~(promulgated)~~) adopted by the department, or of any  
8 order issued granting a variance under RCW 49.17.080 or 49.17.090 as  
9 determined in accordance with subsection (6) of this section, shall  
10 be assessed a civil penalty not to exceed seven thousand dollars for  
11 each such violation. However, if the state is required to have a  
12 higher maximum penalty to qualify a state plan under the occupational  
13 safety and health administration, then the maximum civil penalty is  
14 the higher maximum penalty required under the occupational safety and  
15 health administration.

16 (3) Any employer who has received a citation for a violation of  
17 the requirements of RCW 49.17.060, of any safety or health standard  
18 (~~(promulgated)~~) adopted under this chapter, of any existing rule or  
19 regulation governing the conditions of employment (~~(promulgated)~~)  
20 adopted by the department, or of any order issued granting a variance  
21 under RCW 49.17.080 or 49.17.090, where such violation is  
22 specifically determined not to be of a serious nature as provided in  
23 subsection (6) of this section, may be assessed a civil penalty not  
24 to exceed seven thousand dollars for each such violation, unless such  
25 violation is determined to be de minimis or, if the state is required  
26 to have a higher maximum penalty to qualify a state plan under the  
27 occupational safety and health administration, then the maximum civil  
28 penalty is the higher maximum penalty required under the occupational  
29 safety and health administration.

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

1 penalty is the higher maximum penalty required under the occupational  
2 safety and health administration.

3 (5) Any employer who violates any of the posting requirements of  
4 this chapter, or any of the posting requirements of rules  
5 (~~promulgated~~) adopted by the department pursuant to this chapter  
6 related to employee or employee representative's rights to notice,  
7 including but not limited to those employee rights to notice set  
8 forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130,  
9 49.17.220(1), and 49.17.240(2), shall be assessed a penalty not to  
10 exceed seven thousand dollars for each such violation. However, if  
11 the state is required to have a higher maximum penalty to qualify a  
12 state plan under the occupational safety and health administration,  
13 then the maximum civil penalty is the higher maximum penalty required  
14 under the occupational safety and health administration. Any employer  
15 who violates any of the posting requirements for the posting of  
16 informational, educational, or training materials under the authority  
17 of RCW 49.17.050(7), may be assessed a penalty not to exceed seven  
18 thousand dollars for each such violation. However, if the state is  
19 required to have a higher maximum penalty to qualify a state plan  
20 under the occupational safety and health administration, then the  
21 maximum civil penalty is the higher maximum penalty required under  
22 the occupational safety and health administration.

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

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

38 (8) Civil penalties imposed under this chapter shall be paid to  
39 the director for deposit in the supplemental pension fund established  
40 by RCW 51.44.033. Civil penalties may be recovered in a civil action

1 in the name of the department brought in the superior court of the  
2 county where the violation is alleged to have occurred, or the  
3 department may utilize the procedures for collection of civil  
4 penalties as set forth in RCW 51.48.120 through 51.48.150.

5 NEW SECTION. **Sec. 2.** This act takes effect January 1, 2018.

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