
SENATE BILL 5090

State of Washington

67th Legislature

2021 Regular Session

By Senators Keiser, Conway, Lias, Lovelett, Nguyen, Saldaña, Stanford, and Wilson, C.; by request of Office of the Governor

Prefiled 01/06/21. Read first time 01/11/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to increasing worker protections; amending RCW
2 49.17.130, 49.17.140, 49.17.160, and 49.17.180; adding a new section
3 to chapter 51.04 RCW; creating a new section; prescribing penalties;
4 and providing an effective date.

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

6 **Sec. 1.** RCW 49.17.130 and 2010 c 8 s 12012 are each amended to
7 read as follows:

8 (1) If upon inspection or investigation, the director, or his or
9 her authorized representative, believes that an employer has violated
10 a requirement of RCW 49.17.060, or any safety or health standard
11 promulgated by rules of the department, or any conditions of an order
12 granting a variance, which violation is such that a danger exists
13 from which there is a substantial probability that death or serious
14 physical harm could result to any employee, the director or his or
15 her authorized representative shall issue a citation and may issue an
16 order immediately restraining any such condition, practice, method,
17 process, or means in the workplace. Any order issued under this
18 section may require such steps to be taken as may be necessary to
19 avoid, correct, or remove such danger and prohibit the employment or
20 presence of any individual in locations or under conditions where
21 such danger exists, except individuals whose presence is necessary to

1 avoid, correct, or remove such danger or to maintain the capacity of
2 a continuous process operation in order that the resumption of normal
3 operations may be had without a complete cessation of operations, or
4 where a cessation of operations is necessary, to permit such to be
5 accomplished in a safe and orderly manner. In addition, if any
6 machine or equipment, or any part thereof, is in violation of a
7 requirement of RCW 49.17.060 or any safety or health standard
8 promulgated by rules of the department, and the operation of such
9 machine or equipment gives rise to a substantial probability that
10 death or serious physical harm could result to any employee, and an
11 order of immediate restraint of the use of such machine or equipment
12 has been issued under this subsection, the use of such machine or
13 equipment is prohibited, and a notice to that effect shall be
14 attached thereto by the director or his or her authorized
15 representative.

16 (2) Whenever the director, or his or her authorized
17 representative, concludes that a condition of employment described in
18 subsection (1) of this section exists in any workplace, he or she
19 shall promptly inform the affected employees and employers of the
20 danger.

21 (3) An employer may contest an order restraining any condition of
22 employment or practice issued under subsection (1) of this section
23 within five working days of the effective date of the order by making
24 an application to the superior court of the county wherein such
25 condition of employment or practice exists for injunctive relief or
26 temporary restraining. Upon the filing of any such petition, the
27 superior courts of the state of Washington shall have jurisdiction to
28 grant such injunctive relief or temporary restraining order pending
29 the outcome of enforcement proceedings pursuant to this chapter.

30 (4) At any time that a citation or a citation and order
31 restraining any condition of employment or practice described in
32 subsection (1) of this section is issued by the director, or his or
33 her authorized representative, he or she may in addition request the
34 attorney general to make an application to the superior court of the
35 county wherein such condition of employment or practice exists for a
36 temporary restraining order or such other relief as appears to be
37 appropriate under the circumstances.

38 **Sec. 2.** RCW 49.17.140 and 2017 c 13 s 1 are each amended to read
39 as follows:

1 (1) If after an inspection or investigation the director or the
2 director's authorized representative issues a citation under the
3 authority of RCW 49.17.120 or 49.17.130, the department, within a
4 reasonable time after the termination of such inspection or
5 investigation, shall notify the employer using a method by which the
6 mailing can be tracked or the delivery can be confirmed of the
7 penalty to be assessed under the authority of RCW 49.17.180 and shall
8 state that the employer has fifteen working days within which to
9 notify the director that the employer wishes to appeal the citation
10 or assessment of penalty. If, within fifteen working days from the
11 communication of the notice issued by the director the employer fails
12 to notify the director that the employer intends to appeal the
13 citation or assessment penalty, and no notice is filed by any
14 employee or representative of employees under subsection ~~((3))~~ (4)
15 of this section within such time, the citation and the assessment
16 shall be deemed a final order of the department and not subject to
17 review by any court or agency.

18 (2) If the director has reason to believe that an employer has
19 failed to correct a violation for which the employer was previously
20 cited and which has become a final order, the director shall notify
21 the employer using a method by which the mailing can be tracked or
22 the delivery can be confirmed of such failure to correct the
23 violation and of the penalty to be assessed under RCW 49.17.180 by
24 reason of such failure, and shall state that the employer has fifteen
25 working days from the communication of such notification and
26 assessment of penalty to notify the director that the employer wishes
27 to appeal the director's notification of the assessment of penalty.
28 If, within fifteen working days from the receipt of notification
29 issued by the director the employer fails to notify the director that
30 the employer intends to appeal the notification of assessment of
31 penalty, the notification and assessment of penalty shall be deemed a
32 final order of the department and not subject to review by any court
33 or agency.

34 (3) If the director has reason to believe that an employer
35 violated an order immediately restraining a condition, practice,
36 method, process, or means in the workplace issued under RCW 49.17.130
37 or this section or a notice prohibiting the use of a machine or
38 equipment to which a notice prohibiting such use has been attached,
39 the director shall notify the employer using a method by which the
40 mailing can be tracked or the delivery can be confirmed of such

1 violation of the order and of the penalty to be assessed under RCW
2 49.17.180 by reason of violation of the order and shall state that
3 the employer has 15 working days from the communication of such
4 notification and assessment of penalty to notify the director that
5 the employer wishes to appeal the director's notification of the
6 assessment of penalty. If, within 15 working days from the receipt of
7 notification issued by the director the employer fails to notify the
8 director that the employer intends to appeal the notification of
9 assessment of penalty, the notification and assessment of penalty
10 shall be deemed a final order of the department and not subject to
11 review by any court or agency.

12 (4) If any employer notifies the director that the employer
13 intends to appeal the citation issued under either RCW 49.17.120 or
14 49.17.130 or notification of the assessment of a penalty issued under
15 subsections (1) or (2) of this section, or if, within fifteen working
16 days from the issuance of a citation under either RCW 49.17.120 or
17 49.17.130 any employee or representative of employees files a notice
18 with the director alleging that the period of time fixed in the
19 citation for the abatement of the violation is unreasonable, the
20 director may reassume jurisdiction over the entire matter, or any
21 portion thereof upon which notice of intention to appeal has been
22 filed with the director pursuant to this subsection. If the director
23 reassumes jurisdiction of all or any portion of the matter upon which
24 notice of appeal has been filed with the director, any
25 redetermination shall be completed and corrective notices of
26 assessment of penalty, citations, or revised periods of abatement
27 completed within a period of thirty working days. The thirty-working-
28 day redetermination period may be extended up to forty-five
29 additional working days upon agreement of all parties to the appeal.
30 The redetermination shall then become final subject to direct appeal
31 to the board of industrial insurance appeals within fifteen working
32 days of such redetermination with service of notice of appeal upon
33 the director. In the event that the director does not reassume
34 jurisdiction as provided in this subsection, the director shall
35 promptly notify the state board of industrial insurance appeals of
36 all notifications of intention to appeal any such citations, any such
37 notices of assessment of penalty and any employee or representative
38 of employees notice of intention to appeal the period of time fixed
39 for abatement of a violation and in addition certify a full copy of
40 the record in such appeal matters to the board. The director shall

1 adopt rules of procedure for the reassumption of jurisdiction under
2 this subsection affording employers, employees, and employee
3 representatives notice of the reassumption of jurisdiction by the
4 director, and an opportunity to object or support the reassumption of
5 jurisdiction, either in writing or orally at an informal conference
6 to be held prior to the expiration of the redetermination period.
7 Except as otherwise provided under subsection (~~((4))~~) (5) of this
8 section, a notice of appeal filed under this section shall stay the
9 effectiveness of any citation or notice of the assessment of a
10 penalty pending review by the board of industrial insurance appeals,
11 but such appeal shall not stay the effectiveness of any order of
12 immediate restraint issued by the director under the authority of RCW
13 49.17.130. The board of industrial insurance appeals shall afford an
14 opportunity for a hearing in the case of each such appellant and the
15 department shall be represented in such hearing by the attorney
16 general and the board shall in addition provide affected employees or
17 authorized representatives of affected employees an opportunity to
18 participate as parties to hearings under this subsection. The board
19 shall thereafter make disposition of the issues in accordance with
20 procedures relative to contested cases appealed to the state board of
21 industrial insurance appeals.

22 Upon application by an employer showing that a good faith effort
23 to comply with the abatement requirements of a citation has been made
24 and that the abatement has not been completed because of factors
25 beyond the employer's control, the director after affording an
26 opportunity for a hearing shall issue an order affirming or modifying
27 the abatement requirements in such citation.

28 (~~((4))~~) (5) An appeal of any violation classified and cited as
29 serious, willful, repeated serious violation, or failure to abate a
30 serious violation does not stay abatement dates and requirements
31 except as follows:

32 (a) An employer may request a stay of abatement for any serious,
33 willful, repeated serious violation, or failure to abate a serious
34 violation in a notice of appeal under subsection (~~((3))~~) (4) of this
35 section;

36 (b) When the director reassumes jurisdiction of an appeal under
37 subsection (~~((3))~~) (4) of this section, it will include the stay of
38 abatement request. The issued redetermination decision will include a
39 decision on the stay of abatement request. The department shall stay
40 the abatement for any serious, willful, repeated serious violation,

1 or failure to abate a serious violation where the department cannot
2 determine that the preliminary evidence shows a substantial
3 probability of death or serious physical harm to workers. The
4 decision on stay of abatement will be final unless the employer
5 renews the request for a stay of abatement in any direct appeal of
6 the redetermination to the board of industrial insurance appeals
7 under subsection ~~((+3+))~~ (4) of this section;

8 (c) The board of industrial insurance appeals shall adopt rules
9 necessary for conducting an expedited review on any stay of abatement
10 requests identified in the employer's notice of appeal, and shall
11 issue a final decision within forty-five working days of the board's
12 notice of filing of appeal. This rule making shall be initiated in
13 2011;

14 (d) Affected employees or their representatives must be afforded
15 an opportunity to participate as parties in an expedited review for
16 stay of abatement;

17 (e) The board shall grant a stay of an abatement for a serious,
18 willful, repeated serious violation, or failure to abate a serious
19 violation where there is good cause for a stay unless based on the
20 preliminary evidence it is more likely than not that a stay would
21 result in death or serious physical harm to a worker;

22 (f) As long as a motion to stay abatement is pending all
23 abatement requirements will be stayed.

24 ~~((+5+))~~ (6) When the board of industrial insurance appeals denies
25 a stay of abatement and abatement is required while the appeal is
26 adjudicated, the abatement process must be the same process as the
27 process required for abatement upon a final order.

28 ~~((+6+))~~ (7) The department shall develop rules necessary to
29 implement subsections ~~((+4+and))~~ (5) and (6) of this section. In an
30 application for a stay of abatement, the department will not grant a
31 stay when it can determine that the preliminary evidence shows a
32 substantial probability of death or serious physical harm to workers.
33 The board will not grant a stay where based on the preliminary
34 evidence it is more likely than not that a stay would result in death
35 or serious physical harm to a worker. This rule making shall be
36 initiated in 2011.

37 **Sec. 3.** RCW 49.17.160 and 2010 c 8 s 12013 are each amended to
38 read as follows:

1 (1)(a) No person shall discharge or in any manner discriminate
2 against any employee because such employee has filed any complaint or
3 instituted or caused to be instituted any proceeding under or related
4 to this chapter, or has testified or is about to testify in any such
5 proceeding or because of the exercise by such employee on behalf of
6 himself or herself or others of any right afforded by this chapter.
7 Prohibited discrimination includes a materially adverse action.

8 (b) For purposes of this section, "materially adverse action" is
9 action which would: (i) Deter a reasonable employee from exercising
10 their rights under this chapter; or (ii) have a chilling effect on a
11 reasonable employee's engagement in protected activities.

12 (2) Any employee who believes that he or she has been discharged
13 or otherwise discriminated against by any person in violation of this
14 section may, within (~~thirty~~) 90 days after such violation occurs,
15 file a complaint with the director alleging such discrimination.
16 (~~Upon receipt of such complaint, the director shall cause such~~
17 ~~investigation to be made as he or she deems appropriate. If upon such~~
18 ~~investigation, the director determines that the provisions of this~~
19 ~~section have been violated, he or [or] she shall bring an action in~~
20 ~~the superior court of the county wherein the violation is alleged to~~
21 ~~have occurred against the person or persons who is alleged to have~~
22 ~~violated the provisions of this section. If the director determines~~
23 ~~that the provisions of this section have not been violated, the~~
24 ~~employee may institute the action on his or her own behalf within~~
25 ~~thirty days of such determination. In any such action the superior~~
26 ~~court shall have jurisdiction, for cause shown, to restrain~~
27 ~~violations of subsection (1) of this section and order all~~
28 ~~appropriate relief including rehiring or reinstatement of the~~
29 ~~employee to his or her former position with back pay.~~

30 ~~(3) Within ninety days of the receipt of the complaint filed~~
31 ~~under this section, the director shall notify the complainant of his~~
32 ~~or her determination under subsection (2) of this section.)) The~~
33 ~~department may, at its discretion, extend the time period on~~
34 ~~recognized equitable principles or due to extenuating circumstances.~~

35 (3) Within 90 days of the receipt of the complaint filed under
36 this section, the director shall notify the complainant and the
37 employer of his or her determination under subsections (4) and (5) of
38 this section unless the matter is otherwise resolved. The department
39 may extend the period by providing advance written notice to the
40 complainant and the employer setting forth good cause for an

1 extension of the period, and specifying the duration of the
2 extension.

3 (4) (a) If the director determines that the provisions of this
4 section have been violated, the director will issue a citation and
5 notice of assessment describing the violation to the employer,
6 ordering all appropriate relief, and assessing a civil penalty. Such
7 relief may include, but is not limited to, the following:

8 (i) Restoring the employee to the position of employment held by
9 the employee when the discrimination occurred, or restoring the
10 employee to an equivalent position with equivalent employment hours,
11 work schedule, benefits, pay, and other terms and conditions of
12 employment; and

13 (ii) Ordering the employer to make payable to the employee
14 earnings that the employee did not receive due to the employer's
15 discriminatory action, including interest of one percent per month on
16 all earnings owed. The earnings and interest owed will be calculated
17 from the first date earnings were owed to the employee.

18 (b) A civil penalty not to exceed the maximum penalty for a
19 serious violation under this chapter may be assessed for the first
20 occurrence. A civil penalty not to exceed the maximum penalty for a
21 repeat violation under this chapter may be assessed for each repeat
22 occurrence. Civil penalties are not contingent upon relief being
23 granted to the worker.

24 (5) If the director finds there is insufficient evidence to
25 determine that the provisions of this section have been violated, the
26 director will issue a letter of closure and the employee may
27 institute the action on his or her own behalf within 30 days of such
28 determination. In any such action the superior court shall have
29 jurisdiction, for cause shown, to restrain violations of subsection
30 (1) of this section and order all appropriate relief including
31 rehiring or reinstatement of the employee to his or her former
32 position with back pay.

33 (6) The department must notify an employer and an employee of a
34 citation and notice of assessment issued under subsection (4) of this
35 section using a method by which the mailing can be tracked or the
36 delivery can be confirmed. Citations and notices of assessments shall
37 state that the employer has 15 working days within which to notify
38 the department that the employer wishes to appeal the citation. If,
39 within 15 working days from the communication of the notice issued by
40 the director, the employer fails to notify the department that the

1 employer intends to appeal the citation, the citation shall be deemed
2 a final order of the department and not subject to review by any
3 court or agency.

4 (7) If an employer notifies the department of an appeal, the
5 department may reassume jurisdiction according to the timeline under
6 RCW 49.17.140(4). The redetermination shall become final subject to
7 direct appeal to the board of industrial insurance appeals within 15
8 working days of such redetermination with service of notice of appeal
9 upon the director. In the event that the director does not reassume
10 jurisdiction as provided in this subsection, the director shall
11 promptly notify the state board of industrial insurance appeals of
12 all notifications of intention to appeal the citation and notice of
13 assessment and certify a full copy of the record in such appeal
14 matters to the board. The board of industrial insurance appeals shall
15 afford an opportunity for a hearing in the case of each such
16 appellant and the department shall be represented in such hearing by
17 the attorney general and the board shall in addition provide the
18 complainant an opportunity to participate as a party to hearings
19 under this subsection. The board shall thereafter make disposition of
20 the issues in accordance with procedures relative to contested cases
21 appealed to the state board of industrial insurance appeals. A notice
22 of appeal filed under this section shall stay the effectiveness of
23 any citation or notice of assessment except orders of reinstatement
24 pending review by the board of industrial insurance appeals.

25 (8) Civil penalties imposed under this section shall be paid to
26 the director for deposit in the supplemental pension fund established
27 in RCW 51.44.033.

28 (9) Collections of amounts owed for unpaid citations and notices
29 of assessment will be handled pursuant to the procedures outlined in
30 RCW 51.48.120 through 51.48.150.

31 (10) Nothing in this section diminishes the rights, privileges,
32 or remedies of any employee under any federal or state law or under
33 any collective bargaining agreement. The department and complainant
34 may pursue remedies in superior court that are outside the board of
35 industrial insurance appeals' jurisdiction.

36 **Sec. 4.** RCW 49.17.180 and 2018 c 128 s 1 are each amended to
37 read as follows:

38 (1) Except as provided in RCW 43.05.090, any employer who
39 willfully or repeatedly violates the requirements of RCW 49.17.060,

1 of any safety or health standard adopted under the authority of this
2 chapter, of any existing rule or regulation governing the conditions
3 of employment adopted by the department, or of any order issued
4 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed
5 a civil penalty not to exceed seventy thousand dollars for each
6 violation. However, if the state is required to have a higher maximum
7 penalty to qualify a state plan under the occupational safety and
8 health administration, then the maximum civil penalty is the higher
9 maximum penalty required under the occupational safety and health
10 administration. A minimum penalty of five thousand dollars shall be
11 assessed for a willful violation; unless set to a specific higher
12 amount by the federal occupational safety and health administration
13 and this state is required to equal the higher penalty amount to
14 qualify a state plan.

15 (2) Any employer who has received a citation for a serious
16 violation of the requirements of RCW 49.17.060, of any safety or
17 health standard adopted under the authority of this chapter, of any
18 existing rule or regulation governing the conditions of employment
19 adopted by the department, or of any order issued granting a variance
20 under RCW 49.17.080 or 49.17.090 as determined in accordance with
21 subsection (~~((6))~~) (7) of this section, shall be assessed a civil
22 penalty not to exceed seven thousand dollars for each such violation.
23 However, if the state is required to have a higher maximum penalty to
24 qualify a state plan under the occupational safety and health
25 administration, then the maximum civil penalty is the higher maximum
26 penalty required under the occupational safety and health
27 administration.

28 (3) Any employer who has received a citation for a violation of
29 the requirements of RCW 49.17.060, of any safety or health standard
30 adopted under this chapter, of any existing rule or regulation
31 governing the conditions of employment adopted by the department, or
32 of any order issued granting a variance under RCW 49.17.080 or
33 49.17.090, where such violation is specifically determined not to be
34 of a serious nature as provided in subsection (~~((6))~~) (7) of this
35 section, may be assessed a civil penalty not to exceed seven thousand
36 dollars for each such violation, unless such violation is determined
37 to be de minimis or, if the state is required to have a higher
38 maximum penalty to qualify a state plan under the occupational safety
39 and health administration, then the maximum civil penalty is the

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

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

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

27 (6) Any employer who violates any of the posting requirements of
28 this chapter, or any of the posting requirements of rules adopted by
29 the department pursuant to this chapter related to employee or
30 employee representative's rights to notice, including but not limited
31 to those employee rights to notice set forth in RCW 49.17.080,
32 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2),
33 shall be assessed a penalty not to exceed seven thousand dollars for
34 each such violation. However, if the state is required to have a
35 higher maximum penalty to qualify a state plan under the occupational
36 safety and health administration, then the maximum civil penalty is
37 the higher maximum penalty required under the occupational safety and
38 health administration. Any employer who violates any of the posting
39 requirements for the posting of informational, educational, or
40 training materials under the authority of RCW 49.17.050(7), may be

1 assessed a penalty not to exceed seven thousand dollars for each such
2 violation. However, if the state is required to have a higher maximum
3 penalty to qualify a state plan under the occupational safety and
4 health administration, then the maximum civil penalty is the higher
5 maximum penalty required under the occupational safety and health
6 administration.

7 ~~((6))~~ (7) For the purposes of this section, a serious violation
8 shall be deemed to exist in a workplace if there is a substantial
9 probability that death or serious physical harm could result from a
10 condition which exists, or from one or more practices, means,
11 methods, operations, or processes which have been adopted or are in
12 use in such workplace, unless the employer did not, and could not
13 with the exercise of reasonable diligence, know of the presence of
14 the violation.

15 ~~((7))~~ (8) The director, or his or her authorized
16 representatives, shall have authority to assess all civil penalties
17 provided in this section, giving due consideration to the
18 appropriateness of the penalty with respect to the number of affected
19 employees of the employer being charged, the gravity of the
20 violation, the size of the employer's business, the good faith of the
21 employer, and the history of previous violations.

22 ~~((8))~~ (9) Civil penalties imposed under this chapter shall be
23 paid to the director for deposit in the supplemental pension fund
24 established by RCW 51.44.033. Civil penalties may be recovered in a
25 civil action in the name of the department brought in the superior
26 court of the county where the violation is alleged to have occurred,
27 or the department may utilize the procedures for collection of civil
28 penalties as set forth in RCW 51.48.120 through 51.48.150.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.04
30 RCW to read as follows:

31 (1) In the event of a state of emergency as defined in RCW
32 43.06.010(12), the director is authorized to expend up to two percent
33 per year of the net premiums earned in the accident fund in the prior
34 fiscal year for the purpose of a safety grant program so long as the
35 assets of the accident fund and pension reserve fund were at least 10
36 percent in excess of their funded liabilities in the fiscal quarter
37 immediately preceding the state of emergency proclamation.

38 (2) The safety grant program shall provide one-time grants to
39 employers to purchase equipment, gear, or make capital improvements

1 so long as the purchase is not covered by another grant, government
2 program, or insurance contract. The department may require matching
3 funds from employers. Employers must apply for grants using an
4 application developed by the department.

5 (3) Employers shall apply the safety grants to purchases of
6 equipment, gear, or capital costs to meet any new safety and health
7 requirements related to the emergency that are required before they
8 are permitted to continue or resume business operations.

9 (4) An appropriation is not required for expenditures under this
10 section.

11 (5) Only employers who pay premiums to the state fund as defined
12 in RCW 51.08.175, are not self-insured as defined in RCW 51.08.173,
13 and have 25 or fewer full-time equivalent employees are eligible for
14 funding under this section.

15 (6) The department may adopt rules as necessary to implement this
16 section.

17 NEW SECTION. **Sec. 6.** The department of labor and industries may
18 adopt rules as necessary to implement this act.

19 NEW SECTION. **Sec. 7.** Section 3 of this act takes effect July 1,
20 2022.

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