S-3522.4

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**SENATE BILL 6419**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Ranker, Nelson, Rolfes, Frockt, and Chase

AN ACT Relating to air pollution emission control devices; amending RCW 70.94.015; reenacting and amending RCW 43.21B.300; adding new sections to chapter 70.120A RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds that a key component of preventing unhealthy air pollution levels is the air pollution emission control devices installed on all new vehicles sold or registered in the state. Under federal and state clean air laws, motor vehicle manufacturers must demonstrate that the vehicles they produce meet applicable emission standards and certify that the vehicles and all emission control devices are produced in compliance with these standards. A manufacturer providing a false certification and making large numbers of vehicle sales in the state would be responsible for the emission of large quantities of excess air pollutants, threatening public health and violating ambient air quality standards, and harming owners of the vehicles through lost resale value and the cost and inconvenience of obtaining repairs or other methods of ensuring the vehicle meets applicable emission control requirements.

Therefore, it is the intent and purpose of this act to ensure that the entire responsibility for correcting such failures is placed upon the vehicle manufacturer and that there are adequate remedies to protect public health, to fully compensate vehicle owners for their damages, and to deter such violations in the future.

NEW SECTION. **Sec.**  A new section is added to chapter 70.120A RCW to read as follows:

In addition to or as an alternate to any other penalty provided by law, a person who violates any of the provisions of this chapter or the rules adopted pursuant to this chapter shall incur a civil penalty in an amount not to exceed ten thousand dollars per vehicle. The penalties provided in this section must be imposed pursuant to RCW 43.21B.300.

**Sec.**  RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, ((~~and~~)) RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100, and section 2 of this act, which shall be credited to the motor vehicle emission control subaccount created in RCW 70.94.015(4).

**Sec.**  RCW 70.94.015 and 1998 c 321 s 33 are each amended to read as follows:

(1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW ((~~70.94.650, 70.94.660, 82.44.020(2), and 82.50.405~~)) 70.94.6528 and 70.94.6534 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of chapters 70.94 and 70.120 RCW.

(2)(a) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

(b) Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

((~~(a)~~)) (i) The level and extent of air quality problems within such authority's jurisdiction;

((~~(b)~~)) (ii) The costs associated with implementing air pollution regulatory programs by such authority; and

((~~(c)~~)) (iii) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7). Moneys in the account may be spent only after appropriation.

(4) The motor vehicle emission control subaccount of the air pollution control account is created in the custody of the state treasurer. Except for actions brought pursuant to chapter 19.86 RCW, all receipts collected by or on behalf of the state or other authorities for violations of chapter 70.120A RCW must be deposited into the account. Moneys in the account may be spent only after appropriation and may be spent to support compliance and enforcement of chapter 70.120 RCW, to mitigate and respond to adverse public health and environmental effects of increased air pollution emissions from motor vehicles, to assist motor vehicle owners to obtain full and fair remedies for damages caused by vehicle manufacturer violations of chapter 70.120A RCW, and to assist motor vehicle dealers who may suffer economic damages or incur legal fees and costs in proceedings related to vehicle manufacturer violations of chapter 70.120A RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 70.120A RCW to read as follows:

(1) A motor vehicle manufacturer may not falsely certify that the vehicles it produces meet applicable emission standards or otherwise misrepresent that the vehicles meet applicable emission standards.

(2) The legislature finds that a violation of this section is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Such a violation is not reasonable in relation to the development and preservation of business, is an unfair and deceptive act in trade or commerce, and is an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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