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SENATE BILL 6395

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State of Washington

55th Legislature

1998 Regular Session

By Senators Horn, Schow and Anderson

Read first time 01/16/98. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to civil penalties for accident prevention program  
2 violations; and amending RCW 49.17.180.

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

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

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

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 health  
17 standard promulgated under the authority of this chapter, of any  
18 existing rule or regulation governing the conditions of employment  
19 promulgated by the department, or of any order issued granting a

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

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

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

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

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

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

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

15       (9) A civil penalty may not be assessed against an employer for  
16 failure to address a hazard within an accident prevention program  
17 unless: (a) There is a separate specific standard in rule or variance  
18 addressing the subject matter of the hazard; or (b) as a result of the  
19 separate recognized hazard, the employer has been found to be in  
20 violation of RCW 49.17.060.

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