

Enrolled
Senate Bill 556

Sponsored by Senator BEYER, Representative GILLIAM (at the request of Russian-American Builders' Association)

CHAPTER

AN ACT

Relating to occupational safety violation procedures; creating new provisions; and amending ORS 654.078 and 654.086.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 654.078 is amended to read:

654.078. (1) An employer may contest a citation, a proposed assessment of civil penalty and the period of time fixed for correction of a violation, or any of these, by filing with the Department of Consumer and Business Services, within [20] **30** days after receipt of the citation, notice or order, a written request for a hearing before the Workers' Compensation Board. Such a request need not be in any particular form, but shall specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

(2) An affected employee or representative of such employees may contest the time fixed for correction of a violation by filing with the department, within [20] **30** days after the receipt by the employer of the citation, notice or order which fixes such time for correction, a written request for a hearing before the board. Such a request need not be in any particular form, but shall specify the violation in question and the grounds upon which the employee considers the correction period to be unreasonable.

(3) A hearing on any question relating to the validity of a citation or the proposed civil penalty to be assessed therefor shall not be granted unless a request for hearing is filed by the employer within the period specified in subsection (1) of this section. If a request for hearing is not so filed, the citation and the assessment of penalty as proposed shall be a final order of the department and shall not be subject to review by any agency or court.

(4) A hearing relating to the reasonableness of the time prescribed for the correction of a violation shall not be granted, except for good cause shown, unless a request for hearing is filed within the period specified in subsections (1) and (2) of this section. If a request for hearing is not so filed the time fixed for correction of the violation shall be a final order of the department and shall not be subject to review by any agency or court.

(5) Where an employer contests, in good faith and not solely for delay or avoidance of penalties, the period of time fixed for correction of a nonserious violation, such period of time shall not run between the date the request for hearing is filed and the date the order of the department becomes final by operation of law or on appeal.

(6) Where an employer or employee contests the period of time fixed for correction of a serious violation, any hearing on that issue shall be conducted as soon as possible and shall take precedence

over other hearings conducted by the board under the provisions of ORS 654.001 to 654.295 and 654.750 to 654.780.

(7) Where informal disposition of a contested case is made by stipulation, agreed settlement or a consent order, such stipulation, settlement or order shall not be pleaded or admissible in evidence as an admission or confession in any criminal prosecution or in any other civil proceeding that may be instituted against the employer, except in the case of a civil proceeding brought to enforce such stipulation, settlement or order.

SECTION 2. ORS 654.086 is amended to read:

654.086. (1) The Director of the Department of Consumer and Business Services or the authorized representative of the director is hereby granted the authority to assess civil penalties as provided by this section for violation of the requirements of any state occupational safety or health statute or the lawful rules, standards or orders adopted thereunder as follows:

(a) Any employer who receives a citation for a serious violation of such requirements shall be assessed a civil penalty of not less than \$50 and not more than \$7,000 for each such violation.

(b) Any employer who receives a citation for a violation of such requirements, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of not more than \$7,000 for each such violation.

(c) Any employer who willfully or repeatedly violates such requirements may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for a willful violation.

(d) Any employer who receives a citation, as provided in ORS 654.071 (4), for failure to correct a violation may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.

(e) Any employer who knowingly makes any false statement, representation or certification regarding the correction of a violation shall be assessed a civil penalty of not less than \$100 and not more than \$2,500.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of ORS 654.001 to 654.295 and 654.750 to 654.780, may be assessed a civil penalty of not more than \$1,000 for each violation.

(g) Any person who violates the provisions of ORS 654.082 (2) or (3) shall be assessed a civil penalty of not less than \$100 and not more than \$5,000 for each such violation.

(h) Notwithstanding paragraph (b) of this subsection, an employer who substantially fails to comply with ORS 654.174 (1) shall be assessed a civil penalty of not less than \$250 and not more than \$2,500 for each such violation.

(i) Any insurer or self-insured employer who violates any provision of ORS 654.097, or any rule or order carrying out ORS 654.097, shall be assessed a civil penalty of not more than \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate offense.

(2) For the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780 a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within [10] 20 days after the order becomes final, it constitutes a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(4) Except as provided in subsection (5) of this section, civil penalties collected under ORS 654.001 to 654.295 and 654.750 to 654.780 shall be paid into the Consumer and Business Services Fund.

(5) Civil penalties assessed under this section for a violation of ORS 658.750 shall be credited to the Farmworker Housing Development Account of the Oregon Housing Fund.

SECTION 3. (1) The amendments to ORS 654.078 by section 1 of this 2007 Act apply to citations, notices and orders received on or after the effective date of this 2007 Act.

(2) The amendments to ORS 654.086 by section 2 of this 2007 Act apply to orders assessing civil penalties issued on or after the effective date of this 2007 Act.

Passed by Senate April 4, 2007

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Secretary of Senate

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President of Senate

Passed by House May 31, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State