

# Enrolled Senate Bill 92

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CHAPTER .....

AN ACT

Relating to penalty limits for a violation of occupational safety and health law; amending ORS 654.003, 654.086 and 654.120.

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

**SECTION 1.** ORS 654.003 is amended to read:

654.003. The purpose of the Oregon Safe Employment Act is to *[assure]* **ensure** as far as possible safe and healthful working conditions for every working *[man and woman]* **person** in Oregon, to preserve our human resources and to reduce the substantial burden, in terms of lost production, wage loss, medical expenses, disability compensation payments and human suffering, that is created by occupational injury and disease. To accomplish this purpose the Legislative Assembly intends to provide a procedure that will:

(1) Encourage employers and employees to reduce the number of occupational safety and health hazards and to institute new programs and improve existing programs for providing safe and healthful working conditions.

(2) Establish a coordinated program of worker and employer education, health and safety consultative services, demonstration projects and research to assist workers and their employers in preventing occupational injury and disease, whatever the cause.

(3) Authorize the Director of the Department of Consumer and Business Services and the designees of the director to set reasonable, mandatory, occupational safety and health standards for all employments and places of employment.

(4) Provide an effective program, under the director, to enforce all laws, regulations, rules and standards adopted for the protection of the life, safety and health of employees, and in so doing, predominantly prioritize inspections of places of employment to first focus enforcement activities upon places of employment that the director reasonably believes to be the most unsafe.

(5) Establish appropriate reporting and research procedures that will help achieve the objectives of the Oregon Safe Employment Act, identify occupational hazards and unsafe and unhealthy working conditions, and describe the nature of the occupational safety and health problem.

(6) Assure that Oregon assumes fullest responsibility, in accord with the federal Occupational Safety and Health Act of 1970 (**29 U.S.C. 651 et seq.**) *[(Public Law 91-596)]*, for the development, administration and enforcement of safety and health laws and standards.

**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*] **has** the authority to assess civil penalties as provided by this section for violation of the requirements of [*any*] a state occupational safety or health statute or the lawful rules, standards or orders adopted [*thereunder as follows:*] **under the statute. In setting maximum penalties, the director or the director's representative shall consider, but may not exceed, the maximum penalties under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).**

(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 **the minimum penalty under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)** [*\$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*] **the** 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, 654.412 to 654.423 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, 654.412 to 654.423 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 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, 654.412 to 654.423 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.** ORS 654.120 is amended to read:

654.120. (1) The Department of Consumer and Business Services shall maintain, for a reasonable time, records of all inspections, investigations, employee complaints, employer reports, citations, hearings, proceedings and any other matters necessary for achieving the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780.

(2) Each employer shall keep records, in the manner prescribed by the Director of the Department of Consumer and Business Services, of work-related deaths and serious injuries and illnesses, and of such other relevant occupational safety and health matters as are reasonably necessary for achieving the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780. Each employer shall notify the director forthwith of the work-related death of any employee of the employer, and shall make such other reports as the director may reasonably prescribe by rule or order.

(3) All information reported to or otherwise obtained by the department in connection with any matter or proceeding under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 which contains or which might reveal a trade secret referred to in section 1905, title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other officers or employees of the department or other agencies concerned with carrying out their duties under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 or when relevant in any proceeding under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 or under 654.991. In any such matter or proceeding the department, the other state agency, the Administrative Law Judge, the Workers' Compensation Board or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(4) The director will make reports to the Secretary of Labor of the United States in such form and containing such information as the Secretary of Labor shall from time to time require pursuant to the Occupational Safety and Health Act of 1970 [(Public Law 91-596)] (29 U.S.C. 651 et seq.).

(5) Nothing contained in ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 shall relieve an employer from making such reports to the Secretary of Labor of the United States as may be required by federal law.

**Passed by Senate March 30, 2017**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 25, 2017**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2017

**Approved:**

.....M.,....., 2017

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2017

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Dennis Richardson, Secretary of State