

Senate Bill 92

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows Director of Department of Consumer and Business Services to set civil penalties for violations of state occupational health and safety statutes, not to exceed maximum penalties or fall below certain minimum penalties under federal Occupational Safety and Health Act of 1970.

A BILL FOR AN ACT

1
2 Relating to penalty limits for a violation of occupational safety and health law; amending ORS
3 654.003, 654.086 and 654.120.

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

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

6 654.003. The purpose of the Oregon Safe Employment Act is to [*assure*] **ensure** as far as possible
7 safe and healthful working conditions for every working [*man and woman*] **person** in Oregon, to
8 preserve our human resources and to reduce the substantial burden, in terms of lost production,
9 wage loss, medical expenses, disability compensation payments and human suffering, that is created
10 by occupational injury and disease. To accomplish this purpose the Legislative Assembly intends to
11 provide a procedure that will:

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 2.** ORS 654.086 is amended to read:

2 654.086. (1) The Director of the Department of Consumer and Business Services or the author-
 3 ized representative of the director [*is hereby granted*] **has** the authority to assess civil penalties as
 4 provided by this section for violation of the requirements of [*any*] **a** state occupational safety or
 5 health statute or the lawful rules, standards or orders adopted [*thereunder as follows:*] **under the**
 6 **statute. In setting maximum penalties, the director or the director's representative shall**
 7 **consider, but may not exceed, the maximum penalties under the federal Occupational Safety**
 8 **and Health Act of 1970 (29 U.S.C. 651 et seq.).**

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

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

14 (c) Any employer who willfully or repeatedly violates such requirements may be assessed a civil
 15 penalty of [*not more than \$70,000 for each violation, but*] not less than **the minimum penalty under**
 16 **the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)** [*\$5,000 for a*
 17 *willful violation*].

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

21 (e) Any employer who knowingly makes any false statement, representation or certification re-
 22 garding the correction of a violation shall be assessed a civil penalty of not less than \$100 [*and not*
 23 *more than \$2,500*].

24 (f) Any employer who violates any of the posting requirements, as prescribed under the pro-
 25 visions of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, may be assessed a civil
 26 penalty [*of not more than \$1,000*] for each violation.

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

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

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

36 (2) For the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 a se-
 37 rious violation exists in a place of employment if there is a substantial probability that death or
 38 serious physical harm could result from a condition which exists, or from one or more practices,
 39 means, methods, operations or processes which have been adopted or are in use, in such place of
 40 employment unless the employer did not, and could not with the exercise of reasonable diligence,
 41 know of the presence of the violation.

42 (3) When an order assessing a civil penalty becomes final by operation of law or on appeal,
 43 unless the amount of penalty is paid within 20 days after the order becomes final, it constitutes a
 44 judgment and may be recorded with the county clerk in any county of this state. The clerk shall
 45 thereupon record the name of the person incurring the penalty and the amount of the penalty in the

1 County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon
2 the title to any interest in property owned by the person against whom the order is entered, and
3 execution may be issued upon the order in the same manner as execution upon a judgment of a court
4 of record.

5 (4) Except as provided in subsection (5) of this section, civil penalties collected under ORS
6 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 shall be paid into the Consumer and
7 Business Services Fund.

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

10 **SECTION 3.** ORS 654.120 is amended to read:

11 654.120. (1) The Department of Consumer and Business Services shall maintain, for a reasonable
12 time, records of all inspections, investigations, employee complaints, employer reports, citations,
13 hearings, proceedings and any other matters necessary for achieving the purposes of ORS 654.001
14 to 654.295, 654.412 to 654.423 and 654.750 to 654.780.

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

21 (3) All information reported to or otherwise obtained by the department in connection with any
22 matter or proceeding under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 which
23 contains or which might reveal a trade secret referred to in section 1905, title 18, United States
24 Code, shall be considered confidential for the purposes of that section, except that such information
25 may be disclosed to other officers or employees of the department or other agencies concerned with
26 carrying out their duties under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 or
27 when relevant in any proceeding under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to
28 654.780 or under 654.991. In any such matter or proceeding the department, the other state agency,
29 the Administrative Law Judge, the Workers' Compensation Board or the court shall issue such or-
30 ders as may be appropriate to protect the confidentiality of trade secrets.

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

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

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