
SENATE BILL 5410

State of Washington 52nd Legislature 1991 Regular Session

By Senators Hansen, Newhouse, Barr and Bailey.

Read first time January 30, 1991. Referred to Committee on Agriculture & Water Resources.

1 AN ACT Relating to civil infractions; amending RCW 7.80.100,
2 15.58.260, 49.17.180, and 51.48.090; reenacting and amending RCW
3 17.21.050; and declaring an emergency.

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

5 **Sec. 1.** RCW 7.80.100 and 1987 c 456 s 18 are each amended to read
6 as follows:

7 (1) A hearing held for the purpose of contesting the determination
8 that a civil infraction has been committed shall be without a jury and
9 shall be recorded in the manner provided for in courts of limited
10 jurisdiction.

11 (2) The court may consider the notice of civil infraction and any
12 other written report made under oath submitted by the enforcement
13 officer who issued the notice or whose written statement was the basis
14 for the issuance of the notice in lieu of the officer's personal
15 appearance at the hearing. The person named in the notice may request

1 the court for issuance of subpoena of witnesses, including the
2 enforcement officer who issued the notice, and has the right to present
3 evidence and examine witnesses present in court.

4 (3) The burden of proof is upon the state to establish the
5 commission of the civil infraction by a preponderance of the evidence.
6 However, for purposes of enforcing the provisions of chapters 15.58,
7 17.21, 49.17, 49.30, and 51.48 RCW, the burden of proof is upon the
8 state to establish the commission of the civil infraction by clear and
9 convincing evidence.

10 (4) After consideration of the evidence and argument, the court
11 shall determine whether the civil infraction was committed. Where it
12 has not been established that the civil infraction was committed, an
13 order dismissing the notice shall be entered in the court's records.
14 Where it has been established that the civil infraction was committed,
15 an appropriate order shall be entered in the court's records.

16 (5) An appeal from the court's determination or order shall be to
17 the superior court in the manner provided by the Rules for Appeal of
18 Decisions of Courts of Limited Jurisdiction. The decision of the
19 superior court is subject only to discretionary review pursuant to the
20 Rules of Appellate Procedure.

21 **Sec. 2.** RCW 15.58.260 and 1989 c 380 s 23 are each amended to read
22 as follows:

23 The director is authorized to impose a civil penalty and/or deny,
24 suspend, or revoke any license, registration or permit provided for in
25 this chapter subject to ~~((a hearing and in conformance with))~~ the
26 provisions of chapter ~~((34.05))~~ 7.80 RCW ~~((Administrative Procedure~~
27 ~~Act))~~ in any case in which the director finds there has been a failure
28 or refusal to comply with the provisions of this chapter or rules
29 adopted under this chapter.

1 **Sec. 3.** RCW 17.21.050 and 1989 c 380 s 36 and 1989 c 175 s 58 are
2 each reenacted and amended to read as follows:

3 All hearings for the imposition of a civil penalty and/or the
4 suspension, denial, or revocation of a license issued under the
5 provisions of this chapter shall be subject to the provisions of
6 chapter ~~((34.05))~~ 7.80 RCW ~~((concerning adjudicative proceedings))~~.

7 **Sec. 4.** RCW 49.17.180 and 1986 c 20 s 2 are each amended to read
8 as follows:

9 (1) Any employer who willfully or repeatedly violates the
10 requirements of RCW 49.17.060, of any safety or health standard
11 promulgated under the authority of this chapter, of any existing rule
12 ~~((or regulation))~~ governing the conditions of employment
13 ~~((promulgated))~~ adopted by the department, or of any order issued
14 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a
15 civil penalty not to exceed fifty thousand dollars for each violation.

16 (2) Any employer who has received a citation for a serious
17 violation of the requirements of RCW 49.17.060, of any safety or health
18 standard promulgated under the authority of this chapter, of any
19 existing rule ~~((or regulation))~~ governing the conditions of employment
20 ~~((promulgated))~~ adopted by the department, or of any order issued
21 granting a variance under RCW 49.17.080 or 49.17.090 as determined in
22 accordance with subsection (6) of this section, shall be assessed a
23 civil penalty not to exceed five thousand dollars for each such
24 violation.

25 (3) Any employer who has received a citation for a violation of the
26 requirements of RCW 49.17.060, of any safety or health standard
27 promulgated under this chapter, of any existing rule ~~((or regulation))~~
28 governing the conditions of employment ~~((promulgated))~~ adopted by the
29 department, or of any order issued granting a variance under RCW

1 49.17.080 or 49.17.090, where such violation is specifically determined
2 not to be of a serious nature as provided in subsection (6) of this
3 section, may be assessed a civil penalty not to exceed three thousand
4 dollars for each such violation, unless such violation is determined to
5 be de minimis.

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

15 (5) Any employer who violates any of the posting requirements of
16 this chapter, or any of the posting requirements of rules
17 (~~promulgated~~) adopted by the department pursuant to this chapter
18 related to employee or employee representative's rights to notice,
19 including but not limited to those employee rights to notice set forth
20 in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and
21 49.17.240(2), shall be assessed a penalty not to exceed three thousand
22 dollars for each such violation. Any employer who violates any of the
23 posting requirements for the posting of informational, educational, or
24 training materials under the authority of RCW 49.17.050(7), may be
25 assessed a penalty not to exceed one thousand five hundred dollars for
26 each such violation.

27 (6) For the purposes of this section, a serious violation shall be
28 deemed to exist in a work place if there is a substantial probability
29 that death or serious physical harm could result from a condition which
30 exists, or from one or more practices, means, methods, operations, or

1 processes which have been adopted or are in use in such work place,
2 unless the employer did not, and could not with the exercise of
3 reasonable diligence, know of the presence of the violation.

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

11 (8) Civil penalties imposed under this chapter shall be paid to the
12 director for deposit in the supplemental pension fund established by
13 RCW 51.44.033. Civil penalties may be recovered in a civil action in
14 the name of the department brought in the superior court of the county
15 where the violation is alleged to have occurred, or the department may
16 utilize the procedures for collection of civil penalties as set forth
17 in chapter 7.80 RCW ((51.48.120 through 51.48.150)). For purposes of
18 this chapter, the burden is upon the state to establish the commission
19 of the civil infraction by clear and convincing evidence.

20 **Sec. 5.** RCW 51.48.090 and 1961 c 23 s 51.48.090 are each amended
21 to read as follows:

22 Civil penalties to the state under this title shall be collected by
23 civil action, as set forth in chapter 7.80 RCW, in the name of the
24 state and paid into the accident fund unless a different fund is
25 designated.

26 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and shall take

1 effect immediately.