
SENATE BILL 5943

State of Washington

56th Legislature

1999 Regular Session

By Senators Kline, Patterson and Costa

Read first time 02/17/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to the creation of the Washington citizen
2 enforcement act; and adding a new chapter to Title 7 RCW.

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

4 NEW SECTION. **Sec. 1.** It is the policy of the state of Washington
5 that laws enacted to protect public health, natural resources, and the
6 environment be enforced. Limitations on governmental abilities to
7 enforce those laws, due to the high volume of activities to which
8 health and environmental standards apply and the finite nature of
9 governmental resources, are recognized. The purpose of this chapter is
10 to empower citizens to supplement government enforcement of those laws.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires otherwise.

13 (1) "Citizen" means any person or persons.

14 (2) "Environmental or public health standard or requirement" means:

15 (a) Any condition placed in or on the issuance of any permit or
16 authorization under chapter 43.21C RCW;

17 (b) Any prohibition or requirement adopted under chapters 15.58,
18 35.66, 35A.63, 36.70, 36.70A, 58.17, 70.94, 70.95, 70.105, 75.20,

1 76.09, 90.03, 90.14, 90.44, 90.48, 90.58, and 90.76 RCW, or other
2 zoning or land use law that has been enacted or adopted for the purpose
3 of protecting sensitive areas, natural resources, or human health.

4 (3) "Person" means an individual, corporation, partnership,
5 association, commission, or other governmental entity.

6 NEW SECTION. **Sec. 3.** (1)(a) Except as provided in subsection (2)
7 of this section, any citizen may commence a civil action on his or her
8 own behalf against any person who is alleged to have violated or to be
9 in violation of:

10 (i) An environmental or public health standard or requirement; or

11 (ii) An order issued by a governmental agency with respect to an
12 environmental or health standard or requirement.

13 (b) The civil action may be brought in the superior court for the
14 county in which the alleged violation occurred or occurs, or as
15 otherwise provided in chapter 4.12 RCW or RCW 36.01.050. The superior
16 court has jurisdiction to:

17 (i) Enforce the environmental or public health standard,
18 requirement, or order;

19 (ii) Grant other injunctive relief as justice may require;

20 (iii) Assess civil penalties consistent with subsection (4) of this
21 section; and

22 (iv) Award costs of litigation, including reasonable attorneys' and
23 expert witness fees consistent with subsection (5) of this section.

24 (2) No action may be commenced under subsection (1) of this section
25 unless:

26 (a) There is evidence of more than one day or instance of
27 violation;

28 (b) The plaintiff has given sixty days' notice by certified mail or
29 personal service of the violation to:

30 (i) The alleged violator of the standard or requirement;

31 (ii) The attorney general of Washington; and

32 (iii) The agency with primary responsibility for enforcement of the
33 standard or requirement. The notice must be specific enough to allow
34 the alleged violator to identify the actions, conduct, or circumstances
35 that will be the subject of the action. The notice is considered
36 served on the date it is mailed, or date of actual service, whichever
37 is earlier. An action under subsection (1) of this section may be
38 brought immediately upon giving notice only if the violations present

1 a substantial risk of immediate and irreparable endangerment to human
2 health or the environment.

3 (c) An agency with authority to enforce the standard or requirement
4 alleged to be violated has not already commenced an administrative or
5 in-court action. However, an action may be brought under subsection
6 (1) of this section if the agency action:

7 (i) Does not result in a cessation of all alleged violations;

8 (ii) Imposes a monetary penalty that is less than the violator's
9 economic benefit from the violations; or

10 (iii) Allows significant opportunity for public participation.

11 (3) Whenever an action is brought under subsection (1) of this
12 section, the plaintiff shall serve, by first class mail, copies of the
13 complaint on the attorney general of Washington and the agency with
14 primary responsibility for enforcement of the standard or requirement
15 alleged to be violated.

16 (4) The superior court, upon finding violation of an environmental
17 or public health standard or requirement, shall assess a civil penalty
18 against the violator in an amount not to exceed ten thousand dollars
19 per violation per day of violation unless justice so requires. In
20 determining an appropriate penalty, the court shall consider the
21 seriousness of the violations, any good-faith efforts to comply, the
22 duration of the violations, the economic benefit of the violations to
23 the violator, and such other matters as justice may require. Unless
24 injustice would result, the court shall assess a civil penalty greater
25 than the economic benefit of the violations to the violator. Civil
26 penalties assessed under this section may be paid to the state's
27 general fund, the operating budget of the agency with primary
28 responsibility for enforcement of the standard or requirement violated,
29 or an environmental restoration or enhancement project proposed by the
30 plaintiff as the court determines appropriate.

31 (5) Unless injustice would result, the court, in issuing any final
32 order in any action brought under this section, shall award costs of
33 litigation, including reasonable attorneys' and expert witness fees, to
34 a prevailing or substantially prevailing party, payable by the opposing
35 party or parties.

36 (6) Nothing in this section shall restrict any right which any
37 person or class of persons may have under any statute or common law to
38 seek enforcement of any standard or requirement, or to seek any other
39 relief.

1 NEW SECTION. **Sec. 4.** Nothing in this chapter alters or diminishes
2 any legal obligation otherwise required in common law or by statute,
3 and nothing in this chapter creates or enlarges any defense in any
4 action to enforce a legal obligation. Penalties and sanctions imposed
5 under this chapter are in addition to any penalties or sanctions
6 otherwise prescribed by law. However, nothing in this chapter shall
7 impose any additional liability upon any local government for failure
8 to enforce any violation subject to this chapter.

9 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute
10 a new chapter in Title 7 RCW.

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