
HOUSE BILL 2861

State of Washington 57th Legislature 2002 Regular Session

By Representatives Schoesler and Chandler

Read first time 01/30/2002. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to enhancing the competitiveness of Washington's
2 agricultural and food processing industries; amending RCW 49.46.020,
3 49.17.040, 49.17.050, 34.05.570, and 49.17.020; adding a new section to
4 chapter 49.17 RCW; adding a new section to chapter 49.30 RCW; adding a
5 new chapter to Title 15 RCW; repealing RCW 49.17.041 and 49.17.280; and
6 prescribing penalties.

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

8 **Sec. 1.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as
9 follows:

10 (1) ~~((Until January 1, 1999, every employer shall pay to each of~~
11 ~~his or her employees who has reached the age of eighteen years wages at~~
12 ~~a rate of not less than four dollars and ninety cents per hour.~~

13 (2) ~~Beginning January 1, 1999, and until January 1, 2000, every~~
14 ~~employer shall pay to each of his or her employees who has reached the~~
15 ~~age of eighteen years wages at a rate of not less than five dollars and~~
16 ~~seventy cents per hour.~~

17 (3) ~~Beginning January 1, 2000, and until January 1, 2001, every~~
18 ~~employer shall pay to each of his or her employees who has reached the~~

1 ~~age of eighteen years wages at a rate of not less than six dollars and~~
2 ~~fifty cents per hour.~~

3 ~~(4)(a) Beginning on January 1, 2001, and each following)) (a)~~
4 Except as set forth under (c) of this subsection, on January 1st as set
5 forth under (b) of this subsection, every employer shall pay to each of
6 his or her employees who has reached the age of eighteen years wages at
7 a rate of not less than the amount established under (b) of this
8 subsection.

9 (b) On ~~((September 30, 2000, and on each following))~~ September
10 30th, the department of labor and industries shall calculate an
11 adjusted minimum wage rate to maintain employee purchasing power by
12 increasing the current year's minimum wage rate by the rate of
13 inflation. The adjusted minimum wage rate shall be calculated to the
14 nearest cent using the consumer price index for urban wage earners and
15 clerical workers, CPI-W, or a successor index, for the twelve months
16 prior to each September 1st as calculated by the United States
17 department of labor. Each adjusted minimum wage rate calculated under
18 this subsection ~~((+4))~~ (1)(b) takes effect on the following January
19 1st.

20 ~~((+5))~~ (c) Every employer shall pay to each of his or her
21 employees who has reached the age of eighteen years and who performs
22 services in agriculture or processing as defined in section 6 of this
23 act wages at a rate of not less than six dollars and ninety cents per
24 hour.

25 (2) The director shall by regulation establish the minimum wage for
26 employees under the age of eighteen years.

27 NEW SECTION. Sec. 2. A new section is added to chapter 49.17 RCW
28 to read as follows:

29 Rules dealing with musculoskeletal disorders, adopted on May 26,
30 2000, by the director, and codified as WAC 296-62-05101 through 296-62-
31 05176, do not apply to employees who perform services in agriculture or
32 processing as defined in section 6 of this act.

33 Sec. 3. RCW 49.17.040 and 1973 c 80 s 4 are each amended to read
34 as follows:

35 Except as provided in section 2 of this act, the director shall
36 make, adopt, modify, and repeal rules and regulations governing safety
37 and health standards for conditions of employment as authorized by this

1 chapter after a public hearing in conformance with the administrative
2 procedure act and the provisions of this chapter. At least thirty days
3 prior to such public hearing, the director shall cause public notice of
4 such hearing to be made in newspapers of general circulation in this
5 state, of the date, time, and place of such public hearing, along with
6 a general description of the subject matter of the proposed rules and
7 information as to where copies of any rules and regulations proposed
8 for adoption may be obtained and with a solicitation for
9 recommendations in writing or suggestions for inclusion or changes in
10 such rules to be submitted not later than five days prior to such
11 public hearing. Any preexisting rules adopted by the department of
12 labor and industries relating to health and safety standards in work
13 places subject to the jurisdiction of the department shall remain
14 effective insofar as such rules are not inconsistent with the
15 provisions of this chapter.

16 **Sec. 4.** RCW 49.17.050 and 1998 c 224 s 1 are each amended to read
17 as follows:

18 Except as provided in RCW 49.17.040, in the adoption of rules and
19 regulations under the authority of this chapter, the director shall:

20 (1) Provide for the preparation, adoption, amendment, or repeal of
21 rules and regulations of safety and health standards governing the
22 conditions of employment of general and special application in all work
23 places;

24 (2) Provide for the adoption of occupational health and safety
25 standards which are at least as effective as those adopted or
26 recognized by the United States secretary of labor under the authority
27 of the Occupational Safety and Health Act of 1970 (Public Law 91-596;
28 84 Stat. 1590);

29 (3) Provide a method of encouraging employers and employees in
30 their efforts to reduce the number of safety and health hazards at
31 their work places and to stimulate employers and employees to institute
32 new and to perfect existing programs for providing safe and healthful
33 working conditions;

34 (4) Provide for the promulgation of health and safety standards and
35 the control of conditions in all work places concerning gases, vapors,
36 dust, or other airborne particles, toxic materials, or harmful physical
37 agents which shall set a standard which most adequately assures, to the
38 extent feasible, on the basis of the best available evidence, that no

1 employee will suffer material impairment of health or functional
2 capacity even if such employee has regular exposure to the hazard dealt
3 with by such standard for the period of his working life; any such
4 standards shall require where appropriate the use of protective devices
5 or equipment and for monitoring or measuring any such gases, vapors,
6 dust, or other airborne particles, toxic materials, or harmful physical
7 agents;

8 (5) Provide for appropriate reporting procedures by employers with
9 respect to such information relating to conditions of employment which
10 will assist in achieving the objectives of this chapter;

11 (6) Provide for the frequency, method, and manner of the making of
12 inspections of work places without advance notice; and,

13 (7) Provide for the publication and dissemination to employers,
14 employees, and labor organizations and the posting where appropriate by
15 employers of informational, education, or training materials calculated
16 to aid and assist in achieving the objectives of this chapter;

17 (8) Provide for the establishment of new and the perfection and
18 expansion of existing programs for occupational safety and health
19 education for employers and employees, and, in addition institute
20 methods and procedures for the establishment of a program for voluntary
21 compliance solely through the use of advice and consultation with
22 employers and employees with recommendations including recommendations
23 of methods to abate violations relating to the requirements of this
24 chapter and all applicable safety and health standards and rules and
25 regulations promulgated pursuant to the authority of this chapter;

26 (9) Provide for the adoption of safety and health standards
27 requiring the use of safeguards in trenches and excavations and around
28 openings of hoistways, hatchways, elevators, stairways, and similar
29 openings;

30 (10) Provide for the promulgation of health and safety standards
31 requiring the use of safeguards for all vats, pans, trimmers, cut off,
32 gang edger, and other saws, planers, presses, formers, cogs, gearing,
33 belting, shafting, coupling, set screws, live rollers, conveyors,
34 mangles in laundries, and machinery of similar description, which can
35 be effectively guarded with due regard to the ordinary use of such
36 machinery and appliances and the danger to employees therefrom, and
37 with which the employees of any such work place may come in contact
38 while in the performance of their duties and prescribe methods,
39 practices, or processes to be followed by employers which will enhance

1 the health and safety of employees in the performance of their duties
2 when in proximity to machinery or appliances mentioned in this
3 subsection;

4 (11) Certify that no later than twenty business days prior to the
5 effective date of any significant legislative rule, as defined by RCW
6 34.05.328, a meeting of impacted parties is convened to: (a) Identify
7 ambiguities and problem areas in the rule; (b) coordinate education and
8 public relations efforts by all parties; (c) provide comments regarding
9 internal department training and enforcement plans; and (d) provide
10 comments regarding appropriate evaluation mechanisms to determine the
11 effectiveness of the new rule. The meeting shall include a balanced
12 representation of both business and labor from impacted industries,
13 department personnel responsible for the above subject areas, and other
14 agencies or key stakeholder groups as determined by the department. An
15 existing advisory committee may be utilized if appropriate.

16 **Sec. 5.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to
17 read as follows:

18 (1) Generally. Except to the extent that this chapter or another
19 statute provides otherwise:

20 (a) The burden of demonstrating the invalidity of agency action is
21 on the party asserting invalidity;

22 (b) The validity of agency action shall be determined in accordance
23 with the standards of review provided in this section, as applied to
24 the agency action at the time it was taken;

25 (c) The court shall make a separate and distinct ruling on each
26 material issue on which the court's decision is based; and

27 (d) The court shall grant relief only if it determines that a
28 person seeking judicial relief has been substantially prejudiced by the
29 action complained of.

30 (2) Review of rules. (a) A rule may be reviewed by petition for
31 declaratory judgment filed pursuant to this subsection or in the
32 context of any other review proceeding under this section. In an
33 action challenging the validity of a rule, the agency shall be made a
34 party to the proceeding.

35 (b) The validity of any rule may be determined upon petition for a
36 declaratory judgment addressed to the superior court of ((Thurston))
37 any county, when it appears that the rule, or its threatened
38 application, interferes with or impairs or immediately threatens to

1 interfere with or impair the legal rights or privileges of the
2 petitioner. The declaratory judgment order may be entered whether or
3 not the petitioner has first requested the agency to pass upon the
4 validity of the rule in question.

5 (c) In a proceeding involving review of a rule, the court shall
6 declare the rule invalid only if it finds that: The rule violates
7 constitutional provisions; the rule exceeds the statutory authority of
8 the agency; the rule was adopted without compliance with statutory
9 rule-making procedures; or the rule is arbitrary and capricious.

10 (3) Review of agency orders in adjudicative proceedings. The court
11 shall grant relief from an agency order in an adjudicative proceeding
12 only if it determines that:

13 (a) The order, or the statute or rule on which the order is based,
14 is in violation of constitutional provisions on its face or as applied;

15 (b) The order is outside the statutory authority or jurisdiction of
16 the agency conferred by any provision of law;

17 (c) The agency has engaged in unlawful procedure or decision-making
18 process, or has failed to follow a prescribed procedure;

19 (d) The agency has erroneously interpreted or applied the law;

20 (e) The order is not supported by evidence that is substantial when
21 viewed in light of the whole record before the court, which includes
22 the agency record for judicial review, supplemented by any additional
23 evidence received by the court under this chapter;

24 (f) The agency has not decided all issues requiring resolution by
25 the agency;

26 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050
27 was made and was improperly denied or, if no motion was made, facts are
28 shown to support the grant of such a motion that were not known and
29 were not reasonably discoverable by the challenging party at the
30 appropriate time for making such a motion;

31 (h) The order is inconsistent with a rule of the agency unless the
32 agency explains the inconsistency by stating facts and reasons to
33 demonstrate a rational basis for inconsistency; or

34 (i) The order is arbitrary or capricious.

35 (4) Review of other agency action.

36 (a) All agency action not reviewable under subsection (2) or (3) of
37 this section shall be reviewed under this subsection.

38 (b) A person whose rights are violated by an agency's failure to
39 perform a duty that is required by law to be performed may file a

1 petition for review pursuant to RCW 34.05.514, seeking an order
2 pursuant to this subsection requiring performance. Within twenty days
3 after service of the petition for review, the agency shall file and
4 serve an answer to the petition, made in the same manner as an answer
5 to a complaint in a civil action. The court may hear evidence,
6 pursuant to RCW 34.05.562, on material issues of fact raised by the
7 petition and answer.

8 (c) Relief for persons aggrieved by the performance of an agency
9 action, including the exercise of discretion, or an action under (b) of
10 this subsection can be granted only if the court determines that the
11 action is:

12 (i) Unconstitutional;

13 (ii) Outside the statutory authority of the agency or the authority
14 conferred by a provision of law;

15 (iii) Arbitrary or capricious; or

16 (iv) Taken by persons who were not properly constituted as agency
17 officials lawfully entitled to take such action.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.30 RCW
19 to read as follows:

20 Unless the context clearly requires otherwise, "services in
21 agriculture or processing" means employment:

22 (1) On a farm, in the employ of any person, in connection with the
23 cultivation of the soil, or in connection with raising or harvesting
24 any agricultural or horticultural commodity, including raising,
25 shearing, feeding, caring for, training, and management of livestock,
26 bees, poultry, and furbearing animals and wildlife, or in the employ of
27 the owner or tenant or other operator of a farm in connection with the
28 operation, management, conservation, improvement, or maintenance of
29 such farm and its tools and equipment;

30 (2) In packing, packaging, grading, storing or delivering to
31 storage, or to market or to a carrier for transportation to market, any
32 agricultural or horticultural commodity;

33 (3) Commercial canning, commercial freezing, or any other
34 commercial processing, or with respect to services performed in
35 connection with the cultivation, raising, harvesting, and processing of
36 oysters or in connection with any agricultural or horticultural
37 commodity after its delivery to a terminal market for distribution for
38 consumption;

1 (4) In distributing or selling any pesticide as defined by RCW
2 15.58.030 or any agricultural chemical; or

3 (5) In office management or other support services directly related
4 to employment described in subsections (1) through (4) of this section.

5 NEW SECTION. **Sec. 7.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Agricultural safety and health standard" means a rule adopted
8 by the department that requires the adoption or use of one or more
9 practices, means, methods, operations, or processes reasonably
10 necessary or appropriate to provide safe or healthful agricultural
11 employment and places of agricultural employment.

12 (2) "Agriculture" means farming and includes, but is not limited
13 to:

14 (a) The cultivation and tillage of the soil;

15 (b) Dairying;

16 (c) The production, cultivation, growing, and harvesting of any
17 agricultural or horticultural commodity;

18 (d) The raising of livestock, bees, fur-bearing animals, or
19 poultry; and

20 (e) Any practices performed by a farmer or on a farm, incident to
21 or in connection with such farming operations, including but not
22 limited to preparation for market and delivery to:

23 (i) Storage;

24 (ii) Market; or

25 (iii) Carriers for transportation to market.

26 The term "agriculture" does not mean a farmer's processing a
27 commodity or product grown or produced by a person other than the
28 farmer or the farmer's employees for sale or handling for sale.

29 (3) "Department" means the department of agriculture.

30 (4) "Director" means the director of the department of agriculture,
31 or the director's designee.

32 (5) "Employee" means an employee of an employer who is employed in
33 agriculture whether by way of manual labor or otherwise and every
34 person in this state who is engaged in the employment of or who is
35 working under an independent contract the essence of which is his or
36 her personal labor for an employer under this chapter whether by way of
37 manual labor or otherwise.

1 (6) "Employer" means any person, firm, corporation, partnership,
2 business trust, legal representative, or other business entity that
3 engages in agriculture in this state and employs one or more employees
4 or who contracts with one or more persons, the essence of which is the
5 personal labor of such person or persons and includes the state,
6 counties, cities, and all municipal corporations, public corporations,
7 political subdivisions of the state, and charitable organizations.

8 (7) "Person" means one or more individuals, partnerships,
9 associations, corporations, business trusts, legal representatives, or
10 any organized group of persons.

11 (8) "Working day" means a calendar day, except Saturdays, Sundays,
12 and all legal holidays as set forth in RCW 1.16.050. To compute time
13 within which an act is to be done under this chapter, working day
14 excludes the first working day and includes the last working day.

15 (9) "Workplace" means any plant, yard, premises, room, or other
16 place where an employee or employees are employed for the performance
17 of labor or service over which the employer has the right of access or
18 control.

19 NEW SECTION. **Sec. 8.** This chapter applies with respect to
20 employment performed in any agricultural workplace within the state.
21 The department must provide, by rule, for a schedule of fees and
22 charges to be paid by each employer subject to this chapter. The fees
23 and charges collected will be for the purpose of defraying such
24 employer's pro rata share of the expenses of enforcing and
25 administering this chapter.

26 NEW SECTION. **Sec. 9.** The director may make, adopt, modify, and
27 repeal rules governing safety and health standards for conditions of
28 employment in agriculture after a public hearing in conformance with
29 the administrative procedure act and this chapter. At least thirty
30 days before the public hearing, the director will cause public notice
31 of the hearing to be made in newspapers of general circulation in this
32 state. Notice must include the date, time, and place of the public
33 hearing, along with a general description of the subject matter of the
34 proposed rules and information as to where copies of any rules proposed
35 for adoption may be obtained. Notice must include a solicitation for
36 recommendations in writing or suggestions for inclusion or changes in

1 the rules to be submitted not later than five days before the public
2 hearing.

3 NEW SECTION. **Sec. 10.** Each employer must comply with applicable
4 agricultural safety and health standards.

5 NEW SECTION. **Sec. 11.** The director may issue a temporary order
6 granting an employer a variance from a safety and health standard. The
7 director must adopt rules governing variances that are consistent with
8 RCW 49.17.080 and 49.17.090.

9 NEW SECTION. **Sec. 12.** (1) The director, upon the presentation of
10 appropriate credentials to the owner, manager, operator, or agent in
11 charge, is authorized:

12 (a) To enter, without delay and at all reasonable times, the
13 workplace where work is performed by an employee of an employer; and

14 (b) To inspect, survey, and investigate during regular working
15 hours and at other reasonable times, and within reasonable limits and
16 in a reasonable manner, any workplace and all pertinent conditions,
17 structures, machines, apparatus, devices, equipment, and materials
18 therein, and to question privately any employer, owner, operator,
19 agent, or employee.

20 (2) In making inspections and investigations under this chapter,
21 the director may require the attendance and testimony of witnesses and
22 the production of evidence under oath. Witnesses will be paid the same
23 fees and mileage that are paid to witnesses in the superior courts. In
24 the case of contumacy, failure, or refusal of any person to obey an
25 order, a superior court with jurisdiction, upon the application of the
26 director, may issue an order requiring the person to appear to produce
27 evidence and to give testimony relating to the matter under
28 investigation or in question. The failure to obey an order of the
29 court may be punishable by contempt.

30 NEW SECTION. **Sec. 13.** A representative of the employer and an
31 employee authorized representative must be given an opportunity to
32 accompany the director during the physical inspection of any workplace
33 to aid the inspection. Where there is no employee authorized
34 representative, the director must consult with a reasonable number of
35 employees concerning matters of health and safety in the workplace.

1 The director may adopt rules to implement this section. However,
2 neither this section, nor this chapter, may be construed to interfere
3 with, impede, or in any way diminish the right of employees to bargain
4 collectively with their employers through representatives of their own
5 choosing concerning wages or standards or conditions of employment that
6 equal or exceed those established under this chapter.

7 NEW SECTION. **Sec. 14.** Each employee must comply with this chapter
8 and any rules issued under this chapter that apply to the employee's
9 own actions and conduct in the course of employment. An employee or
10 employee authorized representative who in good faith believes that a
11 violation of an agricultural safety and health standard exists that
12 threatens physical harm to employees, or that an imminent danger to
13 such employees exists, may request an inspection of the workplace by
14 giving notice to the director of the violation or danger. Notice must
15 be in writing, must set forth with reasonable particularity the grounds
16 for the notice, and must be signed by the employee or employee
17 authorized representative. A copy of the notice must be provided to
18 the employer or the employer's agent by the time of inspection. Upon
19 the request of the person giving notice, the employee's name and the
20 names of employees referred to therein may not appear in the copy or on
21 any record published, released, or made available under this chapter.
22 If upon receipt of the notice the director determines that there are
23 reasonable grounds to believe that the violation or danger exists, the
24 director must make a special inspection as soon as practicable, to
25 determine if the violation or danger exists. If the director
26 determines there are no reasonable grounds to believe that a violation
27 or danger exists, the director must notify the employer and the
28 employee or employee authorized representative in writing of the
29 determination.

30 Before or during any inspection of a workplace, an employee or
31 employee authorized representative may notify the director, in writing,
32 of a violation of this chapter which the employee has reason to believe
33 exists in the workplace. The director must, by rule, establish
34 procedures for informal review of any refusal by a representative of
35 the director to issue a citation with respect to any alleged violation,
36 and must furnish the employee or employee authorized representative
37 requesting review a written statement of the reasons for the director's
38 final disposition of the case.

1 NEW SECTION. **Sec. 15.** (1) If upon inspection or investigation the
2 director believes that an employer has violated either a safety and
3 health standard or the conditions of any order granting a variance, the
4 director must with reasonable promptness issue a citation to the
5 employer. Each citation must be in writing and must describe with
6 particularity the nature of the violation, including a reference to the
7 statute or rule alleged to have been violated. In addition, the
8 citation must fix a reasonable time for the abatement of the violation.

9 (2) The director may prescribe procedures for the issuance of a
10 notice in lieu of a citation with respect to de minimis violations that
11 have no direct or immediate relationship to safety or health.

12 (3) Each citation, or a copy or copies thereof, issued under this
13 section and section 16 of this act must be prominently posted at or
14 near each place a violation referred to in the citation occurred or as
15 may otherwise be prescribed in rules issued by the director. The
16 director must provide, by rule, for procedures to be followed by an
17 employee authorized representative upon written application to receive
18 copies of citations and notices issued to any employer having employees
19 who are represented by such employee authorized representative. The
20 rule may prescribe the form of such application, the time for renewal
21 of applications, and the eligibility of the applicant to receive copies
22 of citations and notices.

23 (4) No citation may be issued under this section or section 16 of
24 this act after six months following a compliance inspection,
25 investigation, or survey revealing any violation.

26 (5)(a) No citation may be issued under this section if there is
27 unpreventable employee misconduct that led to the violation, but the
28 employer must show the existence of:

29 (i) A thorough safety program, including work rules, training, and
30 equipment designed to prevent the violation;

31 (ii) Adequate communication of these rules to employees;

32 (iii) Steps to discover and correct violations of its safety rules;
33 and

34 (iv) Effective enforcement of its safety program as written in
35 practice and not just in theory.

36 (b) This subsection (5) does not eliminate or modify any other
37 defenses that may exist to a citation.

1 NEW SECTION. **Sec. 16.** (1) If upon inspection or investigation the
2 director believes that an employer has violated either a safety and
3 health standard or the conditions of any order granting a variance,
4 which violation is such that a danger exists from which there is a
5 substantial probability that death or serious physical harm could
6 result to any employee, the director must issue a citation and may
7 issue an order immediately restraining any such condition, practice,
8 method, process, or means in the workplace. Any order issued under
9 this section may require that steps be taken to avoid, correct, or
10 remove the danger and prohibit the employment or presence of any
11 individual in locations or under conditions where the danger exists,
12 except individuals whose presence is necessary to avoid, correct, or
13 remove the danger or to maintain the capacity of a continuous process
14 operation in order that the resumption of normal operations may be had
15 without a complete cessation of operations or, where a cessation of
16 operations is necessary, to permit such to be accomplished in a safe
17 and orderly manner. In addition, if any machine or equipment, or any
18 part thereof, is in violation of an agricultural safety and health
19 standard, and the operation of the machine or equipment gives rise to
20 a substantial probability that death or serious physical harm could
21 result to any employee, and an order of immediate restraint of the use
22 of the machine or equipment has been issued under this subsection, the
23 use of the machine or equipment is prohibited, and a notice to that
24 effect must be attached thereto by the director.

25 (2) Whenever the director concludes that a condition of employment
26 described in subsection (1) of this section exists in a workplace, he
27 or she must promptly inform the affected employees and employers of the
28 danger.

29 (3) At any time that a citation or a citation and order restraining
30 any condition of employment or practice described in subsection (1) of
31 this section is issued by the director, he or she may request the
32 attorney general to make an application to the superior court of the
33 county wherein such condition of employment or practice exists for a
34 temporary restraining order or other appropriate relief.

35 NEW SECTION. **Sec. 17.** (1) If the director issues a citation under
36 the authority of section 15 or 16 of this act, the department, within
37 a reasonable time after the termination of an inspection or
38 investigation, must notify the employer by certified mail of the

1 penalty to be assessed under the authority of section 18 of this act
2 and must state that the employer has thirty days within which to notify
3 the director that the employer wishes to appeal the citation or
4 assessment of the penalty.

5 (2) An employer aggrieved by an action taken or decision made by
6 the department under this chapter may appeal the citation or assessment
7 of the penalty to the director by filing notice of the appeal with the
8 director within thirty days of the department's action or decision. A
9 notice of appeal filed under this section will stay the effectiveness
10 of a citation or notice of the assessment of a penalty pending review
11 of the appeal by the director, but the appeal does not stay the
12 effectiveness of an order of immediate restraint issued under section
13 16 of this act. Upon receipt of an appeal, a hearing must be held in
14 accordance with chapter 34.05 RCW. The director will issue all final
15 orders after the hearing. The final orders are subject to appeal in
16 accordance with chapter 34.05 RCW. Orders not appealed within the time
17 period specified in chapter 34.05 RCW are final and binding.

18 NEW SECTION. Sec. 18. (1) An employer who willfully or repeatedly
19 violates the requirements of either an agricultural safety and health
20 standard or an order granting a variance may be assessed a civil
21 penalty not to exceed seventy thousand dollars for each violation. A
22 minimum penalty of five thousand dollars will be assessed for a willful
23 violation.

24 (2) Any employer who is cited for a serious violation of the
25 requirements of an agricultural safety and health standard or an order
26 granting a variance will be assessed a civil penalty not to exceed
27 seven thousand dollars for each violation.

28 (3) Any employer who is cited for a violation of the requirements
29 of an agricultural safety and health standard or an order granting a
30 variance that is not a serious violation under subsection (6) of this
31 section may be assessed a civil penalty not to exceed seven thousand
32 dollars for each violation, unless such violation is determined to be
33 de minimis.

34 (4) Any employer who fails to correct a violation for which a
35 citation has been issued under section 15 or 16 of this act within the
36 period permitted for its correction may be assessed a civil penalty of
37 not more than seven thousand dollars for each day during which such
38 failure or violation continues. The period permitted for the

1 violation's correction does not begin to run until the date of the
2 final order in the case of any review proceedings under this chapter
3 initiated by the employer in good faith and not solely for delay or
4 avoidance of penalties.

5 (5) Any employer who violates any of the posting requirements of
6 this chapter, or any of the posting requirements of rules adopted by
7 the department under this chapter related to employee or employee
8 authorized representative's rights to notice will be assessed a penalty
9 not to exceed seven thousand dollars for each violation.

10 (6) For the purposes of this section, a serious violation exists in
11 a workplace if there is a substantial probability that death or serious
12 physical harm could result from a condition that exists in the
13 workplace, or from one or more practices, means, methods, operations,
14 or processes that have been adopted or are in use in the workplace,
15 unless the employer did not, and could not with the exercise of
16 reasonable diligence, know of the presence of the violation.

17 (7) The director may assess civil penalties provided in this
18 section, giving due consideration to the appropriateness of the penalty
19 with respect to the number of affected employees of the employer being
20 charged, the gravity of the violation, the size of the employer's
21 business, the good faith of the employer, and the history of previous
22 violations.

23 (8) The department may recover civil penalties in an action brought
24 in the superior court of the county where the violation is alleged to
25 have occurred.

26 NEW SECTION. Sec. 19. (1) The director must adopt rules requiring
27 employers to make, keep, preserve, and make available to the director
28 records regarding the employer's activities relating to this chapter
29 that are necessary or appropriate for the enforcement of this chapter.

30 (2) The director must adopt rules requiring employers, through
31 posting of notices or other appropriate means, to inform their
32 employees of their protections and obligations under this chapter.

33 (3) The director must adopt rules requiring employers to maintain
34 accurate records of:

35 (a) Work-related deaths;

36 (b) Injuries and illnesses other than minor injuries; and

37 (c) Employee exposures to potentially toxic materials or harmful
38 physical agents which are required to be monitored or measured.

1 **Sec. 20.** RCW 49.17.020 and 1997 c 362 s 2 are each amended to read
2 as follows:

3 For the purposes of this chapter:

4 (1) The term "agriculture" means farming and includes, but is not
5 limited to:

6 (a) The cultivation and tillage of the soil;

7 (b) Dairying;

8 (c) The production, cultivation, growing, and harvesting of any
9 agricultural or horticultural commodity;

10 (d) The raising of livestock, bees, fur-bearing animals, or
11 poultry; and

12 (e) Any practices performed by a farmer or on a farm, incident to
13 or in connection with such farming operations, including but not
14 limited to preparation for market and delivery to:

15 (i) Storage;

16 (ii) Market; or

17 (iii) Carriers for transportation to market.

18 The term "agriculture" does not mean a farmer's processing for sale
19 or handling for sale a commodity or product grown or produced by a
20 person other than the farmer or the farmer's employees.

21 (2) The term "director" means the director of the department of
22 labor and industries, or his or her designated representative.

23 (3) The term "department" means the department of labor and
24 industries.

25 (4) The term "employer" means any person, firm, corporation,
26 partnership, business trust, legal representative, or other business
27 entity which engages in any business, industry, profession, or activity
28 other than agriculture in this state and employs one or more employees
29 or who contracts with one or more persons, the essence of which is the
30 personal labor of such person or persons and includes the state,
31 counties, cities, and all municipal corporations, public corporations,
32 political subdivisions of the state, and charitable organizations(~~(+~~
33 ~~PROVIDED, That~~)). However, any person, partnership, or business entity
34 not having employees, and who is covered by the industrial insurance
35 act (~~shall be~~) is considered both an employer and an employee.

36 (5) The term "employee" means an employee of an employer who is
37 employed in the business of his or her employer other than agriculture
38 whether by way of manual labor or otherwise and every person in this
39 state who is engaged in the employment of or who is working under an

1 independent contract the essence of which is his or her personal labor
2 for an employer under this chapter whether by way of manual labor or
3 otherwise.

4 (6) The term "person" means one or more individuals, partnerships,
5 associations, corporations, business trusts, legal representatives, or
6 any organized group of persons.

7 (7) The term "safety and health standard" means a standard which
8 requires the adoption or use of one or more practices, means, methods,
9 operations, or processes reasonably necessary or appropriate to provide
10 safe or healthful employment and places of employment.

11 (8) The term "work place" means any plant, yard, premises, room, or
12 other place where an employee or employees are employed for the
13 performance of labor or service over which the employer has the right
14 of access or control, and includes, but is not limited to, all work
15 places covered by industrial insurance under Title 51 RCW, as now or
16 hereafter amended.

17 (9) The term "working day" means a calendar day, except Saturdays,
18 Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or
19 hereafter amended, and for the purposes of the computation of time
20 within which an act is to be done under the provisions of this chapter,
21 shall be computed by excluding the first working day and including the
22 last working day.

23 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
24 each repealed:

25 (1) RCW 49.17.041 (Agricultural safety standards--Limitation on
26 adopting or establishing between January 1, 1995, through January 15,
27 1996--Requirements) and 1995 c 371 s 2; and

28 (2) RCW 49.17.280 (Agricultural workers and handlers of
29 agricultural pesticides--Coordination of regulation and enforcement
30 with department of agriculture) and 1996 c 260 s 2.

31 NEW SECTION. **Sec. 22.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 23.** Sections 7 through 19 of this act
2 constitute a new chapter in Title 15 RCW.

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