

# Senate Bill 592

Sponsored by Senator TAYLOR (Presession filed.)

## 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**.

Requires Director of Department of Consumer and Business Services to conduct comprehensive inspections of fixed place of employment when occupational death or three or more willful or repeated violations have occurred.

Provides specific civil penalty amounts that may be assessed against employers that violate occupational safety and health requirements.

Requires Director of Department of Department of Consumer and Business Services to submit annual report to interim committees of Legislative Assembly summarizing information related to penalties assessed, appeals filed with Department of Consumer and Business Services and department inspections of places of employment.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the Oregon Safe Employment Act; creating new provisions; amending ORS 654.067 and  
3 654.086; and declaring an emergency.

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

5 **SECTION 1.** ORS 654.067 is amended to read:

6 654.067. (1) In order to carry out the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and  
7 654.750 to 654.780, the Director of the Department of Consumer and Business Services, upon pre-  
8 senting appropriate credentials to the owner, employer or agent in charge, is authorized:

9 (a) To enter without delay and at reasonable times any place of employment; and

10 (b) To inspect and investigate during regular working hours and at other reasonable times, and  
11 within reasonable limits and in a reasonable manner, any such place of employment and all pertinent  
12 conditions, structures, machines, apparatus, devices, equipment and materials therein, and to ques-  
13 tion privately the owner, employer, agents or employees.

14 **(2) Whenever an occupational death has occurred in a fixed place of employment, the**  
15 **director shall, in addition to any inspections conducted pursuant to complaints filed against**  
16 **the place of employment, conduct a comprehensive inspection of the place of employment**  
17 **within one year following the date on which the closing conference associated with the oc-**  
18 **cupational death was held.**

19 **(3) Whenever three or more willful or repeated violations occur at a fixed place of em-**  
20 **ployment within a one-year period, the director shall, in addition to any inspections con-**  
21 **ducted pursuant to complaints filed against the place of employment, conduct a**  
22 **comprehensive inspection of the place of employment within one year following the date on**  
23 **which the closing conference associated with the most recent willful or repeated violation**  
24 **was held.**

25 [(2)] (4) No person shall give an owner, employer, agent or employee advance notice of any in-  
26 spection to be conducted under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 of  
27 any place of employment without authority from the director.

**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        [(3)] (5) Except in the case of an emergency, or of a place of employment open to the public, if  
 2 the director is denied access to any place of employment for the purpose of an inspection or inves-  
 3 tigation, such inspection or investigation shall not be conducted without an inspection warrant ob-  
 4 tained pursuant to ORS 654.202 to 654.216, or without such other authority as a court may grant in  
 5 an appropriate civil proceeding. Nothing contained herein, however, is intended to affect the validity  
 6 of a constitutionally authorized inspection conducted without an inspection warrant.

7        [(4)] (6) A representative of the employer and a representative authorized by the employees of  
 8 the employer shall be given an opportunity to accompany the director during the inspection of any  
 9 place of employment for the purpose of aiding such inspection. When there is no employee repre-  
 10 sentative, or the employee representative is not an employee of the employer, the director should  
 11 consult with a reasonable number of employees concerning matters of safety and health in the place  
 12 of employment.

13        [(5)] (7) The representative of the employer may, at the employer's option, be an attorney re-  
 14 tained by the employer.

15        (8) **As used in this section:**

16        (a) **"Closing conference" means a conference that occurs at the conclusion of an in-**  
 17 **spection of a place of employment during which the individual responsible for conducting the**  
 18 **inspection discusses, jointly or separately, with the employer and employee representatives**  
 19 **the apparent violations found during the inspection, if any, and other pertinent issues related**  
 20 **to the inspection, including but not limited to abatement methods, ways to correct violations**  
 21 **and how to resolve disputed citations.**

22        (b) **"Comprehensive inspection" means a substantially complete and thorough inspection**  
 23 **of all potentially hazardous areas of a place of employment that may, as a result of profes-**  
 24 **sional judgment of the individual responsible for conducting the inspection, be deemed com-**  
 25 **prehensive although not all potentially hazardous conditions or practices within those areas**  
 26 **are inspected.**

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

28        654.086. (1) The Director of the Department of Consumer and Business Services or the author-  
 29 ized representative of the director has the authority to assess civil penalties as provided by this  
 30 section for violation of the requirements of a state occupational safety or health statute or the  
 31 lawful rules, standards or orders adopted under the statute[. *In setting maximum penalties, the di-*  
 32 *rector or the director's representative shall consider, but may not exceed, the maximum penalties under*  
 33 *the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)*], **as follows:**

34        (a)(A) Any employer who receives a citation for a serious violation of such requirements shall  
 35 be assessed a civil penalty of [*not less than \$50*] **up to \$13,653.**

36        (B) **If the serious violation caused or contributed to the death of an employee, the civil**  
 37 **penalty amount shall be increased to not more than \$50,000, but not less than \$20,000, for**  
 38 **each violation.**

39        (b) Any employer who receives a citation for a violation of such requirements, and such vio-  
 40 lation is specifically determined not to be of a serious nature, may be assessed a civil penalty **of**  
 41 **up to \$13,653 for each violation.**

42        (c)(A) Any employer who willfully or repeatedly violates such requirements may be assessed a  
 43 civil penalty of [*not less than the minimum penalty under the federal Occupational Safety and Health*  
 44 *Act of 1970 (29 U.S.C. 651 et seq.)*] **not more than \$136,532, but not less than \$9,753, for each**  
 45 **willful or repeated violation.**

1       **(B) If an employer's willful or repeated violation caused or contributed to the death of**  
 2 **an employee, the civil penalty amount shall be increased to not more than \$250,000, but not**  
 3 **less than \$50,000, for each violation.**

4       **(C) In determining whether a violation is repeated for purposes of this subsection, the**  
 5 **director shall consider the employer's history of violating the requirements of a state occu-**  
 6 **pational safety or health statute or the lawful rules, standards or orders adopted under the**  
 7 **statute.**

8       (d) Any employer who receives a citation, as provided in ORS 654.071 (4), for failure to correct  
 9 a violation may be assessed a civil penalty, **not to exceed \$13,653**, for each day during which the  
 10 violation continues.

11       (e) Any employer who knowingly makes any false statement, representation or certification re-  
 12 garding the correction of a violation shall be assessed a civil penalty of not less than \$100.

13       (f) Any employer who violates any of the posting requirements, as prescribed under the pro-  
 14 visions of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, may be assessed a civil  
 15 penalty for each violation.

16       (g) Any person who violates the provisions of ORS 654.082 (2) or (3) shall be assessed a civil  
 17 penalty of not less than \$100 for each violation.

18       (h) Notwithstanding paragraph (b) of this subsection, an employer who substantially fails to  
 19 comply with ORS 654.174 (1) shall be assessed a civil penalty of not less than \$250 for each violation.

20       (i) Any insurer or self-insured employer who violates any provision of ORS 654.097, or any rule  
 21 or order carrying out ORS 654.097, shall be assessed a civil penalty. Each violation, or each day a  
 22 violation continues, shall be considered a separate offense.

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

29       **(3) Civil penalties assessed by the Department of Consumer and Business Services**  
 30 **against an employer for repeated violations of any of the following may not receive a penalty**  
 31 **adjustment, based on employer size, that reduces the amount of the civil penalty assessed**  
 32 **against the employer, unless the penalty adjustment is conditioned upon the employer**  
 33 **agreeing to comply with additional mitigation measures as determined by the department:**

34       **(a) Willful violations under subsection (1)(c) of this section; and**

35       **(b) Serious violations resulting in an occupational death.**

36       **(4) The director shall:**

37       **(a) Not later than January 15 of each year, adjust the amount of civil penalties that may**  
 38 **be imposed under this section to account for the percentage increase or decrease, if any, in**  
 39 **the Consumer Price Index for All Urban Consumers, West Region (All Items), as published**  
 40 **by the Bureau of Labor Statistics of the United States Department of Labor or its successor.**

41       **(b) Annually adjust the amount of civil penalties that may be imposed under this section**  
 42 **to align with the penalty schedule for violations imposed under the federal Occupational**  
 43 **Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).**

44       [3] (5) When an order assessing a civil penalty becomes final by operation of law or on appeal,  
 45 unless the amount of penalty is paid within 20 days after the order becomes final, it constitutes a

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

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

10 [(5)] (7) Civil penalties assessed under this section for a violation of ORS 658.750 shall be cred-  
11 ited to the Agricultural Worker Housing Development Account of the Oregon Housing Fund.

12 (8) **The director shall submit a report at least annually to the interim committees of the**  
13 **Legislative Assembly related to business and labor that summarizes:**

14 (a) **The total number and total amount of penalties assessed by the department;**

15 (b) **The total number of appeals of citations, violations and penalty assessments filed with**  
16 **the department; and**

17 (c) **The total number of inspections completed by the department, along with the scope**  
18 **of the inspections and the circumstances that led to the inspections.**

19 **SECTION 3. The Director of the Department of Consumer and Business Services shall**  
20 **submit the first report required under ORS 654.086 (8) no later than September 15, 2024.**

21 **SECTION 4. This 2023 Act being necessary for the immediate preservation of the public**  
22 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**  
23 **on its passage.**

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