

Amendment No. 7

Senate Amendment to Senate Bill No. 40	(BDR 53-222)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/BJF



Date: 4/8/2019

S.B. No. 40—Revises provisions governing penalties for violating occupational safety laws. (BDR 53-222)



SENATE BILL NO. 40—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE DIVISION OF INDUSTRIAL RELATIONS
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY)

PREFILED NOVEMBER 19, 2018

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing penalties for violating occupational safety laws. (BDR 53-222)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to occupational safety; ~~requiring~~ **revising the period of time in which an employer must notify** the Division of Industrial Relations of the Department of Business and Industry ~~to establish by rule or regulation of the employer's intent to contest the issuance of a citation or proposed assessment of a penalty by the Division; revising provisions governing~~ the ~~monetary~~ amounts of administrative fines ~~consistent with federal law, for certain violations of occupational safety and health laws; revising the amounts of administrative fines~~ which the Division is authorized or required to assess against an employer for certain violations of occupational safety and health laws; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an employer has 15 working days within which to notify the Division of Industrial Relations of the Department of Business and Industry that the employer wishes to contest the issuance of a citation or proposed assessment of a penalty by the Division after an inspection of a workplace or an investigation of an imminent danger or suspected violation of certain safety or health standards. (NRS 618.475) Section 1 of this bill increases the notification period to 30 calendar days.

Existing law authorizes the Division ~~of Industrial Relations of the Department of Business and Industry~~ to assess against an employer administrative fines in monetary amounts established in statute for violations of certain occupational safety and health laws. (NRS 618.625) **Section 1.5 of this bill provides that the monetary amounts of those administrative fines may not be greater than the monetary amounts set forth for those violations in the federal Occupational Safety and Health Act, 29 U.S.C. § 666, including any adjustments to the monetary amounts in that Act which are made pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74.**

Existing law: (1) authorizes the Division to assess against an employer an administrative fine of not more than \$70,000, but not less than \$5,000, for each willful or repeated violation

of the requirements of chapter 618 of NRS or standard, rule, regulation or order promulgated or prescribed pursuant to that chapter; (2) requires the Division to assess an administrative fine of not more than \$7,000 for each serious violation and authorizes the Division to assess an administrative fine of not more than \$7,000 for each nonserious violation; (3) authorizes the Division to assess an administrative fine of not more than \$7,000 for each day during which an employer's failure to correct a cited violation continues; and (4) requires the Division to assess an administrative fine of not more than \$7,000 for each violation consisting of the failure to post and maintain certain required notices and records. (NRS 618.635, 618.645, 618.655, 618.675) Sections 2-5 of this bill revise these provisions to ~~authorize or require, as applicable, the Division to instead assess~~ **provide that** those administrative fines ~~[in] may not be greater than the~~ monetary amounts ~~[which the Division establishes]~~ **authorized** pursuant to ~~section 1-1.5.~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 618.475 is hereby amended to read as follows:

618.475 1. If, after an inspection or investigation, the Division issues a citation under the provisions of this chapter, it shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under this chapter and that the employer has ~~[15 working]~~ **30 calendar** days within which to notify the Division that the employer wishes to contest the citation or proposed assessment of penalty. If, within ~~[15 working]~~ **30 calendar** days from the receipt of the notice issued by the Division, the employer fails to notify the Division that the employer intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under this chapter within such time, the citation and assessment as proposed shall be deemed a final order of the review board and not subject to review by any court or agency. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that the abatement has not been completed because of factors beyond the reasonable control of the employer, the Division shall issue an order affirming or modifying the abatement requirements in the citation.

2. In the case of an accident or motor vehicle crash occurring in the course of employment which is fatal to one or more employees, if an employer notifies the Division that the employer wishes to contest a citation or proposed assessment of penalty, the Division shall provide the Board with information as to how to contact the immediate family of each deceased employee.

3. Any employee or the representative of the employee alleging that the time fixed in the citation for the abatement of a violation by his or her employer is unreasonable may, within ~~[15 working]~~ **30 calendar** days after the date of posting of the notice of abatement pursuant to this chapter, file an appeal with the Division to contest the reasonableness of the period of time for abatement of the violation and must be notified in writing as to the time and place of hearing before the review board.

4. If no appeal is filed by an employee or the representative of the employee under subsection 3 within the time limit of ~~[15 working]~~ **30 calendar** days, the period of time fixed for the abatement of the violation is final and not subject to review by any court or the review board.

Sec. 1.5. NRS 618.625 is hereby amended to read as follows:

618.625 1. The Division may assess administrative fines provided for in this chapter, giving due consideration to the appropriateness of the penalty with respect

1 to the size of the employer, the gravity of the violation, the good faith of the
2 employer and the history of previous violations.

3 2. ~~The [Division shall, through rule and regulation, establish the amounts~~
4 ~~of administrative fines which may be imposed pursuant to NRS 618.635,~~
5 ~~618.645, 618.655 and 618.675.] The monetary amount of each of those~~
6 ~~administrative fines] may not be [established at a monetary amount that is]~~
7 ~~greater than the monetary amount of the corresponding civil penalty for the~~
8 ~~applicable violation pursuant to 29 U.S.C. § 666, including any adjustments made~~
9 ~~to the civil penalty pursuant to the Federal Civil Penalties Inflation Adjustment~~
10 ~~Act Improvements Act of 2015, Pub. L. 114-74.~~

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

17 ~~[3.]~~ 4. Administrative fines owed under this chapter must be paid to the
18 Division. The fines may be recovered in a civil action in the name of the Division
19 brought in a court of competent jurisdiction in the county where the violation is
20 alleged to have occurred or where the employer has his or her principal office.

21 **Sec. 2.** NRS 618.635 is hereby amended to read as follows:

22 618.635 Any employer who willfully or repeatedly violates any requirements
23 of this chapter, any standard, rule, regulation or order promulgated or prescribed
24 pursuant to this chapter, may be assessed an administrative fine ~~[of not more than~~
25 ~~\$70,000 for each violation, but not less than \$5,000] in a monetary amount~~
26 ~~[established by the Division for willful or repeated violations]~~ authorized
27 pursuant to subsection 2 of NRS 618.625 for each willful violation.

28 **Sec. 3.** NRS 618.645 is hereby amended to read as follows:

29 618.645 Any employer who has received a citation for a serious violation of
30 any requirement of this chapter, or any standard, rule, regulation or order
31 promulgated or prescribed pursuant to this chapter, must be assessed an
32 administrative fine ~~[of not more than \$7,000] in a monetary amount [established~~
33 ~~by the Division for a serious violation]~~ authorized pursuant to subsection 2 of
34 NRS 618.625 for each such violation. If a violation is specifically determined to be
35 of a nonserious nature an administrative fine ~~[of not more than \$7,000] in a~~
36 ~~monetary amount [established by the Division for a nonserious violation]~~
37 authorized pursuant to subsection 2 of NRS 618.625 may be assessed.

38 **Sec. 4.** NRS 618.655 is hereby amended to read as follows:

39 618.655 Any employer who fails to correct a violation for which a citation
40 has been issued under this chapter within the period permitted for its correction
41 may be assessed an administrative fine ~~[of not more than \$7,000] in a monetary~~
42 ~~amount [established by the Division for a failure to correct a violation for which~~
43 ~~a citation has been issued]~~ authorized pursuant to subsection 2 of NRS 618.625
44 for each day during which the failure or violation continues. If a review proceeding
45 is initiated by the employer in good faith and not solely to delay or avoid any
46 penalties, the period permitted to correct a violation does not begin until the date of
47 the final order of the Division.

48 **Sec. 5.** NRS 618.675 is hereby amended to read as follows:

49 618.675 1. An employer who fails to post the notice and records as required
50 under the provisions of this chapter must be assessed an administrative fine ~~[of not~~
51 ~~more than \$7,000] in a monetary amount [established by the Division for a failure~~
52 ~~to post the notice and records]~~ authorized pursuant to subsection 2 of NRS
53 618.625 for each violation.

1 2. An employer who fails to maintain the notice or notices and records
2 required by this chapter must be assessed an administrative fine ~~of not more than~~
3 ~~\$7,000~~ *in a monetary amount established by the Division for a failure to*
4 ~~maintain the notice or notices and records~~ *authorized pursuant to subsection 2*
5 *of NRS 618.625* for each violation.

6 **Sec. 6.** This act becomes effective:

7 1. Upon passage and approval for the purposes of performing any preparatory
8 administrative tasks and adopting any regulations necessary to carry out the
9 provisions of this act; and

10 2. On ~~July~~ *October* 1, 2019, for all other purposes.