

HOUSE BILL REPORT

HB 2840

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to citations under the Washington industrial safety and health act.

Brief Description: Issuing citations under the Washington industrial safety and health act.

Sponsors: Representatives Clements, McMorris, Schoesler, Honeyford, Boldt, D. Schmidt and Mielke.

Brief History:

Committee Activity:

Commerce & Labor: 2/2/98, 2/5/98 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements; Cole; Hatfield and Lisk.

Staff: Selwyn Walters (786-7117).

Background: The Department of Labor and Industries administers and enforces the Washington Industrial Safety and Health Act (WISHA). The act directs the department to adopt rules governing safety and health standards for workplaces covered by the act.

Washington is a "state plan" state under the federal Occupational Safety and Health Act (OSHA). As a state plan state, Washington is authorized to assume responsibility for occupational safety and health in the state. To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized under OSHA.

Department representatives are authorized to inspect and investigate workplaces at reasonable times and in a reasonable manner. If the department's representative believes, after an investigation, that a requirement of WISHA, the rules adopted under WISHA, or the conditions of an order granting a variance have been violated, the department will issue a citation to the employer. Employers receiving citations are subject to the civil

penalties provided in WISHA. Citations may be appealed to the Board of Industrial Insurance Appeals.

The federal courts under OSHA and the Board of Industrial Insurance Appeals under WISHA permit employers to raise "unpreventable employee misconduct" as an affirmative defense to a citation when the action or practice of an employee led to the safety or health violation. The elements of the defense are: (1) the employer has work rules designed to prevent the violation; (2) the work rules are adequately communicated to employees; (3) the employer has taken steps to discover violations; and (4) the employer has, in practice, effectively enforced the rules.

Summary of Substitute Bill: The Department of Labor and Industries may not issue a citation to an employer for a violation of a safety or health standard under the Washington Industrial Safety and Health Act if:

- (1) the employer has a thorough written safety program, including work rules, training, and equipment designed to prevent the violation;
- (2) the employer's program and rules were adequately communicated to employees;
- (3) the employer takes reasonable measures to discover violations of the safety rules and reasonable corrective action when the violations are discovered;
- (4) The employer enforces its safety program in practice, not just in theory.

The limitation on issuing a citation has no application to a dangerous situation where there is a substantial probability that death or serious physical harm could result to an employee.

Substitute Bill Compared to Original Bill: The substitute bill adds that no citation may be issued against an employer and Industries if there is unpreventable employee misconduct, but the employer must show that its written safety program is effective in practice, not just in theory.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The policy of the Department of Labor and Industries and federal decisions regarding employer defenses for unpreventable employee misconduct are codified. A contractor with a safety program who shows due diligence is not a problem,

and should not be penalized for employee misconduct. Creates a balance. A reasonable and practical proposal.

Testimony Against: There are rules and procedures in place to address employee misconduct. Under WISHA the employer is charged with the responsibility of ensuring compliance with safety rules by its employees. The employer has the responsibility to take all reasonable steps to eradicate preventable hazards including imposing work rules, training, supervision, and disciplinary action. A fine places employers on notice that there are violations and it is their responsibility to ensure a safe work place. The focus should be on the effectiveness of the employer's safety program. Many employees are willing to admit they caused an accident, thereby reducing the employer's fines. Violations of safety rules result not only in injury to a worker, but to other workers and the entire community.

Testified: (Pro) Amber Balch, Association of Washington Business; Gary Smith, Independent Business Association; Rick Slunaker, Associated General Contractors of Washington; David D'Hondt, Absher Construction; and Chris Cheney, Washington Growers League & Hop Growers of Washington. (Con) Jeff Johnson & Randy Loomas, Washington State Labor Council, Alan Darr, International Union of Operating Engineers; Robert Dilger, Building Trades Council; Dan Sexton, Washington Association of Plumbers & Pipefitters; and Harold Abbey, Association of Western Pulp and Paper Workers. (Neutral) Michael Wood, Department of Labor and Industries.