

SENATE BILL REPORT

SHB 2840

As Reported By Senate Committee On:
Commerce & Labor, February 26, 1998

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: House Committee on Commerce & Labor (originally sponsored by Representatives Clements, McMorris, Schoesler, Honeyford, Boldt, D. Schmidt and Mielke).

Brief History:

Committee Activity: Commerce & Labor: 2/19/98, 2/26/98 [DP, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson and Newhouse.

Minority Report: Do not pass.

Signed by Senators Fraser and Heavey.

Staff: Jack Brummel (786-7428)

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. Under the federal Occupational Safety and Health Act (OSHA), the state is authorized to assume responsibility for occupational safety and health standards which 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. 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.

Summary of Bill: No citation under the Washington Industrial Safety and Health Act may be issued for a violation caused by unpreventable employee misconduct if the employer has a thorough safety program with rules that were adequately communicated to employees, the employer takes steps to discover and correct violations of safety rules, and the employer enforces its safety program in practice, not just in theory.

This 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This allows good employers following good practices to avoid citations when violations are caused by employee misconduct. The bill would prevent court appeals by incorporating the defense recognized by the courts. An employee deliberately violating rules should not result in a citation of an employer.

Testimony Against: None.

Testified: PRO: Representative Clements, original prime sponsor; Amber Balch, AWB; DeDi Hitchins, NFIB; Gary Smith, Independent Business Association.