

# HOUSE BILL REPORT

## HB 2412

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**As Reported by House Committee On:**  
Labor & Workforce Development

**Title:** An act relating to increasing protections for employees under the Washington industrial safety and health act of 1973.

**Brief Description:** Increasing protections for employees under the Washington industrial safety and health act of 1973.

**Sponsors:** Representatives Kenney, Sells, Reykdal, Moscoso, Miloscia, Green, Ormsby, Hasegawa, Roberts, Hudgins, Cody and Moeller.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 1/18/12, 1/30/12 [DP].

**Brief Summary of Bill**

- Increases civil and criminal penalties for violations under the Washington Industrial Safety and Health Act.
- Provides that upon request, the Director (or designee) of the Department of Labor and Industries must meet with a victim, provide information to a victim, and, for incidents resulting in death or serious injury, give the victim an opportunity to make a statement before the parties.
- Increases the time to file a discrimination complaint from 30 to 180 days and adds discrimination for reporting any unsafe condition to the employer and other reporting.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 7 members: Representatives Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Sells, Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Joan Elgee (786-7106).

**Background:**

Under the Washington Industrial Health and Safety Act (WISHA), the Department of Labor and Industries (Department) has authority to adopt safety and health standards governing the conditions of employment in all workplaces. The Director of the Department (Director) may inspect and investigate work places. For purposes of the WISHA, the Director includes the Director's designee.

If the Director believes that an employer has violated a safety or health standard, the Director must issue a citation. Civil penalties range from up to \$7,000 for a non-serious violation to up to \$70,000 for a willful or repeated violation. Appeals of citations are heard by the Board of Industrial Insurance Appeals (Board) and the Director may reassume jurisdiction for a redetermination before the Board hears the matter. Employees and employee representatives have an opportunity to participate in the Board hearing and to object or support the Director's reassumption of jurisdiction.

Criminal penalties are established for certain violations and if the Director has reasonable cause to believe that a crime has occurred, the Director must refer the case to the prosecuting attorney. Criminal penalties range from a fine of not more than \$1,000 or imprisonment for not more than six months (or both) for a person who gives advance notice of an inspection, to a fine of not more than \$200,000 or imprisonment of not more than 364 days (or both) for a violation after a first conviction for a willful and knowing violation that caused death.

A person may not discharge or otherwise discriminate against an employee who files a complaint, testifies in a WISHA proceeding, or for certain other activities. A person who believes he or she has been discriminated against may file a complaint with the Director within 30 days after the violation. The Director must investigate and if the Director determines that a violation has occurred, the Director must bring an action in superior court. If the Director determines that a violation has not occurred, the employee may bring an action. The superior court has jurisdiction to restrain violations and order all appropriate relief, including rehiring or reinstatement and back pay.

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**Summary of Bill:**

Civil and criminal penalties are increased for the WISHA violations and additional penalties are created.

Civil Penalties.

- *Willful or repeated violation.* The maximum penalty is increased from \$70,000 to \$120,000, and the minimum penalty for a willful violation is increased from \$5,000 to \$8,000. A new penalty is created for a violation that caused death, which has a maximum penalty of \$250,000 and minimum penalty of \$50,000.
- *Serious violation.* The maximum penalty is increased from \$7,000 to \$12,000. A new penalty is created for a violation that caused death, which has a maximum

- penalty of \$50,000 and a minimum penalty of \$20,000 minimum. (A \$10,000 minimum applies to an employer with 25 or fewer employees.)
- *Non-serious violation.* The maximum penalty is increased from \$7,000 to \$12,000. A new penalty is created for a violation that caused death (which has a maximum penalty of \$50,000 and a minimum penalty of \$20,000). (A \$10,000 minimum applies for an employer with 25 or fewer employees.)
  - *Failure to correct.* The maximum penalty is increased from \$7,000 to \$12,000 per day.
  - *Violation of posting requirements.* The maximum penalty is increased from \$7,000 to \$12,000.

At least once every four years, the Director must adjust the amounts based on the percentage increase or decrease in the Consumer Price Index for all urban wage earners compiled by the Bureau of Labor Statistics.

#### Criminal Penalties.

- *Give advance notice of inspection.* The crime is changed from a gross misdemeanor to a class C felony, with a maximum fine of \$250,000 and maximum two-year prison term.
- *Knowingly make any false statement.* The crime is changed from a gross misdemeanor to a class C felony, with a maximum fine of \$250,000 and maximum two-year prison term.
- *Willfully and knowingly violate any requirement that caused death.* The crime is changed from a gross misdemeanor to a class C felony, with a maximum fine of \$250,000 and maximum 10-year prison term. A subsequent conviction is changed to a class A felony, with a maximum fine of \$250,000 and a maximum year prison term of 20 years.
- *Continuing practice after order to restrain.* The crime is changed from a gross misdemeanor to a class C felony, with a maximum fine of \$250,000 and maximum five-year prison term.
- *Knowingly remove a safety device.* The crime is changed from a misdemeanor to a class C felony, with a maximum fine of \$250,000 and maximum two-year prison term.

A new crime is created for willfully and knowingly violating any requirement that caused serious bodily injury, but did not cause death. The crime is a class C felony, with a maximum fine of \$250,000 and a maximum five-year prison term. For a subsequent conviction, the maximum fine is \$250,000 and the maximum prison term is 10 years.

#### Victim Rights.

The Director must take certain actions at the request of a victim or the victim's representative. A "victim" is an employee who had a workplace injury that is the subject of an inspection or investigation, or the victim's family member if the employee is killed or cannot reasonably exercise the employee's rights. For an incident resulting in death or serious injury, the Director must provide the victim or victim's representative an opportunity to appear and make a statement before the parties conducting any settlement negotiations during reassumption of jurisdiction by the Director or appeal before the Board. This opportunity must take place before the Director agrees to modify or withdraw a citation. In all cases,

upon request, the Director must meet with the victim or victim's representative before the Director decides whether to issue a citation and provide: (1) a copy of any citation or report at no cost; (2) notice of any employer appeal; and (3) an explanation of the right to participate in any appeal. A "serious injury" is an injury or illness requiring hospitalization or resulting in a loss of one or more days of work. The Director must establish procedures to inform victims and their representatives of their rights and for the informal review of any claim of denial of a right.

Discrimination.

The prohibition against discrimination includes discrimination for reporting any injury, illness, or unsafe condition to the employer, agent of the employer, or safety and health committee involved or safety and health representative involved. The time to file a discrimination complaint is increased from 30 to 180 days.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is about modernizing health and safety laws. It incentivizes safety and builds on the abatement bill from last year. The penalties have been in place since the 1980s. Employees and families should have a role in the investigation and a say in the penalty discussions. Horrific disasters have resulted in worker deaths. The penalties do not fit. A person was killed and the fine was only \$10,000. The average penalty is \$600 and employers just build it into the cost of doing business. It is cheaper to leave a hazard and risk a small fine. Taking risks is part of the construction business. The bill will bring about a culture change.

The bill makes sure employees are not discriminated against for being whistleblowers. Now, people can be laid off for complaining.

(Opposed) Last year's abatement bill was a significant undertaking where business and labor came together. Do not provoke another business/labor Armageddon. The bill is modeled after a federal bill for the Occupational Safety and Health Administration. Let Congress set minimum standards and do not make Washington employers subject to different standards than other states.

Having a discussion about raising civil penalty amounts would be okay. New criminal provisions would have a chilling effect on safety managers because of the standard of intent for the WISHA cases.

Adding victims to the process could cause delay and vexation. The Department is already enforcing the WISHA on the victim's behalf. Victims can intervene under civil rules. This bill may hinder the ability of employers to use progressive discipline. The bill adds another way a disgruntled employee can file a complaint and could be costly. The definition of "serious injury" is of concern and may set a precedent. It is hard not to take it personally that people think worker safety is unimportant. Less injuries means more cost effective.

**Persons Testifying:** (In support) Representative Kenney, prime sponsor; Nicole Grant, Certified Electrical Workers of Washington; Randy Loomans, International Union of Operating Engineers Local 302; Teresa Mosqueda, Washington State Labor Council; and Sean O'Sullivan, Association of Western Pulp and Paper Workers.

(Opposed) Kris Tefft, Association of Washington Business; Karen Johnson, Sunset Air; and Gary Smith, Independent Business Association.

**Persons Signed In To Testify But Not Testifying:** Scott Dilley, Washington Farm Bureau.