

HOUSE BILL REPORT

EHB 1891

As Passed House:
March 8, 2013

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 Reykdal, Ormsby, Sells, Moeller, Ryu, Green and Freeman.

Brief History:

Committee Activity:

Labor & Workforce Development: 2/20/13, 2/21/13 [DP].

Floor Activity:

Passed House: 3/8/13, 65-32.

Brief Summary of Engrossed Bill

- Requires the Department of Labor and Industries to report to the Legislature by December 1, 2013, regarding review of the assessment of civil penalties to meet federal requirements and the recommendations of the Washington Industrial Safety and Health Act (WISHA) Advisory Committee regarding any changes to statutory civil penalties.
- Provides that upon request, the Director of the Department of Labor and Industries must meet with a victim, provide information to a victim, and give the victim an opportunity to make a statement before the parties.
- Establishes requirements for safety committees.
- Requires employers to provide information to new employees about their rights under the WISHA.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: Do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

Staff: Joan Elgee (786-7106).

Background:

Washington is a "state plan state" under the federal Occupational Safety and Health Act, which is administered by the Occupational Safety and Health Administration (OSHA). As a state plan state, Washington assumes responsibility for occupational safety and health in the state under the Washington Industrial Safety and Health Act (WISHA). To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized by the OSHA. The Department of Labor and Industries (Department) administers the WISHA.

The Director of the Department (Director) may inspect and investigate work places. Maximum, and in some cases, minimum civil penalties for various types of violations are established in statute. By rule, the Department has established base penalties depending on the gravity of the violation and adjustments to those base penalties for good faith, size of the employer, and other reasons. The WISHA Advisory Committee (Committee) is a statutory employer/employee committee that advises the Department and studies safety and health matters. The Department is working with the Committee on possible changes to penalty rules to meet new OSHA penalty measures. Appeals of citations and penalty assessments are heard by the Board of Industrial Insurance Appeals (Board). However, 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 object to or support the Director's reassumption of jurisdiction.

Under standards adopted by the Department, all employers must have an accident prevention program and must train employees about hazards. By rule, employers with 11 or more employees on the same shift at the same location must establish a safety committee. Other employers may hold a safety meeting instead of establishing a safety committee.

A person may not discharge or otherwise discriminate against an employee who files a complaint or testifies in a WISHA proceeding, or because of certain other actions. A person who believes he or she has been discriminated against may file a complaint with the Director within 30 days after the violation. 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.

Summary of Engrossed Bill:

Penalty Report.

The Washington Industrial Safety and Health Act (WISHA) Advisory Committee (Committee) must continue its work of reviewing and making recommendations regarding civil penalties to assure that the assessment of civil penalties meets federal requirements. In

addition, the Committee must review statutory civil penalties and make recommendations regarding any changes to civil penalties. The Department of Labor and Industries (Department) must report to the Legislature by December 1, 2013, regarding: (a) Committee recommendations and Department steps with respect to ensuring that the assessment of civil penalties meets federal requirements; and (b) Committee recommendations regarding any changes to the statutory civil penalties.

Victim Rights.

The Director of the Department (Director) must take certain actions at the request of a victim. A "victim" is an employee who sustained serious physical harm resulting in death or in-patient hospitalization 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.

The Director must:

- meet with the victim and make a reasonable effort for the meeting to take place before the Director decides whether to issue a citation;
- provide to the victim: (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; and
- provide the victim an opportunity to appear and make a statement before the parties at proceedings during reassumption of jurisdiction by the Director or an appeal before the Board of Industrial Insurance Appeals.

The opportunity to make a statement must take place before the Director agrees to modify or withdraw an associated citation or reduce an associated penalty. The Director must adopt rules regarding victim rights and for the informal review of any claim of denial of a right. The rules must ensure insofar as possible that the issuance of a citation is not unduly delayed by a victim's meeting with the Director. The requirements also apply to the representatives of victims.

Safety Committees.

Requirements are established for employers that are required by law to establish a safety committee or choose to do so. The employer must provide at least eight hours of safety and health training, to include hazard identification and control, to committee members within three months of appointment and then annually. Trainers and class content must meet requirements established by the Department. The training must be in addition to but may be combined with training programs provided to all employees under an accident prevention program. The safety committee must: (1) identify situations that may be a source of danger or hazard to workers; (2) make recommendations to improve the safety and health of workers; and (3) recommend the establishment, maintenance, and monitoring of programs, measures, and procedures respecting the safety and health of workers. An employer must respond to recommendations in writing in 21 or fewer calendar days.

At least one employer and one employee member of a safety committee must conduct inspections at least once every three months to ensure that prompt action is taken to correct any hazardous condition found. Written reports of inspections must be provided to and reviewed by the full safety committee within 45 days of the inspection.

New Employees.

An employer must provide each new employee with written information about employee rights under the WISHA at the time of hiring and before the employee begins work. The information must include the right to: request a workplace inspection; receive information and training about hazards; receive copies of test results done to find hazards; review records of injuries and illnesses; get copies of medical records; and exercise rights without fear of retaliation or discrimination. The Department must develop and make available materials to assist employers in complying with the requirement.

Discrimination.

The time to file a discrimination complaint is increased from 30 to 180 days.

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) At a minimum there should be an inflation index for the penalties. This bill is proactive and brings safety into this century. This bill will bring down costs and protect workers. A worker sustains a serious injury every 15 minutes. We are open to discussing criminal penalties.

Penalties are currently trivial. When a sulphuric tank blew up and killed workers, the Occupational Safety and Health Administration (OSHA) fine was \$175,000 but the Environmental Protection Agency fine was \$12 million. In Washington, the penalty is only \$7,000. The OSHA is requiring Washington to increase penalties but this will only result in an average penalty of \$2,000. Statutory change is needed to change the maximums.

Safety committees are important tools to reduce injuries. In one workplace, a safety committee was responsible for reducing injuries by almost half by changing the safety culture. The bill empowers safety committees to make changes and helps get safety resources into the workplace. A committee would have the authority to inspect a workplace.

New employees have been seriously injured. An orientation would help reduce injuries. If new employees get notice of their rights, it may cut down on them calling their union and fear of retaliation.

At what point is it cheaper to pay the penalties than fix the problem, like the Ford Pinto exploding gas tanks? Workplaces should be made safer as a way to reduce costs rather than chip away at benefits.

(Opposed) This bill is drastic and unreasonable. Employers take safety seriously. The penalties are punitive and arbitrary rather than proactive. One crime changes the burden of proof and the retaliation provision has a double jeopardy element.

The safety and notice sections could be broken out.

The Washington Industrial Safety and Health Act (WISHA) Advisory Committee is working in a collaborative way to meet the OSHA's standard on penalties. That work should be allowed to continue. Passing this bill could hinder those efforts.

Failure to have a notice posted could result in a \$12,000 fine. Workers rip these down. Employers get cited for a general, unclear rule about keeping workplace free from hazards. The bill is inconsistent with laws giving small businesses a chance to correct violations.

Persons Testifying: (In support) Representative Reykdal, prime sponsor; Rebecca Johnson, Washington State Labor Council; Sharon Ness, United Food and Commercial Workers United Council; Michael Silverstein; Larry Brown, International Association of Machinists District 751; Geoff Simpson, Washington State Council of Fire Fighters; and Bob Guenther, International Brotherhood of Electrical Workers Local 77.

(Opposed) Kris Tefft, Association of Washington Business; Gary Smith, Independent Business Association; and Scott Dilley, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.