

SENATE BILL REPORT

EHB 1891

As of April 4, 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: Passed House: 3/08/13, 65-32.

Committee Activity: Commerce & Labor: 4/03/13.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Edith Rice (786-7444)

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 OSHA. The Department of Labor and Industries (Department) administers 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 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.

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.

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 that they were discriminated against may file a complaint with the Director within 30 days after the violation. If the Director determines that a violation occurred, the Director must bring an action in superior court. If the Director determines that a violation did not occur, 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 Bill: Penalty Report. The 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 must report to the Legislature by December 1, 2013, regarding Committee recommendations and Department steps with respect to ensuring that the assessment of civil penalties meets federal requirements; and Committee recommendations regarding any changes to the statutory civil penalties.

Victim Rights. The 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.

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 annually thereafter. 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 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.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The WISHA report that is due back is important. This bill provides some important protections. Our original version of this bill may have been too aggressive. Costs can be reduced. We would like the committee to come back with recommendations. We want to prevent injuries before they happen. Transparency in the process is helpful and more information will bring down costs. It makes sense to empower the safety committees.

CON: We understand that the original was a message bill. It had a serious lack of foundation. We do not need this bill. The process to review penalties is already ongoing. Stop making employers the bad guy and have workers pay a portion of the penalty where there is willful disregard for safety measures. We have concerns, this duplicates existing law.

Persons Testifying: PRO: Representative Reykdal, prime sponsor; Cody Arledge, Sheet Metal Workers, Local 66; Teresa Mosqueda, WA State Labor Council, American Federation of Labor and Congress of Industrial Organization.

CON: Kathleen Collins, WA Self Insurers Assn.; Kris Tefft, Assn. of WA Business; Patrick Connor, Nation Federation of Independent Business.