

# HOUSE BILL REPORT

## HB 1953

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### As Reported by House Committee On: Labor & Workplace Standards

**Title:** An act relating to maximum penalties under the Washington industrial safety and health act.

**Brief Description:** Addressing maximum penalties under the Washington industrial safety and health act.

**Sponsors:** Representatives Dolan, Gregerson, Sells, Doglio, Ormsby and Kilduff; by request of Department of Labor & Industries.

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 2/13/17, 2/16/17 [DP].

#### **Brief Summary of Bill**

- Adjusts penalty maximum and minimum amounts for Washington Industrial Safety and Health Act violations by specifying any higher amounts required by the Occupational Safety and Health Administration.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Pike.

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

#### **Background:**

Washington is a "state plan state" for purposes of the federal 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

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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.*

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), through the Division of Occupational Safety and Health (DOSH), administers the WISHA.

The Director of the Department (Director) may inspect and investigate work places. If the Director believes that an employer has violated a safety or health standard, the Director must issue a citation. The citation identifies the violation, a time for abatement, and the penalty. To determine the penalty, the DOSH calculates a base penalty based on the gravity of the violation and then adjusts the base penalty based on the employer's inspection history, the size of the workforce, and other factors. Maximum penalties are specified in statute for various types of violations, as well as a minimum penalty for willful violations.

In 2015 Congress directed the OSHA to adjust the maximum penalties to reflect inflation. The OSHA subsequently adjusted penalties effective August 1, 2016. The legislation also requires the OSHA to annually adjust civil penalties.

The civil penalty maximums and minimum under the WISHA and the OSHA for various violations are:

	WISHA	OSHA (January 1, 2017)
Serious or non-serious, failure to abate, posting—maximum penalty	\$7,000 (some penalties are discretionary and some mandatory)	\$12,675
Willful or repeated—maximum penalty	\$70,000	\$126,749
Willful—minimum penalty	\$5,000	\$9,054

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**Summary of Bill:**

Penalty maximums under the WISHA are adjusted so that if the state is required to have a higher maximum penalty for purposes of the OSHA, the maximum penalty is the higher penalty required under the OSHA. Similarly, for the mandatory minimum penalty for a willful violation, if the state is required to have a higher penalty amount, the higher amount set by the OSHA must be assessed.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2018.

**Staff Summary of Public Testimony:**

(In support) The bill synchs up Washington with federal law. Congress required the OSHA to do a one-time catch up for penalties, which had not been adjusted since 1990. Congress also required annual inflationary adjustments. Under Washington's penalty rule, less than 1 percent of penalties would be affected. If the state does not adjust its penalties, federal funding would be at risk and ultimately the OSHA could take over workplace safety in the state. While there is no enthusiasm for increased penalties, the state system is preferred over the OSHA. The Department will implement the bill responsibly.

(Opposed) None.

(Other) While there is no enthusiasm for the bill, a takeover by the OSHA is not desired.

**Persons Testifying:** (In support) Representative Dolan, prime sponsor; Tammy Fellin, Department of Labor and Industries; and Jim King, Heating, Ventilation and Air Conditioning Industry Association.

(Other) Gary Smith, Independent Business Association.

**Persons Signed In To Testify But Not Testifying:** None.