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53

HB 53 -- An Act relating to penalties for violation of  
work-place safety laws

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Comparison of All States Private Sector, 1983 to 1984

# HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary  
Finance

DATE: \_\_\_\_\_

The Health, Education and Social Services Committee has considered HB 53

"An Act relating to penalties for violation of workplace safety laws."

**RECOMMENDS:**

- replace with CSHB53 (HESS)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

John Ellis (Co-Chair)  
Phil Johnson (Co-Chair)  
Dave Donley  
Mark Gustenber

**SIGNING OTHER RECOMMENDATIONS:**

Alice Harley - No Rec.  
Bill E. Bell - No Rec.  
Bill Harris - No Rec.

John Ellis  
 Co-Chairman's signature  
Phil Johnson

Alaska State Legislature  
Representative Niilo Koponen

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POSITION PAPER

HB 53 - "AN ACT RELATING TO PENALTIES FOR VIOLATIONS TO  
WORK-PLACE SAFETY LAWS"

This legislation would reinforce the legislative intent in AS 18.60.010, which states that the legislature finds that "...personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments." The health and safety of every Alaskan worker should be a first priority in any work-place.

Alaska has continued to have one of the highest occupational injury and illness rates in the country. It is therefore necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state. My decision to strengthen the work-place safety laws resulted from past discussions with laborers, and research into case examples of the asbestos problems and other work-place accidents that have occurred within Alaska. These incidents include the Clear A.F.B. case, where avoidable microwave exposure causing severe injury to six workers resulted in an approximately \$400 fine.

This legislation parallels actions taken by the Washington State Legislature last year (1986) by increasing penalties for serious work-place violations. For example, under current Alaska Statute the penalty for a serious work-place safety violation is a maximum fine of \$1,000. This penalty is then adjusted downward by the Occupational Safety and Health Administration (OSHA), taking into consideration factors such as the size of the employee's business, good faith of the employer and any previous history of violations. The adjusted average fine for a serious violation is \$175.00. This penalty structure, which has not been adjusted for the past 17 years, is not an effective deterrent to serious hazards.

HB 53 would increase the maximum fine to \$25,000. With the application of the adjustment formula this is expected to increase the average fine to \$4,375. The possibility of more severe fines should encourage companies to pay more attention to worker safety. In Washington, an equivalent violation now carries a maximum fine of \$50,000.

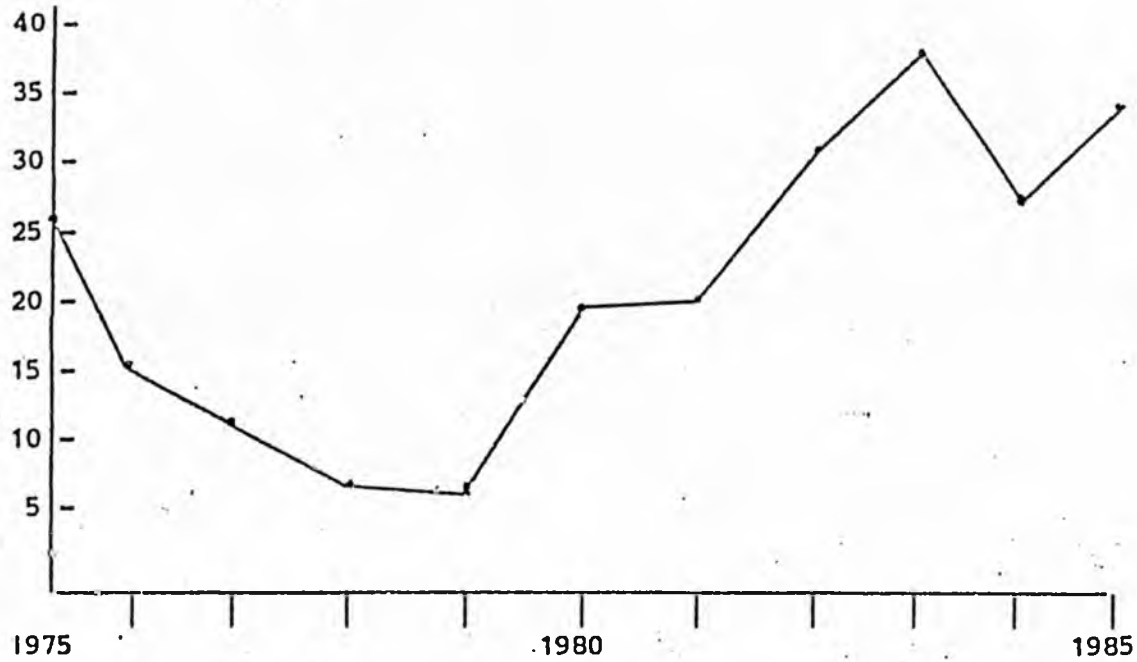
There is no reason why an employer can not abide by the standards that the federal and state statutes have established. There is a

common-law duty to provide a safe work-site that affects whomever supplies and controls that work-site. This duty protects all people on the site and not just the employees. (AS18.60.075.)

HB 53 is a deterrent intended to encourage businesses to conform to work-place safety laws and regulations. The main purpose of this legislation is to remind employers of their responsibility to prevent accidents. An increase in fines is one way of making sure that safety in the work-place is a top priority. Employees and the public need this protection. If an employer complies with required statutes and standards, then there should be no worry of being fined. Small fines are not effective enough to make changes occur.

It is the sponsor's earnest hope that greater compliance will result in a decrease in the number of fines levied. Collected fines levied will be deposited into the general fund which can be used to offset the temporary administrative costs that the Department of Labor will have until the new fines are promulgated.

Alaska Injury and Illness Rate  
Percentage Above National Average



Alaskan versus National Incidence Rates By Year

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Alaska	11.5	10.7	10.4	10.0	10.1	10.4	10.0	10.3	10.6	10.3	10.7
U.S.	9.1	9.2	9.3	9.4	9.5	8.7	8.3	7.7	7.6	8.0	7.9
Percentage Above National Average	26.0	16.3	11.8	6.38	6.3	19.5	20.4	33.7	39.4	28.0	35.0

# WASHINGTON STATE

## LABOR REGULATIONS

49.17.180

### Administrative Code References

In general, see WAC 296-360-005 et seq.

1970; prohibition against discrimination by employer. 9 Gonzaga L.Rev. 551.

### Law Review Commentaries

Employee's rights under Federal Occupational Safety and Health Act of

### Library References

Master and Servant §30(1).  
C.J.S. Master and Servant § 42.

### 49.17.170. Injunctions—Temporary restraining orders

(1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any work place, he shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his restraining authority under RCW 49.17.130.

Enacted by Laws 1973, ch. 80, § 17.

### Library References

Injunction §90.

C.J.S. Injunctions §§ 134, 135.

### 49.17.180. Violations—Civil penalties

(1) Any employer who wilfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be

49.17.180

LABOR REGULATIONS

assessed a civil penalty not to exceed fifty thousand dollars for each violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed five thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed three thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than five thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed three thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed one thousand five hundred dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation

LABOR REGULATIONS

49.17.190

is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

Enacted by Laws 1973, ch. 80, § 18. Amended by Laws 1986, ch. 20, § 2.

Law Review Commentaries

Citations and penalties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 571.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Sanctions against violation of Washington Industrial Safety and Health Act. 9 Gonzaga L.Rev. 457.

Library References

Labor Relations 10.

C.J.S. Labor Relations § 12.

Notes of Decisions

Where farm tractor driver, who had been assigned to drive tractor by employer, permitted plaintiff to ride on metal frame holding onto cross-bar while tractor was being driven from one area of hop field to another, where such conduct violated regulation pertaining to farm employees, and where driver's negligence in failing to determine whether plaintiff was off tractor before engaging mechanism was proximate cause of plaintiff's injury, tractor driver's employer was liable for plaintiff's injury. *Garcia v. Brulotte* (1980) 25 Wash.App. 818, 609 P.2d 976, reversed on other grounds 94 Wash.2d 794, 620 P.2d 99.

Under principle that in any conflict between statutory provisions which

treats subject in general way and another which treats subject in specific way, specific statute will prevail, notice and review procedures of State Industrial Safety and Health Act of 1973 (§ 49.17.010 et seq.) prevail, and there is no conflict, and no violation of due process, in labor and industries department's taking advantage of warrant procedures available to department as alternate means of collection. *Department of Labor and Industries v. City of Kennewick* (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

Where there was only one action to determine issues, i.e., propriety of citations and assessments by department of labor and industries under State Industrial Safety and Health Act of 1973, § 49.17.010 et seq., department's warrant, which respondent characterized as new cause of action because it was given cause number as required by § 51.48.140, merely established department's right to payment and acted as lien, same as judgment in civil case duly docketed in office of county clerk, and assignment of cause number did not alone split department's cause of action, as against contention that statutory procedures in essence allowed department to split its cause of action. *Department of Labor and Industries v. City of Kennewick* (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

It was not prejudicial error to refuse instruction on safety regulation where employee of subcontractor, who had been injured at construction site, failed to show general contractor's actual negligence. *Hyatt v. Sellen Const. Co., Inc.* (1985) 40 Wash.App. 893, 700 P.2d 1164.

49.17.190. Violations—Criminal penalties

(1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction

out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Enacted by Laws 1973, ch. 80, § 20.

**Cross References**

Uniform trade secrets act, see ch. 19.108.

**Library References**

Witnesses §216.  
C.J.S. Witnesses § 264.

**49.17.210. Research, experiments and demonstrations for safety purposes—Variances**

The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. The director, in his discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, which experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment.

Enacted by Laws 1973, ch. 80, § 21.

**Library References**

Labor Relations §10.  
C.J.S. Labor Relations § 12.

**49.17.220. Records—Reports—Notice to employee exposed to harmful materials**

(1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who

has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken.

Enacted by Laws 1973, ch. 80, § 22.

**Administrative Code References**

In general, see WAC 296-27-010 et seq.

**Law Review Commentaries**

Washington plan constituting alternative to preemption under Federal Occu-

pational Safety and Health Act of 1970; record keeping. 9 Gonzaga L.Rev. 626.

**Library References**

Labor Relations ⇐10.  
C.J.S. Labor Relations § 12.

**49.17.230. Compliance with federal act—Agreements and acceptance of grants authorized**

The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590)<sup>1</sup> to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970.

Enacted by Laws 1973, ch. 80, § 23.

<sup>1</sup> 29 U.S.C.A. § 667.

**Administrative Code References**

Record keeping and reporting, see WAC 296-27-010 et seq.

**Law Review Commentaries**

Alternative to preemption under Federal Occupational Safety and Health Act of 1970: The Washington plan. 9 Gonzaga L.Rev. 615.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Demonstrated need for agricultural standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 439.

Employee's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 543.

Employer's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 519.

Grants and loans to employers, under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 605.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Legislative history of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 327.

Overview of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 477.

Standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 493.

Variations under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 509.

**Library References**

Labor Relations ⇐10.  
C.J.S. Labor Relations § 12.

**49.17.246. Safety and health standards**

(1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of em-



safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: *Provided*, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or his authorized representative, may in his discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter.

Enacted by Laws 1973, ch. 80, § 25.

#### Law Review Commentaries

Washington plan constituting alternative to preemption under Federal Occupational Safety and Health Act of 1970; consultation inspection. 9 Gonzaga L.Rev. 627.

#### Library References

Labor Relations §10.  
C.J.S. Labor Relations § 12.

## 49.17.260. Statistics—Investigations—Reports

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: *Provided*, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action.

Enacted by Laws 1973, ch. 80, § 26.

## Administrative Code References

Record keeping and reporting, see  
WAC 296-27-010 et seq.

## Library References

Labor Relations 10.  
C.J.S. Labor Relations § 12.

## Law Review Commentaries

Records and reports under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 589.

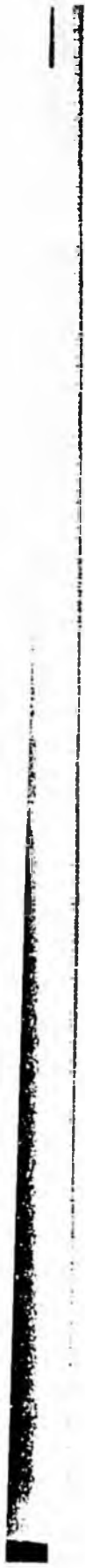
## 49.17.270. Administration of chapter

The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: *Provided*, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter.

Enacted by Laws 1973, ch. 80, § 27.

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Incidence rates of Recordable Occupational Injuries and Illnesses  
 Comparison of all States - Private Sector  
 1983 to 1984

	1983	1984
USA	7.6	8.0
Maine	11.0	13.2
Oregon	9.8	10.6
Alaska	10.6	10.3
Vermont	9.2	10.0
Hawaii	10.6	10.0
Washington	9.7	9.9
Oklahoma	9.9	9.8
Arizona	9.3	9.5
California	9.1	9.3
Utah	8.5	9.2
Nevada	9.0	9.0
Florida	8.7	8.9
Nebraska	8.4	8.8
New Mexico	7.8	8.7
Tennessee	7.9	8.6
Wyoming	7.9	8.6
Montana		8.5
Rhode Island	8.3	8.4
Connecticut	8.0	8.3
Alabama	7.9	8.3
Kentucky	7.6	8.3
Iowa	7.8	8.1
Arkansas	8.1	8.0
Mississippi		8.0
Missouri	7.5	8.0
Louisiana	7.4	7.9
Maryland	7.6	7.8
Minnesota	7.3	7.7
Kansas		7.7
Indiana	7.3	7.7
Virginia	7.0	7.6
Michigan	6.8	7.6
North Carolina	6.8	7.2
West Virginia	6.7	7.2
South Carolina	6.7	6.9
Delaware	5.3	5.5
Puerto Rico	4.2	3.9
American Samoa	2.5	3.0
Guam	2.7	2.8
Virgin Islands	2.8	2.4
Texas		
Illinois		
New Hampshire		
New Jersey		
Wisconsin		
Massachusetts		
Idaho		
Georgia		
Ohio		
South Dakota		
North Dakota		
Colorado		
Pennsylvania		
New York		



# Alaska State Legislature

## House of Representatives

COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

GUEST SIGN IN SHEET

Date: Jan. 29, 1987

Subject of Meeting DHSS, HB 53

Name	Address / Representing	Phone	Do you want to Testify?
<i>Jeff Potter</i>	801 Lincoln St / SITKA AK Sheldon Jackson college	747-9937	NO
<i>E. Ken Plate</i>	Dept. Labor HB 53	465-2760	"
<i>Karen Pedue</i>	DHSS	3030	"
<i>Elizabeth Ward</i>	DHSS	3030	"
<i>John Tiber</i>	DHSS	3347	yes
<i>Deborah Smith</i>	DHSS	3370	no
<i>Carl Kammath</i>	Ok. Dept. Institute		yes





STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 53  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to penalties for violation of workplace safety laws"  
Sponsor: Koponen and Goll  
Requestor: House HFSS

Agency Affected: Labor  
BRU: Occupational Safety and Health  
Components: Occupational Safety and Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL		3.2	1.7			
CONTRACTUAL		60.0	27.5			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	63.2	29.2	0	0	0
CAPITAL						
REVENUE	0	523.3	301.4	219.7	219.7	219.7

FUNDING: (Thousands of Dollars)

GENERAL FUND		31.6	14.6			
FEDERAL FUNDS		31.6	14.6			
OTHER						
TOTAL	0	63.2	29.2	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

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Division: Labor Standards and Safety Date: 1/26/87

Approved by Commissioner: Jim Sampson Date: 1/26/87  
Agency: Labor

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Fiscal Note Analysis  
For House Bill 53

House Bill 53 increases penalties for violations of workplace safety and health laws and is viewed as an effective deterrent to such violations. However, it is anticipated that a two-year period will be required for the deterrent effects of the increased penalties to be fully realized. Until the deterrent effect is fully realized, it is projected that the increased penalties will result in increased contests which will temporarily result in increased expenditures. Likewise, it is expected that revenues from penalties will initially increase and then decline as the deterrent effect materializes.

The increased costs are:

Contractual:

In FY 88 an additional \$45,000 will be required for legal costs for services provided by the Department of Law in connection with contested citations, and collection of penalties. This amount will decrease in FY 89 as the increased deterrent effect of the increased penalties is realized, and by FY 90, contests will have returned to present levels.

In FY 88, an additional \$10,000 in hearing officer costs will also be incurred for the OSHA Review Board which decides contested cases. As with the Department of Law costs, this fiscal note anticipates a decline in the caseload in FY 89, and a return to present levels in FY 90.

A one-time cost of \$5,000 is also included for mailing a notice to all employers in the state to inform them of the increased penalties.

Travel:

In FY 88, an additional \$3,200 in per diem costs will be incurred for the three-member OSHA Review Board which decides contested cases. The Board will meet an additional 8 days to hear the additional cases. These costs would likewise decrease in FY 89 and dissipate in FY 90.

Following are the specific workload assumptions used in projecting costs and revenues:

1. Increased penalties will take effect July 1, 1987;
2. In FY 88, there will be a 25% reduction in the number of serious violations and the number of serious citations. In FY 89 and FY 90, there will be further reductions of 35% and 20%, respectively. After FY 90, further reductions are not anticipated.

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Serious violations	250	190	125	100
Number of Serious citations	165	125	80	65

(Serious citations average  $1\frac{1}{2}$  serious violations each. Therefore, the number of citations issued is less than the number of serious violations.)

3. 40% of the Serious citations issued by the Department will be contested. (This is the present contest rate for citations with penalties of \$500 or more.)

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Contested citations	25	50	32	25

Additional Revenues:

The increased revenues are projected upon increases in penalties as follows:

Type of Violation	FY 87		FY 88		FY 89		FY 90	
	Violations	Penalties	Violations	Penalties	Violations	Penalties	Violations	Penalties
Repeat	30	\$10,700	20	\$142,800	10	\$71,400	5	\$35,700
Serious	250	45,000	190	684,000	125	450,000	100	360,000
Failure to Abate	1	300	2	6,000	0	0	0	0
Willful	<u>0</u>	<u>0</u>	<u>1</u>	<u>30,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Proposed Penalties		\$56,000		\$862,800		\$521,400		(\$395,700)
Less penalty reduction as a result of negotiated settlements and uncollect- ible penalties		(\$18,480)		(\$302,000)		(\$182,500)		(\$138,500)
Less Current Revenues		(37,520)		(37,520)		(37,520)		(37,520)
Additional Revenues		0		\$523,280		\$301,380		\$219,680

Bill No. House Bill No. 53

Date January 27, 1987

Title "An Act relating to penalties for violation of workplace safety laws."

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Under House Bill 53, the penalties assessed by the Department of Labor for violations of Alaska's Occupational Safety and Health law and regulations would be increased.

Specifically, the provisions of this bill:

- (1) increase the maximum penalty for a willful or repeat violation from \$10,000 to \$25,000;
- (2) establish a \$1000 minimum penalty for a serious violation; and increase the maximum penalty for a serious or failure to abate violation from \$1,000 to \$25,000;
- (3) increase the maximum penalty for a non-serious violation from \$1,000 to \$10,000;
- (4) increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$150,000; and increase from \$20,000 to \$500,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) increase from \$10,000 to \$25,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records or documents; and
- (6) increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$5,000.

The penalties in effect have not been increased since Alaska's occupational safety and health law was initially enacted in 1973.

More important than providing for an overdue inflationary increase in the penalty system, however, the increased penalties would serve as an effective deterrent to workplace safety and health violations. This, of course, will translate into safer workplaces, and a reduced risk of injury and illness to Alaska's workers.

An increased emphasis on worker safety and health is particularly important in times of economic decline, such as are presently being experienced. When cost-saving measures are implemented by employers during recessionary periods, equipment maintenance and replacement are diminished, and the need to increase worker productivity often results in unsafe "shortcuts" that would not be taken or even considered in more prosperous times. The deterrent effect of increased penalties would, therefore, assure that implementation of cost-saving measures by Alaska business is not at the expense of or to the detriment of the safety and health of Alaska's workers.

**POSITION PAPER/**Department of Labor

The Department of Labor supports the concept of increasing penalties for violations of Alaska's occupational safety and health law and regulations as provided in House Bill 53. However, the Department would recommend that the \$25,000 maximum penalty proposed for serious and for failure to abate violations each be reduced to \$10,000; and that the \$10,000 maximum proposed for non-serious violations be reduced to \$5,000. The Department feels that these lesser maximum penalties will still produce the desired deterrent effect.

The following specific amendments to House Bill 53 would be required to achieve this:

1. change line 20 on page 1 to read:  
less than [UP TO] \$1,000 and not more than \$10,000 for each violation.
2. change line 4 on page 2 to read:  
up to \$5,000 [\$1,000] for each violation.
3. change line 9 on page 2 to read:  
than \$10,000 [\$1,000] for each day during which the failure to correct

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor

## Sample of Penalty Structure

### Other-than-Serious:<sup>1</sup>

Number of Employees	Present Penalty	Penalty under HB 53
3	\$60	\$600
50	\$240	\$2,400
200	\$300	\$3,000

### Serious:

Number of Employees	Present Penalty	Penalty under HB 53
3	\$60	\$1,280
13	\$240	\$4,350
65	\$450	\$10,620
300	\$550	\$13,150

### Repeated Violations:<sup>2</sup>

Number of Employees	Present Penalty	Penalty under HB 53
3	\$120	\$2,560
13	\$480	\$8,700
65	\$900	\$21,240
200	\$1,100	\$26,300

### Willful Violations:

Number of Employees	Present Penalty	Penalty under HB 53
3	\$1,800	\$18,000
50	\$2,400	\$24,000
100	\$5,000	\$50,000

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<sup>1</sup>It is the department's current policy not to assess a penalty for "other" violations unless 10 or more violations are found at the worksite.

<sup>2</sup>If the violation is repeated a second time, the original penalty is multiplied by four and if it is repeated a third time the original penalty is multiplied by 10.

Failure to Abate Violation:<sup>3</sup>

Number of Employees	Present Penalty	Penalty under HB 53
3	\$240	\$2,400
13	\$1,680	\$30,450
65	\$4,050	\$95,580
300	\$5,500	\$131,500

Posting Violations:

	Present Penalty	Penalty under HB 53
Failure to post the "Safety and Health Protection on the Job" poster	\$60	\$300
Failure to post the "Annual Summary of Occupational Injuries and Illnesses" form	\$100	\$500
Failure to post a citation issued by the Department of Labor	\$250	\$1,250
Failure to post the "Right-to-Know" poster	\$60	\$300

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<sup>3</sup>Note the maximum penalty under HB 53 for each day a violation is uncorrected is \$25,000. In calculating these penalties it is assumed that the violation was uncorrected for 10 days.

Criminal Willful:<sup>4</sup>

Present Penalty

\$10,000

Penalty under HB 53

\$150,000

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<sup>4</sup>The department has never issued a criminal willful violation; however, if such a violation was found, the department would ask for the maximum penalty allowed under the law.