

1 **SHB 1471** H AMD to H COMM AMD - H AMD
2 By Representative Vance

3 On page 20 after line 8, strike all material through
4 "remedies." on line 3, page 25, and insert:

5 "(3)(a) Minors may not be employed at a time during school hours
6 which will interfere with their education except by special
7 permission of school officials as provided in RCW 28A.225.010 and
8 28A.225.080.

9 (b) Minors under the age of sixteen may not work more than
10 three hours a day on school days or more than eighteen hours a week
11 during the school year.

12 (c) Minors who are sixteen and seventeen years of age may not
13 work after 10 p.m. on consecutive school nights.

14 (e) This subsection (3) shall not apply to minors sixteen
15 years of age or older who are emancipated by court order.

16 (4) The minimum wage for minors shall be as prescribed in RCW
17 49.46.020.

18 (5) For the purposes of this section, "school year" means the
19 weeks during which school is in session in the school district
20 attended by the minor or, if the minor is not enrolled in school,
21 in the school district in which the minor resides.

1 NEW SECTION. Sec. 402. RCW 49.12.123 and 1983 c 3 s 156 &
2 1973 c 51 s 3 are each repealed.

3 "B. Enforcement of Child Labor Standards"

4 "NEW SECTION. **Sec. 403.** The legislature finds that employment
5 of minors requires strict adherence to standards that protect the
6 safety and health of children and ensure that their education
7 receives top priority. The purposes of this act are to protect
8 children in the work force and provide the department of labor and
9 industries the education and enforcement resources necessary to
10 assure that minors are employed in accordance with the state's
11 child labor standards.

12 NEW SECTION. **Sec. 404.** (1)(a) Except as otherwise provided
13 in subsection (2) of this section, if the director, or the
14 director's designee, finds that an employer has violated any of the
15 requirements of RCW 49.12.121, or a rule or order adopted or
16 variance granted under RCW 49.12.121, a citation stating the
17 violations shall be issued to the employer. The citation shall be
18 in writing, describing the nature of the violation including
19 reference to the standards, rules, or orders alleged to have been
20 violated. An initial citation for failure to comply with RCW
21 49.12.121 or rules requiring a minor work permit and maintenance of
22 records shall state a specific and reasonable time for abatement of
23 the violation to allow the employer to correct the violation

1 without penalty. The director or the director's designee shall
2 establish a specific time for abatement of other nonserious
3 violations in lieu of a penalty for first time violations. The
4 citation and a proposed penalty assessment shall be given to the
5 highest management official available at the work place and be
6 mailed to the central personnel office of the employer. Citations
7 issued under this section shall be posted at or near the place
8 where the violation occurred.

9 (b) Except when an employer corrects a violation as provided
10 in (a) of this subsection, he or she shall be assessed a civil
11 penalty of not more than one thousand dollars depending on the size
12 of the business and the gravity of the violation. The employer
13 shall pay the amount assessed within thirty days of receipt of the
14 assessment or notify the director of his or her intent to appeal
15 the citation or the assessment penalty as provided in section 3 of
16 this act.

17 (2) If the director, or the director's designee, finds that an
18 employer has committed a serious or repeated violation of the
19 requirements of RCW 49.12.121, or any rule or order adopted or
20 variance granted under RCW 49.12.121, the employer is subject to a
21 civil penalty of not more than one thousand dollars for each day
22 the violation continues. For the purposes of this subsection, a
23 serious violation shall be deemed to exist where the violation has
24 caused a substantial probability that death or serious physical
25 harm could result to a minor employee, unless the employer did not,

1 and could not with the exercise of reasonable diligence, know of
2 the presence of the violation.

3 (3) In addition to any other authority provided in this
4 section, if, upon inspection or investigation, the director, or
5 director's designee, believes that an employer has violated RCW
6 49.12.121, or a rule or order adopted or variance granted under RCW
7 49.12.121, and that the violation creates a danger from which there
8 is a substantial probability that death or serious physical harm
9 could result to a minor employee, the director, or director's
10 designee, may issue an order immediately restraining the condition,
11 practice, method, process, or means creating the danger in the work
12 place. An order issued under this subsection may require the
13 employer to take steps necessary to avoid, correct, or remove the
14 danger and to prohibit the employment or presence of a minor in
15 locations or under conditions where the danger exists.

16 (4) An employer who violates any of the posting requirements
17 of RCW 49.12.121 or rules adopted implementing RCW 49.12.121 shall
18 be assessed a civil penalty of not more than one hundred dollars
19 for each violation.

20 (5) A person who gives advance notice, without the authority
21 of the director, of an inspection to be conducted under this
22 chapter shall be assessed a civil penalty of not more than one
23 thousand dollars.

24 (6) Penalties assessed under this section shall be paid to the
25 director and deposited into the general fund.

1 NEW SECTION. **Sec. 405.** A person, firm, or corporation
2 aggrieved by an action taken or decision made by the department
3 under section 404 of this act may appeal the action or decision to
4 the director by filing notice of the appeal with the director
5 within thirty days of the department's action or decision. A
6 notice of appeal filed under this section shall stay the
7 effectiveness of a citation or notice of the assessment of a
8 penalty pending review of the appeal by the director, but such
9 appeal shall not stay the effectiveness of an order of immediate
10 restraint issued under section 404 of this act. Upon receipt of an
11 appeal, a hearing shall be held in accordance with chapter 34.05
12 RCW. The director shall issue all final orders after the hearing.
13 The final orders are subject to appeal in accordance with chapter
14 34.05 RCW. Orders not appealed within the time period specified in
15 chapter 34.05 RCW are final and binding.

16 NEW SECTION. **Sec. 406.** An employer who knowingly or
17 recklessly violates the requirements of RCW 49.12.121, or a rule or
18 order adopted under RCW 49.12.121, is guilty of a gross
19 misdemeanor. An employer whose practices in violation of the
20 requirements of RCW 49.12.121, or a rule or order adopted under RCW
21 49.12.121, result in the death or permanent disability of a minor
22 employee is guilty of a class C felony.

23 **Sec. 407.** RCW 49.12.121 and 1989 c 1 s 3 are each amended to

1 read as follows:

2 ~~((The committee, or the director,))~~ (1) The department may at
3 any time inquire into wages, hours, and conditions of labor of
4 minors employed in any trade, business or occupation in the state
5 of Washington and may adopt special rules for the protection of the
6 safety, health and welfare of minor employees. ~~((The minimum wage
7 for minors shall be as prescribed in RCW 49.46.020.))~~

8 (2) ~~The ((committee))~~ department shall issue work permits to
9 employers for the employment of minors~~((, after being assured))~~ if
10 the proposed employment ~~((of a minor))~~ meets the standards ~~((set
11 forth concerning))~~ for the health, safety and welfare of minors
12 ~~((as set forth in the rules and regulations promulgated by the
13 committee))~~ required by this chapter or adopted by department rule.
14 To implement state policy to assure the attendance of children in
15 the public schools, an employer employing a minor shall obtain a
16 work permit issued by the department. The permit shall be kept on
17 file during the employment of minors. No minor person shall be
18 employed in any occupation, trade or industry subject to this 1973
19 amendatory act, unless a work permit has been properly issued, with
20 the consent of the parent, guardian or other person having legal
21 custody of the minor and with the approval of the school which
22 ~~((such))~~ the minor may then be attending.

23 (3) By November 1, 1991, the department shall adopt rules to
24 implement this section. The rules shall take effect no earlier
25 than May 1, 1992. Consistency of coordination between the federal

1 rules and state regulations to avoid unnecessary confusion shall be
2 of paramount importance and shall take precedence over minor or
3 technical variations in the development of the rules required under
4 this section.

5 (4) Not more than 60 days following the formal adoption of
6 the rules required under this section, the department shall
7 undertake a broad public education program to ensure that the
8 greatest number of effected individuals as is practicable are
9 informed of the rule changes and their operation. The public
10 education program shall inform employers, parents, minor workers,
11 schools and educators of the new child labor regulatory
12 requirements and penalties. The program shall include mailings,
13 public service announcements, press releases, seminars, and any
14 other efficient means to communicate the changes to the state child
15 labor laws. This educational campaign shall be in place and
16 initiated not less than four months prior to the effective date of
17 the rules.

18 **Sec. 408.** RCW 49.12.170 and 1973 2nd ex.s. c 16 s 16 are each
19 amended to read as follows:

20 The committee shall not knowingly issue a variance under
21 the provisions of RCW 49.12.105 which places an employer in
22 conflict with the Federal Fair Labor Standards Act. Except as
23 otherwise provided in section 404 or 406 of this act, any employer
24 employing any person for whom a minimum wage or standards,

1 conditions, and hours of labor have been specified, at less than
2 said minimum wage, or under standards, or conditions of labor or at
3 hours of labor prohibited by the rules and regulations of the
4 committee; or violating any other of the provisions of this 1973
5 amendatory act, shall be deemed guilty of a misdemeanor, and shall,
6 upon conviction thereof, be punished by a fine of not less than
7 twenty-five dollars nor more than one thousand dollars.

8 NEW SECTION. Sec. 409. The penalties established in sections
9 404 and 406 of this act for violations of RCW 49.12.121 are
10 exclusive remedies.

11 **Sec. 410.** RCW 49.46.100 and 1959 c 294 s 10 are each amended
12 to read as follows:

13 (1) Any employer who hinders or delays the director or ((his))
14 the director's authorized representatives in the performance of
15 ((his)) the director's duties in the enforcement of this chapter,
16 or refuses to admit the director or ((his)) the director's
17 authorized representatives to any place of employment, or fails to
18 make, keep, and preserve any records as required under the
19 provisions of this chapter, or falsifies any such record, or
20 refuses to make any record accessible to the director or ((his))
21 the director's authorized representatives upon demand, or refuses
22 to furnish a sworn statement of such record or any other

1 information required for the proper enforcement of this chapter to
2 the director or ((his)) the director's authorized representatives
3 upon demand(~~(, or pays or agrees to pay wages at a rate less than~~
4 ~~the rate applicable under this chapter, or otherwise violates any~~
5 ~~provision of this chapter or of any regulation issued under this~~
6 ~~chapter)) shall be deemed in violation of this chapter and shall(~~(,~~
7 ~~upon conviction therefor, be guilty of a gross misdemeanor)) be
8 assessed a civil penalty of not more than one thousand dollars
9 depending on the size of the business and the gravity of the
10 violation.~~~~

11 (2) Any employer who willfully or repeatedly pays or agrees to
12 pay wages at a rate less than the rate applicable under this
13 chapter or a rule or order adopted under this chapter is in
14 violation of this chapter, and shall, upon conviction, be guilty of
15 a gross misdemeanor.

16 (3) Upon a finding by the director that an employer who
17 discharges or in any other manner discriminates against any
18 employee because such employee has made any complaint to his or her
19 employer, to the director, or his or her authorized representatives
20 that he or she has not been paid wages in accordance with the
21 provisions of this chapter, or that the employer has violated any
22 provision of this chapter, or because such employee has caused to
23 be instituted or is about to cause to be instituted any proceeding
24 under or related to this chapter, or because such employee has
25 testified or is about to testify in any such proceeding (~~shall be~~

1 ~~deemed in violation of this chapter and shall, upon conviction~~
2 ~~therefor, be guilty of a gross misdemeanor)), the director may~~
3 require an employer who has discharged or discriminated against an
4 employee in violation of this chapter to reinstate the employee to
5 the same position with back pay.

6 (4) Civil penalties imposed under this chapter shall be paid
7 to the director for deposit in the general fund. Civil penalties
8 may be recovered and other civil remedies authorized by this
9 chapter may be enforced in a civil action in the name of the
10 department brought in the superior court of the county where the
11 violation is alleged to have occurred, or the department may use
12 the procedures for collection of wages set forth in chapter 49.48
13 RCW.

14 **Sec. 411.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each
15 amended to read as follows:

16 (1) If upon investigation by the director, after taking
17 assignments of any wage claim under RCW 49.48.040, it appears to
18 the director that the employer is representing to ((his)) employees
19 that ((he)) the employer is able to pay wages for their services
20 and that the employees are not being paid for their services or if
21 the director determines an employer has repeatedly violated the
22 provisions of chapter 49.46 or 49.48 RCW requiring payment of
23 wages, the director may require the employer to give a bond in such
24 sum as the director deems reasonable and adequate in the

1 circumstances, with sufficient surety, conditioned that the
2 employer will for a definite future period not exceeding six months
3 conduct ((his)) business and pay ((his)) employees in accordance
4 with the laws of the state of Washington.

5 (2) If within ten days after demand for such bond the employer
6 fails to provide the same, the director may commence a suit against
7 the employer in the superior court of appropriate jurisdiction to
8 compel ((him)) the employer to furnish such bond or cease doing
9 business until ((he)) the employer has done so. The employer shall
10 have the burden of proving the amount thereof to be excessive.

11 (3) If the court finds that there is just cause for requiring
12 such bond and that the same is reasonable, necessary or appropriate
13 to secure the prompt payment of the wages of the employees of such
14 employer and his compliance with RCW 49.48.010 through 49.48.080,
15 the court shall enjoin such employer from doing business in this
16 state until the requirement is met, or shall make other, and may
17 make further, orders appropriate to compel compliance with the
18 requirement.

19 ~~((Upon being informed of a wage claim against an employer or
20 former employer, the director shall, if such claim appears to be
21 just, immediately notify the employer or former employer, of such
22 claim by mail. If the employer or former employer fails to pay the
23 claim or make satisfactory explanation to the director of his
24 failure to do so, within thirty days thereafter, the employer or
25 former employer shall be liable to a penalty of ten percent of that~~

1 ~~portion of the claim found to be justly due. The director shall~~
2 ~~have a cause of action against the employer or former employer for~~
3 ~~the recovery of such penalty, and the same may be included in any~~
4 ~~subsequent action by the director on said wage claim, or may be~~
5 ~~exercised separately after adjustment of such wage claim without~~
6 ~~court action.))~~

7 **Sec. 412.** RCW 49.48.030 and 1971 ex s c 55 s 3 are each
8 amended to read as follows:

9 In any action under this chapter for wages or salary owed in
10 ~~which any person is ((successful in recovering judgment for wages~~
11 ~~or salary owed to him))~~ the prevailing party, reasonable attorney's
12 fees, in an amount to be determined by the court, shall be
13 ~~((assessed against said employer or former employer))~~ awarded to
14 the prevailing party: Provided, however, That this section shall
15 not apply if the amount of recovery is less than or equal to the
16 amount admitted by the employer or claimed by the employee to be
17 owing for said wages or salary.

18 NEW SECTION. **Sec. 413.** Sections 404 through 406 and 409 of
19 this act are each added to chapter 49.12 RCW.

20 NEW SECTION. **Sec. 414.** Sections 401, 404 through 406 and 409
21 of this act shall take effect May 1, 1992."

1 Renumbering remaining sections consecutively and change
2 internal references accordingly.

EFFECT: The amendment makes the following changes to the bill:

- (1) Adds a requirement that citations for child labor law violations allow a reasonable time for correction of the violation.
- (2) Amends the provisions limiting hours of work for minors.
- (3) Requires the Department of Labor and Industries to adopt new rules for child labor with respect to hours and prohibited occupations, to take effect May 1, 1992.
- (4) Requires the department to implement an education program for employers on the new child labor rules.
- (5) Deletes the authority for the department to impose a 20 percent civil penalty for violations of the minimum wage chapter and for wage claims violations.
- (6) Requires attorneys' fees to be paid to the prevailing party in a wage claim action.
- (7) Prohibits knowingly issuing a variance which places an employer in conflict with the Federal Fair Labor Standards Act.