

SENATE BILL 5154

State of Washington

52nd Legislature

1991 Regular Session

By Senators Anderson, Murray, A. Smith, Moore, McMullen, Talmadge, Skratek, Pelz, Roach and Conner; by request of Department of Labor & Industries.

Read first time January 22, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the employment of minors; amending RCW
2 49.12.170; adding new sections to chapter 49.12 RCW; creating a new
3 section; prescribing penalties; providing an effective date; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the future of
7 the state depends on the education and well-being of the state's
8 children. Investigations of three hundred ninety-five workplace
9 injuries to minors by the department of labor and industries indicates
10 that over forty percent of the injuries occurred at worksites not in
11 compliance with child labor laws. Almost half of the injuries that
12 resulted in time off work occurred at a worksite not in compliance with
13 child labor laws.

1 The legislature finds that employment of minors requires strict
2 adherence to standards that protect the safety and health of children
3 and ensure that their education receives top priority. The purposes of
4 this act are to protect children in the work force and provide the
5 department of labor and industries the enforcement resources necessary
6 to assure that minors are employed in accordance with the state's child
7 labor standards.

8 NEW SECTION. **Sec. 2.** (1)(a) Except as otherwise provided in
9 subsection (2) of this section, if the director, or the director's
10 designee, finds that an employer has violated any of the requirements
11 of RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance
12 granted under RCW 49.12.121 or 49.12.123, a citation stating the
13 violations shall be issued to the employer. The citation shall be in
14 writing, describing the nature of the violation including reference to
15 the standards, rules, or orders alleged to have been violated. An
16 initial citation for failure to comply with RCW 49.12.123 or rules
17 requiring a minor work permit and maintenance of records shall state a
18 specific time for abatement of the violation to allow the employer to
19 correct the violation without penalty. The director or the director's
20 designee may establish a specific time for abatement of other
21 nonserious violations in lieu of a penalty for first time violations.
22 The citation and a proposed penalty assessment shall be given to the
23 highest management official available at the workplace or be mailed to
24 the employer at the workplace. In addition, the department will mail
25 a copy of the citation and proposed penalty assessment to the central
26 personnel office of the employer. Citations issued under this section
27 shall be posted at or near the place where the violation occurred.

28 (b) Except when an employer corrects a violation as provided in (a)
29 of this subsection, he or she shall be assessed a civil penalty of not

1 more than one thousand dollars depending on the size of the business
2 and the gravity of the violation. The employer shall pay the amount
3 assessed within thirty days of receipt of the assessment or notify the
4 director of his or her intent to appeal the citation or the assessment
5 penalty as provided in section 3 of this act.

6 (2) If the director, or the director's designee, finds that an
7 employer has committed a serious or repeated violation of the
8 requirements of RCW 49.12.121 or 49.12.123, or any rule or order
9 adopted or variance granted under RCW 49.12.121 or 49.12.123, the
10 employer is subject to a civil penalty of not more than one thousand
11 dollars for each day the violation continues. For the purposes of this
12 subsection, a serious violation shall be deemed to exist if death or
13 serious physical or emotional harm has resulted or could result from a
14 condition that exists, or from one or more practices, means, methods,
15 operations, or processes that have been adopted or are in use by the
16 employer, unless the employer did not, and could not with the exercise
17 of reasonable diligence, know of the presence of the violation.

18 (3) In addition to any other authority provided in this section,
19 if, upon inspection or investigation, the director, or director's
20 designee, believes that an employer has violated RCW 49.12.121 or
21 49.12.123, or a rule or order adopted or variance granted under RCW
22 49.12.121 or 49.12.123, and that the violation creates a danger from
23 which there is a substantial probability that death or serious physical
24 harm could result to a minor employee, the director, or director's
25 designee, may issue an order immediately restraining the condition,
26 practice, method, process, or means creating the danger in the
27 workplace. An order issued under this subsection may require the
28 employer to take steps necessary to avoid, correct, or remove the
29 danger and to prohibit the employment or presence of a minor in
30 locations or under conditions where the danger exists.

1 (4) An employer who violates any of the posting requirements of RCW
2 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed
3 a civil penalty of not more than one hundred dollars for each
4 violation.

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

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

10 NEW SECTION. **Sec. 3.** A person, firm, or corporation aggrieved by
11 an action taken or decision made by the department under section 2 of
12 this act may appeal the action or decision to the director by filing
13 notice of the appeal with the director within thirty days of the
14 department's action or decision. A notice of appeal filed under this
15 section shall stay the effectiveness of a citation or notice of the
16 assessment of a penalty pending review of the appeal by the director,
17 but such appeal shall not stay the effectiveness of an order of
18 immediate restraint issued under section 2 of this act. Upon receipt
19 of an appeal, a hearing shall be held in accordance with chapter 34.05
20 RCW. The director shall issue all final orders after the hearing. The
21 final orders are subject to appeal in accordance with chapter 34.05
22 RCW. Orders not appealed within the time period specified in chapter
23 34.05 RCW are final and binding.

24 NEW SECTION. **Sec. 4.** An employer who knowingly or recklessly
25 violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or
26 order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross
27 misdemeanor. An employer whose practices in violation of the
28 requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted

1 under RCW 49.12.121 or 49.12.123, result in the death or permanent
2 disability of a minor employee is guilty of a class C felony.

3 **Sec. 5.** RCW 49.12.170 and 1973 2nd ex.s. c 16 s 16 are each
4 amended to read as follows:

5 Except as otherwise provided in section 2 or 4 of this act, any
6 employer employing any person for whom a minimum wage or standards,
7 conditions, and hours of labor have been specified, at less than said
8 minimum wage, or under standards, or conditions of labor or at hours of
9 labor prohibited by the rules and regulations of the committee; or
10 violating any other of the provisions of this 1973 amendatory act,
11 shall be deemed guilty of a misdemeanor, and shall, upon conviction
12 thereof, be punished by a fine of not less than twenty-five dollars nor
13 more than one thousand dollars.

14 NEW SECTION. **Sec. 6.** The penalties established in sections 2 and
15 4 of this act for violations of RCW 49.12.121 and 49.12.123 are
16 exclusive remedies.

17 NEW SECTION. **Sec. 7.** Sections 2 through 4 and 6 of this act are
18 each added to chapter 49.12 RCW.

19 NEW SECTION. **Sec. 8.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and shall take

1 effect July 1, 1991.