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SENATE BILL 5405

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators A. Smith, Murray, Talmadge, Pelz, Skratek, Rinehart, Vognild, Moore, L. Kreidler, Niemi, McMullen and Wojahn.

Read first time January 30, 1991. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to employment; amending RCW 49.12.121, 49.12.170,  
2 49.46.100, 49.48.040, and 49.48.060; adding new sections to chapter  
3 49.12 RCW; creating new sections; repealing RCW 49.12.123; prescribing  
4 penalties; providing an effective date; and 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.

14            The legislature finds that employment of minors requires strict  
15 adherence to standards that protect the safety and health of children

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

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

26 (b) Except when an employer corrects a violation as provided in (a)  
27 of this subsection, he or she shall be assessed a civil penalty of not  
28 more than one thousand dollars depending on the size of the business  
29 and the gravity of the violation. The employer shall pay the amount

1 assessed within thirty days of receipt of the assessment or notify the  
2 director of his or her intent to appeal the citation or the assessment  
3 penalty as provided in section 3 of this act.

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

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

29 (4) An employer who violates any of the posting requirements of RCW  
30 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed

1 a civil penalty of not more than one hundred dollars for each  
2 violation.

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

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

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

22 NEW SECTION. **Sec. 4.** An employer who knowingly or recklessly  
23 violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or  
24 order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross  
25 misdemeanor. An employer whose practices in violation of the  
26 requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted  
27 under RCW 49.12.121 or 49.12.123, result in the death or permanent  
28 disability of a minor employee is guilty of a class C felony.

1       **Sec. 5.** RCW 49.12.121 and 1989 c 1 s 3 are each amended to read as  
2 follows:

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

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

24       (3)(a) Minors legally required to attend school may not be employed  
25 during school hours except by special permission of school officials as  
26 provided in RCW 28A.225.010 and 28A.225.080.

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

1        (c) Minors who are sixteen and seventeen years of age may not work  
2 more than four hours a day on school days or more than twenty-eight  
3 hours a week during the school year.

4        (d) No minor may work more than eight hours a day or more than  
5 forty hours a week. No minor may work more than five days in a week.

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

8        (4) The minimum wage for minors shall be as prescribed in RCW  
9 49.46.020.

10       (5) For the purposes of this section, "school year" means the weeks  
11 during which school is in session in the school district attended by  
12 the minor or, if the minor is not enrolled in school, in the school  
13 district in which the minor resides.

14       **Sec. 6.** RCW 49.12.170 and 1973 2nd ex.s. c 16 s 16 are each  
15 amended to read as follows:

16       Except as otherwise provided in section 2 or 4 of this act, any  
17 employer employing any person for whom a minimum wage or standards,  
18 conditions, and hours of labor have been specified, at less than said  
19 minimum wage, or under standards, or conditions of labor or at hours of  
20 labor prohibited by the rules and regulations of the committee; or  
21 violating any other of the provisions of this 1973 amendatory act,  
22 shall be deemed guilty of a misdemeanor, and shall, upon conviction  
23 thereof, be punished by a fine of not less than twenty-five dollars nor  
24 more than one thousand dollars.

25       NEW SECTION. **Sec. 7.** The penalties established in sections 2 and  
26 4 of this act for violations of RCW 49.12.121 and 49.12.123 are  
27 exclusive remedies.

1        NEW SECTION.    **Sec. 8.**    The legislature finds that over twenty-five  
2 thousand state residents per year file cases and complaints with the  
3 department of labor and industries alleging they have been denied  
4 payment for work they performed.    Each month an average of over one  
5 million dollars in back wages is sought by workers.

6        The legislature further finds that the Washington state minimum  
7 wage law and wage claim laws do not require payment of interest on back  
8 wages owed and do not authorize adequate penalties against violators.  
9 To improve compliance, the department of labor and industries should be  
10 allowed to assess interest on back wages and impose civil penalties  
11 against employers who are found to be not in compliance with chapters  
12 49.46 and 49.48 RCW.

13        **Sec. 9.**    RCW 49.46.100 and 1959 c 294 s 10 are each amended to read  
14 as follows:

15        (1) Any employer who hinders or delays the director or ((his)) the  
16 director's authorized representatives in the performance of ((his)) the  
17 director's duties in the enforcement of this chapter, or refuses to  
18 admit the director or ((his)) the director's authorized representatives  
19 to any place of employment, or fails to make, keep, and preserve any  
20 records as required under the provisions of this chapter, or falsifies  
21 any such record, or refuses to make any record accessible to the  
22 director or ((his)) the director's authorized representatives upon  
23 demand, or refuses to furnish a sworn statement of such record or any  
24 other information required for the proper enforcement of this chapter  
25 to the director or ((his)) the director's authorized representatives  
26 upon demand(~~(, or pays or agrees to pay wages at a rate less than the~~  
27 ~~rate applicable under this chapter, or otherwise violates any provision~~  
28 ~~of this chapter or of any regulation issued under this chapter)) shall  
29 be deemed in violation of this chapter and shall(~~(, upon conviction~~~~

1 ~~therefor, be guilty of a gross misdemeanor))~~ be assessed a civil  
2 penalty of not more than one thousand dollars depending on the size of  
3 the business and the gravity of the violation.

4 (2) ~~((Any))~~ (a) An employer who pays or agrees to pay wages at a  
5 rate less than the rate applicable under this chapter or any rule or  
6 order adopted under this chapter may be assessed civil penalties of an  
7 amount equal to twenty percent of the wage violation.

8 (b) An employer who willfully or repeatedly pays or agrees to pay  
9 wages at a rate less than the rate applicable under this chapter or a  
10 rule or order adopted under this chapter is in violation of this  
11 chapter, and shall, upon conviction, be guilty of a gross misdemeanor.

12 (3) Upon a finding by the director that an employer who discharges  
13 or in any other manner discriminates against any employee because such  
14 employee has made any complaint to his or her employer, to the  
15 director, or his or her authorized representatives that he or she has  
16 not been paid wages in accordance with the provisions of this chapter,  
17 or that the employer has violated any provision of this chapter, or  
18 because such employee has caused to be instituted or is about to cause  
19 to be instituted any proceeding under or related to this chapter, or  
20 because such employee has testified or is about to testify in any such  
21 proceeding ~~((shall be deemed in violation of this chapter and shall,~~  
22 ~~upon conviction therefor, be guilty of a gross misdemeanor))~~, the  
23 director may require an employer who has discharged or discriminated  
24 against an employee in violation of this chapter to reinstate the  
25 employee to the same position with back pay and interest up to one  
26 percent per month.

27 (4) Civil penalties imposed under this chapter shall be paid to the  
28 director for deposit in the general fund. Civil penalties may be  
29 recovered and other civil remedies authorized by this chapter may be  
30 enforced in a civil action in the name of the department brought in the



1 superior court of the county where the violation is alleged to have  
2 occurred, or the department may use the procedures for collection of  
3 wages set forth in chapter 49.48 RCW.

4 **Sec. 10.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read  
5 as follows:

6 (1) The department of labor and industries may:

7 (a) Conduct investigations to ensure compliance with chapters  
8 39.12, 49.46, and 49.48 RCW, upon obtaining information indicating an  
9 employer may be committing a violation under chapters 39.12, 49.46, and  
10 49.48 RCW(~~, conduct investigations to ensure compliance with chapters~~  
11 39.12, 49.46, and 49.48 RCW));

12 (b) Order the payment of all wages owed the workers, including  
13 interest of up to one percent per month on back wages owed, and  
14 institute actions necessary for the collection of the sums determined  
15 owed; and

16 (c) Take assignments of wage claims and prosecute actions for the  
17 collection of wages and interest of up to one percent per month on back  
18 wages owed of persons who are financially unable to employ counsel when  
19 in the judgment of the director of the department the claims are valid  
20 and enforceable in the courts.

21 (2) Upon being informed of a wage claim against an employer or  
22 former employer, the director shall, if such claim appears to be just,  
23 immediately notify the employer or former employer, of such claim by  
24 mail. If the employer or former employer fails to pay the claim or  
25 make satisfactory explanation to the director of the failure to do so,  
26 within thirty days thereafter, the employer or former employer shall be  
27 liable to a penalty of twenty percent of that portion of the claim  
28 found to be justly due. The director shall have a cause of action  
29 against the employer or former employer for the recovery of such

1 penalty, and the same may be included in any subsequent action by the  
2 director on said wage claim, or may be exercised separately after  
3 adjustment of such wage claim without court action.

4 (3) The director of the department or any authorized representative  
5 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080:

6 (a) Issue subpoenas to compel the attendance of witnesses or parties  
7 and the production of books, papers, or records; (b) administer oaths  
8 and examine witnesses under oath; (c) take the verification of proof of  
9 instruments of writing; and (d) take depositions and affidavits. If  
10 assignments for wage claims are taken, court costs shall not be payable  
11 by the department for prosecuting such suits.

12 ~~((3))~~ (4) The director shall have a seal inscribed "Department of  
13 Labor and Industries--State of Washington" and all courts shall take  
14 judicial notice of such seal. Obedience to subpoenas issued by the  
15 director or authorized representative shall be enforced by the courts  
16 in any county.

17 ~~((4))~~ (5) The director or authorized representative shall have  
18 free access to all places and works of labor. Any employer or any  
19 agent or employee of such employer who refuses the director or  
20 authorized representative admission therein, or who, when requested by  
21 the director or authorized representative, willfully neglects or  
22 refuses to furnish the director or authorized representative any  
23 statistics or information pertaining to his or her lawful duties, which  
24 statistics or information may be in his or her possession or under the  
25 control of the employer or agent, shall be guilty of a misdemeanor.

26 (6) An action for relief under this section shall be commenced  
27 within three years after the cause of action accrues, unless a longer  
28 period of time applies under law.

1       **Sec. 11.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to  
2 read as follows:

3       (1) If upon investigation by the director, after taking assignments  
4 of any wage claim under RCW 49.48.040, it appears to the director that  
5 the employer is representing to ~~((his))~~ employees that ~~((he))~~ the  
6 employer is able to pay wages for their services and that the employees  
7 are not being paid for their services or if the director determines an  
8 employer has repeatedly violated the provisions of chapter 39.12, 49.46  
9 or 49.48 RCW requiring payment of wages, the director may require the  
10 employer to give a bond in such sum as the director deems reasonable  
11 and adequate in the circumstances, with sufficient surety, conditioned  
12 that the employer will for a definite future period not exceeding six  
13 months conduct ~~((his))~~ business and pay ~~((his))~~ employees in accordance  
14 with the laws of the state of Washington.

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

21       (3) If the court finds that there is just cause for requiring such  
22 bond and that the same is reasonable, necessary or appropriate to  
23 secure the prompt payment of the wages of the employees of such  
24 employer and his compliance with RCW 49.48.010 through 49.48.080, the  
25 court shall enjoin such employer from doing business in this state  
26 until the requirement is met, or shall make other, and may make  
27 further, orders appropriate to compel compliance with the requirement.

28       ~~((Upon being informed of a wage claim against an employer or former~~  
29 ~~employer, the director shall, if such claim appears to be just,~~  
30 ~~immediately notify the employer or former employer, of such claim by~~

1 mail.— If the employer or former employer fails to pay the claim or  
2 make satisfactory explanation to the director of his failure to do so,  
3 within thirty days thereafter, the employer or former employer shall be  
4 liable to a penalty of ten percent of that portion of the claim found  
5 to be justly due.— The director shall have a cause of action against  
6 the employer or former employer for the recovery of such penalty, and  
7 the same may be included in any subsequent action by the director on  
8 said wage claim, or may be exercised separately after adjustment of  
9 such wage claim without court action.))

10 NEW SECTION. **Sec. 12.** Sections 2 through 4 and 7 of this act  
11 are each added to chapter 49.12 RCW.

12 NEW SECTION. **Sec. 13.** RCW 49.12.123 and 1983 c 3 s 156 & 1973  
13 c 51 s 3 are each repealed.

14 NEW SECTION. **Sec. 14.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 15.** Sections 1 through 7 of this act are  
19 necessary for the immediate preservation of the public peace, health,  
20 or safety, or support of the state government and its existing public  
21 institutions, and shall take effect July 1, 1991.