

# HOUSE BILL REPORT

## HB 1548

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### As Reported by House Committee On:

Commerce & Labor

**Title:** An act relating to authorizing the director of labor and industries to issue and enforce civil penalties for violations of the minimum wage act and chapter 49.48 RCW.

**Brief Description:** Authorizing penalties for wage payment violations.

**Sponsors:** Representatives McCoy, Hudgins, Conway, Simpson and Kenney; by request of Department of Labor & Industries.

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/19/03, 3/4/03 [DPA].

#### Brief Summary of Amended Bill

- Requires employers that violate wage payment laws to pay workers unpaid wages and interest of up to 1 percent per month on such wages.
- Establishes civil penalties for violations of minimum wage and wage payment laws.
- Creates the employment standards enforcement account.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

**Staff:** Jill Reinmuth (786-7134).

### Background:

The state Minimum Wage Act and other laws establish standards for the payment of

wages. These standards are enforced by the Department of Labor and Industries (Department), which has authority to investigate wage violations, order the payment of wages owed to workers, and bring civil actions to collect wages. Employees are also permitted to bring civil actions to collect unpaid wages. Criminal penalties apply to certain violations.

An employer who pays an employee less than the amount to which the employee is entitled is liable in a civil action to the employee, even if the employee agreed to work for less. If the employee is successful in obtaining a judgment for wages owed, attorneys' fees are assessed against the employer, unless the recovery is equal to or less than the amount the employer admitted to be owing.

An employer is also liable in a civil action to the employee or employee's assignee for collecting a rebate from employees' wages and for paying a lower wage than obligated by law or contract when the paying of lower wages is willful and is done with intent to deprive. In this case, the employer is subject to exemplary damages of twice the amount of wages withheld.

The Department may investigate wage violations, order employers to pay, and institute actions to collect after a determination that sums are owed. The Department also may take assignments of wage claims and prosecute actions for employees who are financially unable to employ counsel.

A three-year statute of limitation applies to a number of causes, including an action on an unwritten contract (six years for written contract). The statute of limitations is two years for any action with no other limit specified.

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### **Summary of Amended Bill:**

The Legislature makes certain findings related to the state Minimum Wage Act and wage claim laws. In particular, the Legislature finds that the penalties for violating these laws are inadequate, and that the Department of Labor and Industries (Department) should be allowed to impose civil penalties and assess interest on back wages.

An employer is required to pay a worker all wages due to the worker on established paydays. An employer that violates wage payment laws must pay wages, including interest of up to 1 percent per month on unpaid wages, to the worker. An employer that violates these laws is also subject to civil penalties from \$100 to \$1,000 per violation per employee per day, and is guilty of a misdemeanor.

The Director of the Department is authorized to waive collection of penalties in favor of full payment of wages owed to a worker. The Director of the Department is also authorized to order payment of unpaid wages, including interest on unpaid wages. The

Department need not take an assignment of a wage claim before bringing a civil action to collect unpaid wages.

Finally, the Director of the Department is authorized to assess civil penalties. Certain factors that the Director may consider when determining the amount of penalties are specified. Civil penalties are paid to the Director of the Department, and are deposited in the new employment standards enforcement account. Expenditures from this account must be used for the Department's employment standards program.

Procedures are established for: (1) administrative review of citations or notices of assessment; and (2) for collection of unpaid wages and civil penalties.

Civil actions under wage payment laws must be commenced within three years after the cause of action accrues, unless a longer period of time applies under law.

Private rights of action against employers for unpaid wages are preserved.

Other technical corrections are made.

#### **Amended Bill Compared to Original Bill:**

The employment standards enforcement account is created. Civil penalties for wage payment violations must be deposited in this account instead of the supplemental pension fund. Expenditures from this account must be used only for the Department of Labor and Industries' employment standards program.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This legislation is needed to punish those who are misbehaving. It sets the record straight. It says that when a worker is owed the minimum wage, the worker must be paid the minimum wage. At least one-third of wage claims require active intervention on behalf of people who have worked and are owed wages. These are people hoping to put food on their tables and roofs over their heads. Enforcement of wage payment laws and employment standards is a long time coming. It amounts to wage theft when workers are not paid what they are owed. The workers and their families suffer. An administrative remedy is needed, with civil penalties to back it up. The employment standards program at the Department of Labor and Industries is understaffed. Some changes to the bill may be appropriate (e.g., some penalties should

go to workers rather than the Department and others should go towards enforcement of employment standards). When an employer fails to pay wages, there are consequences. With automatic deposits and payments, there may be insufficient funds to make automatic payments for mortgages and utilities.

**Testimony Against:** The key is consistency with federal law so that employers understand what they need to do to comply with state wage and hour laws. Employers have to guess at what is required under state laws. Until there is greater clarity, business cannot support this bill as written. This bill goes too far. It captures good actors and inadvertent errors. It requires interests payment as well as penalties. It imposes penalties for record keeping violations. Violations should be per pay period rather than per day. The emphasis should be on the collection and resolution of wage disputes. There are also problems with the statute of limitations, the double damages provision, and the possibility of both civil liability and civil penalties. Penalties should be deposited into a different fund. Inspections should be scheduled. For business to support this bill, there must be consistency with federal law, a more limited scope, the use of existing collection measures, and a window of correction for certain types of violations. This bill applies to more than just the Minimum Wage Act. This is more than a tool for minimum wage payment enforcement. The Department should not be able to impose fines without conducting complete investigations, and the Department lacks the resources to conduct such investigations. There should be a better small claims process.

**Testified:** (In support) Representative McCoy, prime sponsor; Patrick Woods, Department of Labor and Industries; Jeff Johnson, Washington State Labor Council; and Jeri Wood, Communication Workers of America.

(Opposed) Rick Slunaker, Associated General Contractors; Amber Balch, Association of Washington Business; Chris Cheney, Washington Growers' League; and Gary Smith, Independent Business Association.