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**SUBSTITUTE HOUSE BILL 1548**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives McCoy, Hudgins, Conway, Simpson, G. and Kenney; by request of Department of Labor & Industries)

READ FIRST TIME 02/06/04.

1       AN ACT Relating to authorizing the director of labor and industries  
2 to issue and enforce civil penalties for violations of the minimum wage  
3 act and chapter 49.48 RCW; amending RCW 49.46.100, 49.48.020,  
4 49.48.040, 49.48.060, and 49.48.070; adding new sections to chapter  
5 49.48 RCW; adding new sections to chapter 49.46 RCW; creating a new  
6 section; and prescribing penalties.

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

8       NEW SECTION. **Sec. 1.** The legislature finds that over five  
9 thousand state residents per year file cases and complaints with the  
10 department of labor and industries alleging they have been denied  
11 payment for work they performed. The department of labor and  
12 industries currently does not have an effective means of addressing  
13 these complaints in order to ensure workers are paid the wages they are  
14 owed.

15       The legislature further finds that the Washington state minimum  
16 wage law and wage claim laws do not authorize adequate penalties  
17 against violators. To improve compliance, the department of labor and  
18 industries should be allowed to assess interest on back wages and

1 impose civil penalties against employers who are found to be not in  
2 compliance with chapters 49.46 and 49.48 RCW.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.48 RCW  
4 to read as follows:

5 (1) An employer shall pay each worker all wages due on an  
6 established payday for each pay period.

7 (2) An employer found to have violated a provision requiring  
8 payment of wages under chapter 49.12, 49.28, 49.30, 49.46, or 49.52 RCW  
9 or this chapter in a citation or notice of assessment issued by the  
10 director of labor and industries or the director's authorized  
11 representative: Must pay the wages to the employee, including interest  
12 of up to one percent per month on the unpaid wages, also to be paid to  
13 the worker; shall be assessed a civil penalty of not less than one  
14 hundred dollars and not more than one thousand dollars for each  
15 violation per employee; and may be assessed a civil penalty of not more  
16 than one thousand dollars for each subsequent violation found in the  
17 citation or notice of assessment. Each day a violation occurs may  
18 constitute a separate violation. The director or director's authorized  
19 representative may also claim the remedies in RCW 49.52.070.

20 (3) The director of labor and industries may waive collection of a  
21 portion or all of the penalties assessed under this chapter in favor of  
22 the full payment of wages owed to the employee.

23 (4) The director of labor and industries, or the director's  
24 authorized representative, may require payment of unpaid wages and may  
25 assess all civil penalties authorized by this section. When  
26 considering the amount of penalties for multiple violations found in a  
27 citation and notice of assessment, the director, or the director's  
28 authorized representative, may consider the appropriateness of the  
29 penalty with respect to the number of affected employees of the  
30 employer being charged for each violation, the gravity of the  
31 violations, the duration of the violations, the size of the employer's  
32 business, the good faith of the employer, the history of previous  
33 violations, and other relevant factors.

34 (5) Civil penalties imposed under this chapter shall be paid to the  
35 director of labor and industries for deposit in the employment  
36 standards enforcement account established under section 17 of this act.

1 (6) The employer shall pay wages and the civil penalty amount  
2 assessed under this section within thirty days of receipt of the  
3 assessment or notify the director of his or her intent to appeal the  
4 citation or the assessment penalty as provided in section 9 of this  
5 act.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46 RCW  
7 to read as follows:

8 (1) An employer found to have violated any of the provisions of  
9 this chapter may be assessed a civil penalty of not less than one  
10 hundred dollars and not more than one thousand dollars for each  
11 violation per employee, and may be assessed a civil penalty of not more  
12 than one thousand dollars for each subsequent violation found in the  
13 citation or notice of assessment. Each day a violation occurs may  
14 constitute a separate violation.

15 (2) Civil penalties imposed under this chapter shall be paid to the  
16 director for deposit in the employment standards enforcement account  
17 established under section 17 of this act.

18 (3) The employer shall pay the civil penalty amount assessed under  
19 this section within thirty days of receipt of the assessment or notify  
20 the director of his or her intent to appeal the citation or the  
21 assessment penalty as provided in section 10 of this act.

22 **Sec. 4.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to read  
23 as follows:

24 (1) Any employer who hinders or delays the director or ~~((his))~~ the  
25 director's authorized representatives in the performance of ~~((his))~~ the  
26 director's duties in the enforcement of this chapter, or refuses to  
27 admit the director or ~~((his))~~ the director's authorized representatives  
28 to any place of employment, or fails to make, keep, and preserve any  
29 records as required under the provisions of this chapter, or falsifies  
30 any such record, or refuses to make any record accessible to the  
31 director or ~~((his))~~ the director's authorized representatives upon  
32 demand, or refuses to furnish a sworn statement of such record or any  
33 other information required for the proper enforcement of this chapter  
34 to the director or ~~((his))~~ the director's authorized representatives  
35 upon demand, or pays or agrees to pay wages at a rate less than the  
36 rate applicable under this chapter, or otherwise violates any provision

1 of this chapter or of any regulation issued under this chapter shall be  
2 deemed in violation of this chapter and shall, upon conviction  
3 therefor, be guilty of a gross misdemeanor.

4 (2) Any employer who discharges or in any other manner  
5 discriminates against any employee because such employee has made any  
6 complaint to his or her employer, to the director, or ~~((his))~~ the  
7 director's authorized representatives that he or she has not been paid  
8 wages in accordance with the provisions of this chapter, or that the  
9 employer has violated any provision of this chapter, or because such  
10 employee has caused to be instituted or is about to cause to be  
11 instituted any proceeding under or related to this chapter, or because  
12 such employee has testified or is about to testify in any such  
13 proceeding shall be deemed in violation of this chapter and shall, upon  
14 conviction therefor, be guilty of a gross misdemeanor.

15 **Sec. 5.** RCW 49.48.020 and 1971 ex.s. c 55 s 2 are each amended to  
16 read as follows:

17 Any person, firm, or corporation which violates any of the  
18 provisions of RCW 49.48.010 through 49.48.030 ~~((and))~~, 49.48.060, and  
19 section 2 of this act shall be guilty of a misdemeanor.

20 **Sec. 6.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read  
21 as follows:

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

23 (a) Conduct investigations to enforce section 2 of this act and to  
24 ensure compliance with this chapter and chapters 39.12, 49.12, 49.28,  
25 49.30, 49.46, and 49.52 RCW, upon obtaining information indicating an  
26 employer may be committing a violation under these chapters ~~((39.12,~~  
27 ~~49.46, and 49.48 RCW, conduct investigations to ensure compliance with~~  
28 ~~chapters 39.12, 49.46, and 49.48 RCW))~~);

29 (b) Order the payment of all wages owed the workers, including  
30 interest of up to one percent per month on the unpaid wages, also to be  
31 paid to the worker, and institute actions necessary for the collection  
32 of the sums determined owed either under section 2 of this act or in a  
33 civil action in the name of the department brought in superior court or  
34 other court of competent jurisdiction of the county where the violation  
35 is alleged to have occurred, or the department may use the procedures

1 for collection of wages in a court action set forth in this chapter and  
2 chapter 49.52 RCW; and

3 (c) (~~Take assignments of wage claims and~~) Prosecute actions for  
4 the collection of wages ((ef)), including interest of up to one percent  
5 per month on the unpaid wages, also to be paid to the worker, for  
6 persons who are financially unable to employ counsel when in the  
7 judgment of the director of the department the claims are valid and  
8 enforceable (~~in the courts~~).

9 (2) The director of the department or any authorized representative  
10 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080  
11 and section 2 of this act: (a) Issue subpoenas to compel the  
12 attendance of witnesses or parties and the production of books, papers,  
13 or records; (b) administer oaths and examine witnesses under oath; (c)  
14 take the verification of proof of instruments of writing; and (d) take  
15 depositions and affidavits. If assignments for wage claims are taken,  
16 court costs shall not be payable by the department for prosecuting such  
17 suits.

18 (3) The director shall have a seal inscribed "Department of Labor  
19 and Industries--State of Washington" and all courts shall take judicial  
20 notice of such seal. Obedience to subpoenas issued by the director or  
21 authorized representative shall be enforced by the courts in any  
22 county.

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

32 (5) An action for relief under this section shall be commenced  
33 within three years after the cause of action accrues, unless a longer  
34 period of time applies under law.

35 **Sec. 7.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to  
36 read as follows:

37 (1) If upon investigation by the director, (~~after taking~~

1 ~~assignments of any wage claim under RCW 49.48.040,~~) it appears to the  
2 director that the employer is representing to his or her employees that  
3 he or she is able to pay wages for their services and that the  
4 employees are not being paid for their services, the director may  
5 require the employer to give a bond in such sum as the director deems  
6 reasonable and adequate in the circumstances, with sufficient surety,  
7 conditioned that the employer will for a definite future period not  
8 exceeding six months conduct his or her business and pay his or her  
9 employees in accordance with the laws of the state of Washington.

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

16 (3) If the court finds that there is just cause for requiring such  
17 bond and that the same is reasonable, necessary or appropriate to  
18 secure the prompt payment of the wages of the employees of such  
19 employer and his or her compliance with RCW 49.48.010 through  
20 49.48.080, the court shall enjoin such employer from doing business in  
21 this state until the requirement is met, or shall make other, and may  
22 make further, orders appropriate to compel compliance with the  
23 requirement.

24 Upon being informed of a wage claim against an employer or former  
25 employer, the director shall, if such claim appears to be just,  
26 immediately notify the employer or former employer, of such claim by  
27 mail. If the employer or former employer fails to pay the claim or  
28 make satisfactory explanation to the director of his or her failure to  
29 do so, within thirty days thereafter, the employer or former employer  
30 shall be liable to a penalty of ten percent of that portion of the  
31 claim found to be justly due. The director shall have a cause of  
32 action against the employer or former employer for the recovery of such  
33 penalty, and the same may be included in any subsequent action by the  
34 director on said wage claim, or may be exercised separately after  
35 adjustment of such wage claim without court action.

36 **Sec. 8.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read  
37 as follows:

1       It shall be the duty of the director of labor and industries to  
2 inquire diligently for any violations of RCW 49.48.040 through  
3 49.48.080 and section 2 of this act, and to institute the actions for  
4 penalties herein provided, and to enforce generally the provisions of  
5 RCW 49.48.040 through 49.48.080 and section 2 of this act.

6       NEW SECTION. Sec. 9. A new section is added to chapter 49.48 RCW  
7 to read as follows:

8       A person, firm, or corporation aggrieved by a citation or notice of  
9 assessment issued by the department of labor and industries under this  
10 chapter may appeal the action or decision to the director of labor and  
11 industries by filing notice of the appeal with the director within  
12 thirty days of the department's issuance of a citation or notice of  
13 assessment, otherwise the citation or notice of assessment is final and  
14 binding. A notice of appeal filed under this section shall stay the  
15 effectiveness of a citation or notice of the assessment of a penalty  
16 pending review of the appeal by the director. Upon receipt of an  
17 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.  
18 The director shall issue all final orders after the hearing. The final  
19 orders are subject to appeal in accordance with chapter 34.05 RCW, with  
20 the prevailing party entitled to recover reasonable costs and  
21 attorneys' fees. Orders that are not appealed within the time period  
22 specified in chapter 34.05 RCW are final and binding.

23       NEW SECTION. Sec. 10. A new section is added to chapter 49.46 RCW  
24 to read as follows:

25       A person, firm, or corporation aggrieved by a citation or notice of  
26 assessment issued by the department of labor and industries under this  
27 chapter may appeal the action or decision to the director of labor and  
28 industries by filing notice of the appeal with the director within  
29 thirty days of the department's issuance of a citation or notice of  
30 assessment, otherwise the citation or notice of assessment is final and  
31 binding. A notice of appeal filed under this section shall stay the  
32 effectiveness of a citation or notice of the assessment of a penalty  
33 pending review of the appeal by the director. Upon receipt of an  
34 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.  
35 The director shall issue all final orders after the hearing. The final  
36 orders are subject to appeal in accordance with chapter 34.05 RCW, with

1 the prevailing party entitled to recover reasonable costs and  
2 attorneys' fees. Orders that are not appealed within the time period  
3 specified in chapter 34.05 RCW are final and binding.

4 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.48 RCW  
5 to read as follows:

6 Nothing in this chapter prohibits an employee from pursuing a  
7 private right of action against an employer for unpaid wages. The  
8 remedies provided for in this chapter are not exclusive and are  
9 concurrent with any other remedy provided by law.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.46 RCW  
11 to read as follows:

12 Nothing in this chapter prohibits an employee from pursuing a  
13 private right of action against an employer for unpaid wages. The  
14 remedies provided for in this chapter are not exclusive and are  
15 concurrent with any other remedy provided by law.

16 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.48 RCW  
17 to read as follows:

18 (1) If an employer defaults in a payment, penalty, or fine due to  
19 the department of labor and industries after a final order is issued  
20 under this chapter the director of labor and industries or the  
21 director's designee may file with the clerk of any county within the  
22 state, a warrant in the amount of the notice of assessment, plus  
23 interest, penalties, and a filing fee of twenty dollars. The clerk of  
24 the county in which the warrant is filed shall immediately designate a  
25 superior court cause number for the warrant, and the clerk shall cause  
26 to be entered in the judgment docket under the superior court cause  
27 number assigned to the warrant, the name of the employer mentioned in  
28 the warrant, the amount of payment, penalty, fine due on it, or filing  
29 fee, and the date when the warrant was filed. The aggregate amount of  
30 the warrant as docketed becomes a lien upon the title to, and interest  
31 in, all real and personal property of the employer against whom the  
32 warrant is issued, the same as a judgment in a civil case docketed in  
33 the office of the clerk. The sheriff shall proceed upon the warrant in  
34 all respects and with like effect as prescribed by law with respect to  
35 execution or other process issued against rights or property upon



1 judgment in a court of competent jurisdiction. The warrant so docketed  
2 is sufficient to support the issuance of writs of garnishment in favor  
3 of the state in a manner provided by law in case of judgment, wholly or  
4 partially unsatisfied. The clerk of the court is entitled to a filing  
5 fee which will be added to the amount of the warrant. A copy of the  
6 warrant shall be mailed to the employer within three days of filing  
7 with the clerk.

8 (2)(a) The director of labor and industries or the director's  
9 designee may issue to any person, firm, corporation, other entity,  
10 municipal corporation, political subdivision of the state, a public  
11 corporation, or any agency of the state, a notice and order to withhold  
12 and deliver property of any kind when he or she has reason to believe  
13 that there is in the possession of the person, firm, corporation, other  
14 entity, municipal corporation, political subdivision of the state,  
15 public corporation, or agency of the state, property that is or will  
16 become due, owing, or belonging to an employer upon whom a notice of  
17 assessment has been served by the department of labor and industries  
18 for payments, penalties, or fines due to the department. The effect of  
19 a notice and order is continuous from the date the notice and order is  
20 first made until the liability out of which the notice and order arose  
21 is satisfied or becomes unenforceable because of lapse of time. The  
22 department shall release the notice and order when the liability out of  
23 which the notice and order arose is satisfied or becomes unenforceable  
24 by reason of lapse of time and shall notify the person against whom the  
25 notice and order was made that the notice and order has been released.

26 (b) The notice and order to withhold and deliver must be served by  
27 the sheriff of the county or by the sheriff's deputy, by certified  
28 mail, return receipt requested, or by an authorized representative of  
29 the director. A person, firm, corporation, other entity, municipal  
30 corporation, political subdivision of the state, public corporation, or  
31 agency of the state upon whom service has been made shall answer the  
32 notice within twenty days exclusive of the day of service, under oath  
33 and in writing, and shall make true answers to the matters inquired of  
34 in the notice and order. Upon service of the notice and order, if the  
35 party served possesses any property that may be subject to the claim of  
36 the department, the party shall promptly deliver the property to the  
37 director or the director's authorized representative. The director  
38 shall hold the property in trust for application on the employer's

1 indebtedness to the department, or for return without interest, in  
2 accordance with a final determination of a petition for review. In the  
3 alternative, the party shall furnish a good and sufficient surety bond  
4 satisfactory to the director conditioned upon final determination of  
5 liability. If a party served and named in the notice fails to answer  
6 the notice within the time prescribed in this section, the court may  
7 render judgment by default against the party for the full amount  
8 claimed by the director in the notice, together with costs. If a  
9 notice is served upon an employer and the property subject to it is  
10 wages, the employer may assert in the answer all exemptions provided  
11 for by chapter 6.27 RCW to which the wage earner is entitled.

12 (3) In addition to the procedure for collection of a payment,  
13 penalty, or fine due to the department of labor and industries as set  
14 forth in this section, the department may recover civil penalties  
15 imposed under this chapter in a civil action in the name of the  
16 department brought in a court of competent jurisdiction of the county  
17 where the violation is alleged to have occurred.

18 (4) This section does not affect other collection remedies that are  
19 otherwise provided by law.

20 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.46 RCW  
21 to read as follows:

22 (1) If an employer defaults in a payment, penalty, or fine due to  
23 the department of labor and industries after a final order is issued  
24 under this chapter the director of labor and industries or director's  
25 designee may file with the clerk of any county within the state, a  
26 warrant in the amount of the notice of assessment, plus interest,  
27 penalties, and a filing fee of twenty dollars. The clerk of the county  
28 in which the warrant is filed shall immediately designate a superior  
29 court cause number for the warrant, and the clerk shall cause to be  
30 entered in the judgment docket under the superior court cause number  
31 assigned to the warrant, the name of the employer mentioned in the  
32 warrant, the amount of payment, penalty, fine due on it, or filing fee,  
33 and the date when the warrant was filed. The aggregate amount of the  
34 warrant as docketed becomes a lien upon the title to, and interest in,  
35 all real and personal property of the employer against whom the warrant  
36 is issued, the same as a judgment in a civil case docketed in the  
37 office of the clerk. The sheriff shall proceed upon the warrant in all

1 respects and with like effect as prescribed by law with respect to  
2 execution or other process issued against rights or property upon  
3 judgment in a court of competent jurisdiction. The warrant so docketed  
4 is sufficient to support the issuance of writs of garnishment in favor  
5 of the state in a manner provided by law in case of judgment, wholly or  
6 partially unsatisfied. The clerk of the court is entitled to a filing  
7 fee which will be added to the amount of the warrant. A copy of the  
8 warrant shall be mailed to the employer within three days of filing  
9 with the clerk.

10 (2)(a) The director of labor and industries or the director's  
11 designee may issue to any person, firm, corporation, other entity,  
12 municipal corporation, political subdivision of the state, a public  
13 corporation, or any agency of the state, a notice and order to withhold  
14 and deliver property of any kind when he or she has reason to believe  
15 that there is in the possession of the person, firm, corporation, other  
16 entity, municipal corporation, political subdivision of the state,  
17 public corporation, or agency of the state, property that is or will  
18 become due, owing, or belonging to an employer upon whom a notice of  
19 assessment has been served by the department of labor and industries  
20 for payments, penalties, or fines due to the department. The effect of  
21 a notice and order is continuous from the date the notice and order is  
22 first made until the liability out of which the notice and order arose  
23 is satisfied or becomes unenforceable because of lapse of time. The  
24 department shall release the notice and order when the liability out of  
25 which the notice and order arose is satisfied or becomes unenforceable  
26 by reason of lapse of time and shall notify the person against whom the  
27 notice and order was made that the notice and order has been released.

28 (b) The notice and order to withhold and deliver must be served by  
29 the sheriff of the county or by the sheriff's deputy, by certified  
30 mail, return receipt requested, or by an authorized representative of  
31 the director. A person, firm, corporation, other entity, municipal  
32 corporation, political subdivision of the state, public corporation, or  
33 agency of the state upon whom service has been made shall answer the  
34 notice within twenty days exclusive of the day of service, under oath  
35 and in writing, and shall make true answers to the matters inquired of  
36 in the notice and order. Upon service of the notice and order, if the  
37 party served possesses any property that may be subject to the claim of  
38 the department, the party shall promptly deliver the property to the

1 director or the director's authorized representative. The director  
2 shall hold the property in trust for application on the employer's  
3 indebtedness to the department, or for return without interest, in  
4 accordance with a final determination of a petition for review. In the  
5 alternative, the party shall furnish a good and sufficient surety bond  
6 satisfactory to the director conditioned upon final determination of  
7 liability. If a party served and named in the notice fails to answer  
8 the notice within the time prescribed in this section, the court may  
9 render judgment by default against the party for the full amount  
10 claimed by the director in the notice, together with costs. If a  
11 notice is served upon an employer and the property subject to it is  
12 wages, the employer may assert in the answer all exemptions provided  
13 for by chapter 6.27 RCW to which the wage earner is entitled.

14 (3) In addition to the procedure for collection of a payment,  
15 penalty, or fine due to the department of labor and industries as set  
16 forth in this section, the department may recover civil penalties  
17 imposed under this chapter in a civil action in the name of the  
18 department brought in a court of competent jurisdiction of the county  
19 where the violation is alleged to have occurred.

20 (4) This section does not affect other collection remedies that are  
21 otherwise provided by law.

22 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.48 RCW  
23 to read as follows:

24 The director of labor and industries may adopt rules to carry out  
25 the purposes of this chapter.

26 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.46 RCW  
27 to read as follows:

28 The director may adopt rules to carry out the purposes of this  
29 chapter.

30 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.46 RCW  
31 to read as follows:

32 The employment standards enforcement account is created in the  
33 state treasury. All receipts from civil penalties assessed under this  
34 chapter and chapter 49.48 RCW must be deposited in the account. Moneys

1 in the account may be spent only after appropriation. Expenditures  
2 from the account may be used only for the employment standards program  
3 administered by the department of labor and industries.

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