

# SENATE BILL REPORT

## SB 5240

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, March 1, 2005

**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:** Senators Keiser, Kohl-Welles, Fraser, Prentice and Kline; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/3/05, 3/1/05 [DPS, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5240 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

**Staff:** Jennifer Strus (786-7316)

**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 (L&I), 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.

L&I may investigate wage violations, order employers to pay, and institute actions to collect after a determination that sums are owed. L&I 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.

**Summary of Substitute Bill:** An employer who violates a record keeping requirement under the Minimum Wage Act may be assessed a penalty of not less than \$100 and not more than \$1,000 per violation per employee. An employer found to have violated a wage payment requirement must pay the wages due including interest of up to one percent per month on the unpaid wages and may be assessed a civil penalty of not more than 10 times the wages due for

each violation per employee. The L&I director may waive collection of penalties in favor of payment of wages.

An employee who believes he or she is owed wages may file a complaint with L&I. L&I must decide whether or not to accept the complaint; if it accepts the complaint it must notify the complainant that the claim is accepted. Once accepted, L&I must evaluate the claim. Based upon the evaluation, L&I notifies the employer whether or not wages are owed. Within 10 business days of receiving the notification, the employer must notify L&I that it agrees with L&I's evaluation and pays the wages, disagrees with the evaluation or agrees in part and disagrees in part. It must notify L&I of its decision in writing. Once received by L&I, it must decide whether to investigate the complaint further.

In addition, the director is authorized to assess civil penalties. There are certain factors that the director may consider when determining the amount of penalties. Civil penalties are paid to L&I and are deposited in the supplemental pension fund.

Procedures are established for: (1) administrative review of citations or notices of assessment; and (2) 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.

**Substitute Bill Compared to Original Bill:** Procedures for handling wage violation complaints by L&I are added.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Of the 5000 claims L&I receives each year alleging that wages have not been paid, 38 percent are paid by the employer (once L&I gets involved), 26 percent the employer refuses to pay, and in 36 percent the claim is rejected by L&I for various reasons. The only enforcement mechanism L&I has is criminal sanctions. Having the ability to issue civil sanctions would make it easier to enforce wage claim issues. It is difficult to convince prosecutors to prosecute these cases when an average wage claim is about \$200-\$400. There are businesses that suffer when employees are not paid; these are the utilities, landlords, credit card companies that don't get paid when low-income workers do not receive the wages they have earned.

**Testimony Against:** Employers have an opportunity under current law to correct a wage and hour or minimum wage mistake without being penalized for it. Under the bill, employers would not be able to correct before the penalty is imposed unless L&I waives it. The state and federal laws on this issue are confusing and this confusion should be resolved before a bill like this is considered. Notice of correction should occur before penalties are imposed.

**Who Testified:** PRO: Senator Keiser, prime sponsor; Patrick Woods, Department of Labor & Industries; Jeff Johnson, Washington State Labor Council; Miriam Israel Moses, Rebound; Bruce Neap, Columbia Legal Services.

CON: Dan Fazio, Washington State Farm Bureau; Chris Hummel, County Green Turf Farm; Gary Smith, Independent Business Association; Kris Tefft, Association of Washington Business.