
SUBSTITUTE SENATE BILL 5240

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Keiser, Kohl-Welles, Fraser,
Prentice and Kline; by request of Department of Labor & Industries)

READ FIRST TIME 03/02/05.

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 49.48.040, 49.48.060, and
4 49.48.070; adding new sections to chapter 49.48 RCW; adding a new
5 section to chapter 49.46 RCW; creating new sections; and prescribing
6 penalties.

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

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

6 (1) "Department" means the department of labor and industries.

7 (2) "Director" means the director of the department of labor and
8 industries, or the director's authorized representative.

9 (3) "Recordkeeping requirement" means a recordkeeping requirement
10 set forth in RCW 49.12.041, 49.12.050, 49.12.105, 49.46.040, 49.46.070,
11 or 49.52.050, and any related rules adopted by the department.

12 (4) "Wage payment requirement" means a wage payment requirement set
13 forth in chapter 49.12, 49.30, 49.46, or 49.52 RCW or this chapter, and
14 any related rules adopted by the department.

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

17 COMPLAINT AND DISPUTE OF WAGE CLAIMS. (1) An employee who believes
18 he or she is owed wages by an employer may file with the department a
19 written complaint alleging a violation of a wage payment requirement.

20 (2) The department shall promptly determine whether the complaint
21 shall be accepted or denied. If the department accepts the claim it
22 shall notify the complainant that the claim has been accepted or
23 rejected. If the claim is accepted, the department shall notify the
24 employer unless such notification to the employer would compromise any
25 investigation by the department or is prohibited by law.

26 (3) Once the complaint is accepted the department shall conduct an
27 evaluation which shall include, but is not limited to:

28 (a) Telephonic, electronic mail, or written correspondence with
29 either the worker or workers, the employer, or others that may have
30 knowledge and information about the complaint; or

31 (b) Interviews of the worker or workers, employer, or others that
32 may have knowledge or information about the complaint.

33 (4) Based on the evaluation of the complaint the department will
34 notify the employer that:

35 (a) A specified amount of additional wages were determined to be

1 owed together with the name of each claimant, together with the amount
2 owed each claimant; or

3 (b) No wages are owed.

4 (5) Within ten business days of receipt of the department's
5 evaluation of wages owed, the employer must notify the department that
6 it:

7 (a) Agrees with the department's evaluation of wages owed and
8 provide payment of the wages assessed to the department for
9 disbursement to the complainant or complainants;

10 (b) Disagrees with the department's evaluation and provide an
11 explanation of the basis for disagreement; or

12 (c) Agrees or disagrees in part with the department's evaluation
13 and provide an explanation of the basis for disagreement.

14 (6) After the department receives written notice under subsection
15 (5)(b) or (c) of this section that a wage claim is disputed or if the
16 employer does not respond to the department's evaluation of wages owed
17 under subsection (4) of this section, the department shall review the
18 employee's complaint and the employer's statement and written evidence,
19 and issue a written notice stating:

20 (a) The department's intent to dismiss or not pursue the wage
21 complaint; or

22 (b) The department's intent to investigate the wage complaint.

23 (7) Nothing in this section may be construed to affect
24 investigations that are conducted absent a wage complaint or for
25 situations where additional workers are identified as a result of a
26 wage complaint.

27 (8) Nothing in this section may be construed to negate a wage
28 complaint brought by an employee. The timelines associated with this
29 section may be waived or extended by the department for good cause.

30 (9) Unless specified, notification under this section may be either
31 verbal or in writing.

32 (10) Nothing in this section may be construed to prohibit an
33 informal resolution of the wage complaint by the employer and the
34 employee.

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

37 (1) The department (~~(of labor and industries)~~) may:

1 (a) Conduct investigations to enforce and ensure compliance with
2 this chapter and chapters 39.12, 49.12, 49.30, 49.46, and 49.52 RCW,
3 upon receiving a complaint under section 3 of this act or obtaining
4 information indicating an employer may be committing a violation under
5 these chapters ((39.12, 49.46, and 49.48 RCW, conduct investigations to
6 ensure compliance with chapters 39.12, 49.46, and 49.48 RCW));

7 (b) ~~((Order the payment of))~~ Issue a citation or notice of
8 assessment ordering an employer to pay all wages owed the ((workers))
9 employees, including interest of up to one percent per month on the
10 unpaid wages to the employee, and to pay any assessed penalties; and

11 (c) Institute actions necessary ((for the collection of the sums
12 determined owed; and

13 ~~(c) Take assignments of wage claims and prosecute actions for the~~
14 ~~collection of wages of persons who are financially unable to employ~~
15 ~~counsel when in the judgment of the director of the department the~~
16 ~~claims are valid and enforceable in the courts))~~ to recover wages
17 determined to be owed to employees in superior court or other court of
18 competent jurisdiction of the county where the violation is alleged to
19 have occurred, or the department may use the procedures for recovery of
20 wages in a court action set forth in this chapter and chapter 49.52
21 RCW.

22 (2) The director ~~((of the department or any authorized~~
23 ~~representative))~~ may, for the purpose of carrying out RCW 49.48.010 and
24 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the
25 attendance of witnesses or parties and the production of books, papers,
26 or records; (b) administer oaths and examine witnesses under oath; (c)
27 take the verification of proof of instruments of writing; and (d) take
28 depositions and affidavits. If assignments for wage claims are taken,
29 court costs shall not be payable by the department for prosecuting such
30 suits.

31 (3) The director shall have a seal inscribed "Department of Labor
32 and Industries--State of Washington" and all courts shall take judicial
33 notice of such seal. Obedience to subpoenas issued by the director
34 ~~((or authorized representative))~~ shall be enforced by the courts in any
35 county.

36 (4) The director ~~((or authorized representative))~~ shall have free
37 access to all places and works of labor. Any employer or any agent or
38 employee of such employer who refuses the director ~~((or authorized~~

1 ~~representative))~~ admission therein, or who, when requested by the
2 director (~~(or authorized representative)~~), willfully neglects or
3 refuses to furnish the director (~~(or authorized representative)~~) any
4 statistics or information pertaining to his or her lawful duties, which
5 statistics or information may be in his or her possession or under the
6 control of the employer or agent, shall be guilty of a misdemeanor.

7 (5) The department shall commence a civil action or issue a
8 citation or notice of assessment within three years after the cause of
9 action accrues, unless a longer period of time applies under law.

10 **Sec. 5.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to
11 read as follows:

12 (1) If upon investigation by the director, (~~(after taking~~
13 ~~assignments of any wage claim under RCW 49.48.040,)~~) it appears to the
14 director that the employer is representing to his or her employees that
15 he or she is able to pay wages for their services and that the
16 employees are not being paid for their services, the director may
17 require the employer to give a bond in such sum as the director deems
18 reasonable and adequate in the circumstances, with sufficient surety,
19 conditioned that the employer will for a definite future period not
20 exceeding six months conduct his or her business and pay his or her
21 employees in accordance with the laws of the state of Washington.

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

28 (3) If the court finds that there is just cause for requiring such
29 bond and that the same is reasonable, necessary or appropriate to
30 secure the prompt payment of the wages of the employees of such
31 employer and his or her compliance with RCW 49.48.010 through
32 49.48.080, the court shall enjoin such employer from doing business in
33 this state until the requirement is met, or shall make other, and may
34 make further, orders appropriate to compel compliance with the
35 requirement.

36 (~~Upon being informed of a wage claim against an employer or former~~
37 ~~employer, the director shall, if such claim appears to be just,~~

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

11 **Sec. 6.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read
12 as follows:

13 It shall be the duty of the director (~~(of labor and industries)~~) to
14 inquire diligently for any violations of RCW 49.48.010 and 49.48.040
15 through 49.48.080, and to institute the actions for penalties herein
16 provided, and to enforce generally the provisions of RCW 49.48.010 and
17 49.48.040 through 49.48.080.

18 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.48 RCW
19 to read as follows:

20 CITATIONS AND ASSESSMENTS OF CIVIL PENALTIES. (1)(a) An employer
21 found to have violated a wage payment requirement in a citation or
22 notice of assessment issued by the director shall pay the wages due,
23 including interest of up to one percent per month on the unpaid wages,
24 to the employee, and may be assessed a civil penalty of not more than
25 ten times the wages due for each violation per employee. Each day a
26 violation occurs is a separate violation. The director may also claim
27 the remedies in RCW 49.52.070.

28 (b) If the employer pays all wages due to the employee, the
29 director may waive collection of a penalty assessed under subsection
30 (1) of this section in whole or in part.

31 (2) An employer found to have violated a recordkeeping requirement
32 may be assessed a civil penalty of not less than one hundred dollars
33 and not more than one thousand dollars for each violation per employee,
34 and may be assessed a civil penalty of not more than one thousand
35 dollars for each subsequent violation found in the citation or notice
36 of assessment. Each day a violation occurs is a separate violation.

1 (3) The director may require payment of wages determined to be
2 unpaid and may assess civil penalties authorized by this section. When
3 considering the amount of penalties for multiple violations found in a
4 citation and notice of assessment, the director shall consider the good
5 faith of the employer, the appropriateness of the penalty with respect
6 to the number of affected employees of the employer being charged for
7 each violation, the gravity of the violations, the duration of the
8 violations, the size of the employer's business, the history of
9 previous violations, any voluntary resolution of the claim between the
10 claimant and the employer, and other relevant factors.

11 (4) Civil penalties collected under this section shall be paid to
12 the director for deposit in the supplemental pension fund established
13 under RCW 51.44.033.

14 (5) The employer shall pay wages and the civil penalty amount
15 assessed under this section within thirty days of receipt of the notice
16 of assessment or file an appeal of the citation or the notice of
17 assessment penalty in writing to the director as provided in section 8
18 of this act.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.48 RCW
20 to read as follows:

21 ADMINISTRATIVE APPEALS. (1) A person, firm, or corporation
22 aggrieved by a citation or notice of assessment issued by the
23 department under this chapter may appeal the action or decision to the
24 director by filing notice of the appeal with the director within thirty
25 days of the department's issuance of a citation or notice of
26 assessment. A citation or notice of assessment not appealed within the
27 thirty-day period is final and binding, and not subject to further
28 appeal.

29 (2) Upon receipt of an appeal, the director shall assign the
30 hearing to an administrative law judge of the office of administrative
31 hearings to conduct the hearing and issue an initial order. The
32 hearing and review procedures shall be conducted in accordance with
33 chapter 34.05 RCW. A party aggrieved by the initial order may file a
34 petition for administrative review of the initial order with the
35 director within thirty days of the administrative law judge's issuance
36 of the initial order.

1 (3) The director shall issue all final orders after the initial
2 order. The final order of the director is subject to appeal in
3 accordance with chapter 34.05 RCW.

4 (4) A notice of appeal filed with the director under this section
5 shall stay the effectiveness of a citation or notice of assessment of
6 a penalty pending final review of the appeal by the director as
7 provided for in chapter 34.05 RCW.

8 (5) Orders that are not appealed within the time period specified
9 in this section and chapter 34.05 RCW are final and binding, and not
10 subject to further appeal.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.48 RCW
12 to read as follows:

13 COLLECTION PROCEDURES. (1) If an employer defaults in a payment of
14 wages and civil penalties payable to the department after a final order
15 is issued under this chapter, the director may file with the clerk of
16 any county within the state, a warrant in the amount of the notice of
17 assessment, plus interest, penalties, and any filing fees. The clerk
18 of the county in which the warrant is filed shall immediately designate
19 a superior court cause number for the warrant, and the clerk shall
20 cause to be entered in the judgment docket under the superior court
21 cause number assigned to the warrant, the name of the employer
22 mentioned in the warrant, the amount of payment, penalty, fine due on
23 it, or filing fee, and the date when the warrant was filed. The
24 aggregate amount of the warrant as docketed becomes a lien upon the
25 title to, and interest in, all real and personal property of the
26 employer against whom the warrant is issued, the same as a judgment in
27 a civil case docketed in the office of the clerk. The sheriff shall
28 proceed upon the warrant in all respects and with like effect as
29 prescribed by law with respect to execution or other process issued
30 against rights or property upon judgment in a court of competent
31 jurisdiction. The warrant so docketed is sufficient to support the
32 issuance of writs of garnishment in favor of the state in a manner
33 provided by law in case of judgment, wholly or partially unsatisfied.
34 The clerk of the court is entitled to a filing fee which will be added
35 to the amount of the warrant. A copy of the warrant shall be mailed to
36 the employer within three days of filing with the clerk.

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

18 (b) The notice and order to withhold and deliver must be served by
19 the sheriff of the county or by the sheriff's deputy, by certified
20 mail, return receipt requested, or by an authorized representative of
21 the director. A person, firm, corporation, other entity, municipal
22 corporation, political subdivision of the state, public corporation, or
23 agency of the state upon whom service has been made shall answer the
24 notice within twenty days exclusive of the day of service, under oath
25 and in writing, and shall make true answers to the matters inquired of
26 in the notice and order. Upon service of the notice and order, if the
27 party served possesses any property that may be subject to the claim of
28 the department, the party shall promptly deliver the property to the
29 director. The director shall hold the property in trust for
30 application on the employer's indebtedness to the department, or for
31 return without interest, in accordance with a final determination of a
32 petition for review. In the alternative, the party shall furnish a
33 good and sufficient surety bond satisfactory to the director
34 conditioned upon final determination of liability. If a party served
35 and named in the notice fails to answer the notice within the time
36 prescribed in this section, the court may render judgment by default
37 against the party for the full amount claimed by the director in the
38 notice, together with costs. If a notice is served upon an employer

1 and the property subject to it is wages, the employer may assert in the
2 answer all exemptions provided for by chapter 6.27 RCW to which the
3 wage earner is entitled.

4 (3) In addition to the procedure for collection of a payment,
5 penalty, or fine due to the department as set forth in this section,
6 the department may recover civil penalties or wages imposed under this
7 chapter in a civil action brought in a court of competent jurisdiction
8 of the county where the violation is alleged to have occurred.

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

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.48 RCW
12 to read as follows:

13 ELECTION OF REMEDY. An employee may elect to pursue a private
14 right of action against an employer for payment of wages or file a wage
15 complaint with the department. If, at any time, an employee elects to
16 bring a private right of action, the department shall discontinue any
17 action that it is taking to recover wages for the employee.

18 Nothing in this section may be construed to prohibit the department
19 from seeking penalties for violations of wage payment requirements, or
20 to affect actions where additional workers were identified as a result
21 of a wage complaint, or actions conducted absent a wage complaint.

22 The filing of a written wage complaint by an employee with the
23 department shall toll the statute of limitations for a private right of
24 action until such time that the department either: (1) Issues a
25 citation or notice of assessment or initiates a civil action; or (2)
26 notifies the employee in writing of the department's intent to dismiss
27 or not pursue the wage complaint.

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

30 RULE-MAKING AUTHORITY. The director may adopt rules to carry out
31 the purposes of this chapter.

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

34 RULE-MAKING AUTHORITY. The director may adopt rules to carry out
35 the purposes of this chapter.

1 NEW SECTION. **Sec. 13.** CAPTIONS. Captions used in this act are
2 not any part of the law.

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