

# SENATE BILL REPORT

## SB 5158

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As Passed Senate, March 11, 2013

**Title:** An act relating to minimum wage and overtime compensation complaints.

**Brief Description:** Creating a good faith defense for certain minimum wage and overtime compensation complaints.

**Sponsors:** Senators Braun, Holmquist Newbry, Becker, Bailey, Roach, Sheldon, Dammeier, Schoesler and Honeyford.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/06/13, 2/15/13 [DP, DNP].

Passed Senate: 3/11/13, 25-24.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

**Minority Report:** Do not pass.

Signed by Senators Conway, Ranking Member; Hasegawa and Keiser.

**Staff:** Edith Rice (786-7444)

**Background:** Under the Minimum Wage Act employers are liable for the payment of the full minimum wage amount due to the employee. If the employer pays less, the employee, can bring legal action for the full amount of the wage rate and be awarded costs and attorneys' fees. When an employee is expected to work more than 40 hours per week, the employee is entitled to be paid at the rate of one and one half times their regular compensation. The Department of Labor and Industries (L&I) director may investigate and collect information regarding wages, hours, working conditions, and practices of employment in any industry covered by the Minimum Wage Act. Employers are required to maintain records of employees and wages. L&I can develop rules allowing for wages lower than minimum wage. The director must hold public hearings when new or modified regulations are being considered. Violation of the Minimum Wage Act is a gross misdemeanor. Under the 2006 Wage Payment Act, L&I is allowed to collect wages owed to workers. L&I will work with employers and workers to resolve wage complaints. L&I may cite the employer or determine that wages are not owed. The employer or employee may

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appeal the L&I decision in an administrative process. Under the Wage Payment Act, L&I may not assess a civil penalty if the employer reasonably relied upon a rule related to any wage payment requirement, a written order, ruling, approval, opinion, advice, determination, or interpretation of the direct or an interpretive or administrative policy issued by L&I.

**Summary of Bill:** Employers are not liable, nor can they be assessed a penalty for their failure to pay minimum wages or overtime compensation under the Minimum Wage Act if the employer can establish that they relied in good faith upon an agency regulation, order, advice, or interpretation of the Director of L&I. This is true regardless of whether the regulation, order, advice, or interpretation of the Director is later modified, rescinded, or overturned in court.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony:** PRO: This does not affect wage entitlement, it provides a safe harbor for employers so that they can rely on agency advice. It is already provided for in the Wage Payment Act. It levels the playing field. It will have no effect on low-wage earners.

CON: Adoption of this language would change 100 years of history. Even under the Wage Payment Act, if there is a bona fide dispute, the employer still pays the wages owed, but not the penalty. This language undermines the Minimum Wage Act and will incentivize employers choosing their own interpretation of the laws.

**Persons Testifying:** PRO: Kris Tefft, Assn. of WA Business; Doug Smith, Littler Mendelson, Tim O'Connell, Stoel Rives LLP.

CON: David Mark, Rebecca Johnson, WA State Labor Council, AFL-CIO.