

2SHB 1965 - H AMD 1036

By Representative Hansen

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that while most
4 employers pay their workers wages owed, provide safe working
5 conditions, provide a workplace free from discrimination, and
6 otherwise follow the law, violations of workplace protections
7 persist. The legislature further finds that state resources available
8 to rectify workplace violations are limited, which allows abuses to
9 go unpunished. Lack of enforcement means workers work for less than
10 minimum wage, sustain serious injuries, and suffer other violations.
11 In addition, it is unfair to law-abiding employers to have to compete
12 with employers that disregard the law. Therefore, the legislature
13 intends to permit qui tam actions, allowing private persons, acting
14 as relators, to bring public enforcement actions of worker protection
15 laws on behalf of the state.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Agency" means the department of labor and industries, except
20 that for purposes of chapter 49.60 RCW "agency" means the Washington
21 state human rights commission.

22 (2) "Aggrieved person" means a person against whom one or more
23 violations of the provisions of this act was committed, and includes
24 an individual who is asserting a claim that he or she is or was
25 misclassified as an independent contractor in violation of the
26 provisions of law under section 4 of this act.

27 (3) "Person" means any natural person, partnership, corporation,
28 association, or other legal entity, including any local or political
29 subdivision of a state.

30 (4) "Qui tam relator" or "relator" means an aggrieved person,
31 whistleblower, or representative organization or local or political

1 subdivision of a state designated under section 3(9) of this act,
2 that brings a public enforcement action under section 3 of this act.

3 (5) "Qui tam action" means an action brought by a relator under
4 section 3 of this act.

5 (6) "Whistleblower" means a current or former employee,
6 contractor, subcontractor, or employee of a contractor or
7 subcontractor with knowledge of facts that the individual reasonably
8 believes constitute a violation of the provisions of this act.

9 NEW SECTION. **Sec. 3.** (1) A relator, on behalf of an agency and
10 in the name of the agency, may bring a qui tam action in court for
11 any relief the agency may pursue under the laws specified in section
12 4 of this act, including equitable relief, penalties, and any relief
13 specified in rule. The granting of relief shall be subject to the
14 same conditions and limitations that apply to the agency, including
15 any requirements for conference and conciliation and any conditions
16 and limitations specified in rule, including penalty amounts. The
17 action may allege multiple violations that have affected different
18 employees aggrieved by the same employer. The relator must follow the
19 procedures specified in section 5 of this act.

20 (2) A relator that prevails in a qui tam action is entitled to an
21 award of reasonable attorneys' fees and costs.

22 (3) No qui tam action may be brought if the agency, regarding the
23 same facts as alleged in the qui tam action, issued a notice of
24 assessment, determination of compliance, or order, or otherwise
25 resolved the complaint.

26 (4) A qui tam action must be commenced within the same period of
27 time that the agency would have to take action based on the same set
28 of alleged facts. The statute of limitations for bringing a qui tam
29 action is tolled from the date a relator files a notice with the
30 agency or the date the agency commences an investigation.

31 (5)(a) No qui tam action may be brought with respect to
32 modifying, revoking, or suspending a license, variance, or permit; or
33 for any violation of a posting, notice, agency reporting, or filing
34 requirement, except where the filing or reporting requirement
35 involves injury reporting or a safety or health violation.

36 (b) Where an employer has voluntarily entered into consultation
37 under RCW 49.17.250, no qui tam action may be brought with respect to
38 any alleged violation included in the scope of the consultation. An
39 employer who has been notified pursuant to section 5 of this act may

1 not then enter into consultation under RCW 49.17.250 to avoid a qui
2 tam action.

3 (6) The requirements of Rule 23 of the superior court rules of
4 civil procedure do not apply to a qui tam action.

5 (7) The right to bring a qui tam action under this section may
6 not be impaired by any private agreement.

7 (8) A qui tam action is a public action and does not preclude a
8 cause of action by an individual or individuals or operate as an
9 estoppel for relief based on the same set of alleged facts, except
10 that a court may not permit a double recovery.

11 (9) An aggrieved person or whistleblower of the entity alleged to
12 have violated a law enumerated in section 4 of this act may designate
13 in writing a representative organization or local or political
14 subdivision of a state to initiate a qui tam action on the person's
15 behalf.

16 NEW SECTION. **Sec. 4.** A qui tam action may be brought to enforce
17 the following laws:

18 (1) Chapter 49.46 RCW, known as the minimum wage act;

19 (2) Chapter 49.48 RCW, relating to the payment of wages;

20 (3) Chapter 49.52 RCW, relating to wage rebates;

21 (4) RCW 49.28.130 through 49.28.150, relating to health care
22 facility employee overtime;

23 (5) Chapter 39.12 RCW, relating to prevailing wage;

24 (6) Chapter 49.40 RCW, relating to seasonal labor;

25 (7) Chapter 49.17 RCW, the Washington industrial safety and
26 health act of 1973;

27 (8) Chapter 49.19 RCW, relating to safety in health care
28 settings; chapter 49.22 RCW, relating to safety in late night retail
29 establishments; chapter 49.24 RCW, relating to safety for underground
30 workers, and chapter 49.26 RCW, relating to asbestos safety;

31 (9) Chapter 49.77 RCW, known as military family leave;

32 (10) Chapter 49.58 RCW, known as gender equal pay and advancement
33 opportunities;

34 (11) Chapter 49.60 RCW, known as the Washington law against
35 discrimination;

36 (12) Chapter 19.30 RCW, relating to farm labor contractors;

37 (13) Chapter 49.30 RCW, relating to agricultural labor;

38 (14) RCW 43.70.075, relating to health care employee
39 whistleblower retaliation protection;

1 (15) Chapter 49.12 RCW, known as the industrial welfare act; and
2 (16) Section 8 of this act.

3 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act
4 may be commenced before written notice of the claim has been
5 submitted by the relator to the agency, via online submission, and
6 the relator has notified the employer by certified mail. The notice
7 must be construed in the light most favorable to the relator, and
8 must include the name, address, and contact information of the
9 alleged violator; the name and contact information of the relator or
10 the relator's legal counsel, should one exist; and a brief statement
11 of the underlying claim.

12 (2) If the agency intends to investigate the alleged violation,
13 the agency must notify the relator and make a determination within
14 one hundred eighty days of receiving the notice under subsection (1)
15 of this section. If the agency decides not to investigate the alleged
16 violation, it must notify the relator within sixty business days of
17 the date it receives the notification submitted by the relator. Upon
18 receiving notice that the agency does not intend to investigate or if
19 the agency does not make a determination within one hundred eighty
20 days, the relator may commence a qui tam action.

21 (3) As part of its investigation, the agency may attempt to
22 remedy the alleged violation through settlement. If the settlement
23 obtained by the agency provides the aggrieved employee or employees
24 with a full remedy of not less than one hundred percent of any
25 wrongfully withheld wages or benefits, including twelve percent
26 interest per annum, and the aggrieved employees receive payment in
27 full prior to the end of the one hundred eighty-day investigation
28 period, the agency shall notify the relator that the agency will not
29 commence an action and the settlement shall preclude further claims
30 for the same wages or benefits paid in the settlement.

31 (4) If the agency objects to the state being represented by a
32 particular attorney proposed by the relator, the agency may file an
33 objection to the attorney general. Upon finding, after notice and
34 hearing, that, based on the attorney's past conduct while
35 representing a client or clients, the attorney does not meet the
36 required professional standards of representatives, or,
37 alternatively, if the attorney fails to zealously pursue the remedies
38 available under this chapter, the attorney general may, within thirty
39 days of receiving the objection, order that the qui tam action may

1 not be filed or maintained by the particular attorney on behalf of
2 the relator.

3 NEW SECTION. **Sec. 6.** (1) The agency may intervene in a qui tam
4 action and proceed with any and all claims in the action:

5 (a) As of right within thirty days after the filing of the qui
6 tam action;

7 (b) For good cause shown, as determined by the court, after the
8 expiration of the thirty-day period.

9 (2) If the agency intervenes in a qui tam action, the agency
10 shall have primary responsibility for litigating the action and shall
11 not be bound by an act of the relator in bringing the action. If the
12 agency proposes to settle a qui tam action, the agency must give
13 notice to the relator and the attorney general. The court may allow
14 the attorney general to intervene and object to the settlement. If
15 the agency proposes to dismiss a qui tam action, the agency must give
16 notice to the relator and the relator must have an opportunity to be
17 heard. The agency may dismiss or settle the action if court
18 determines that the dismissal or settlement is fair, adequate,
19 reasonable, and in the public interest.

20 (3) If the agency does not intervene, the relator shall have the
21 right to litigate the action. The court must review and approve any
22 settlement. The proposed settlement must be submitted to the agency
23 and to the attorney general at the same time that it is submitted to
24 the court, and the agency may present to the court its position on
25 the proposed settlement or intervene as provided in subsection (1) of
26 this section. The court may also allow the attorney general to
27 intervene and object to the dismissal. The court shall approve a
28 settlement only upon a determination that it is fair, adequate,
29 reasonable, and in the public interest.

30 (4) Any settlement of a qui tam action may not be confidential.

31 NEW SECTION. **Sec. 7.** (1)(a) Civil penalty amounts recovered in
32 a qui tam action must be distributed as follows:

33 (i) If the agency has not intervened, forty percent to the
34 relator and sixty percent to the agency.

35 (ii) If the agency has intervened, twenty percent to the relator
36 and eighty percent to the agency.

37 (b) The relator shall equitably distribute the share of penalties
38 due the relator among the parties aggrieved by the practices

1 complained of in the qui tam action. The relator shall submit a
2 distribution summary to the agency, which may order a different
3 distribution within sixty days after receipt of the distribution
4 summary, provided that the relator shall receive a service award that
5 reflects the burdens and risks assumed by the relator in prosecuting
6 the action.

7 (c) Amounts distributed to the agency shall be used for
8 enforcement of this title and education about the rights and
9 obligations enforceable through this title by the agency.

10 (2) Damages recovered in a qui tam action shall be awarded for
11 distribution to the aggrieved employees, whether directly or through
12 the agency. The agency may request the appointment of an
13 administrative law judge or special master to assist in the
14 distribution of the amounts.

15 (3) This section does not limit the state's right to seek
16 restitution and damages, where available, for aggrieved employees as
17 part of a qui tam action in which it has intervened.

18 NEW SECTION. **Sec. 8.** A qui tam action shall not be stayed
19 during concurrent adjudication of private claims.

20 NEW SECTION. **Sec. 9.** (1) A person may not discharge or in any
21 manner discriminate against any employee because such employee has
22 filed any written notice or instituted or caused to be instituted any
23 proceeding under or related to this chapter or has testified or is
24 about to testify in any such proceeding or because of the exercise by
25 such employee on behalf of himself or herself or others of any right
26 afforded by this chapter. The commencement of a peer review process,
27 or an action by a duly constituted quality improvement committee
28 under RCW 70.41.200, shall not be construed to be retaliation under
29 this section if sufficient cause to initiate the peer review process
30 or action under RCW 70.41.200 exists independently of the action
31 being brought under this chapter.

32 (2) Any employee aggrieved by a violation of this section may:

33 (a) Bring an action in court for compensatory damages or
34 equitable relief, including restraint of prohibited actions,
35 restitution of wages or benefits, reinstatement, costs, reasonable
36 attorneys' fees, and any other appropriate relief; and, in addition,

1 (b) If the aggrieved employee has been discharged from employment
2 because of the exercise of the rights afforded by this chapter,
3 provide notice to the agency pursuant to section 5 of this act.

4 (i) Upon receipt of such notification, the agency shall commence
5 an expedited investigation within ten days to be completed within
6 thirty days.

7 (ii) For purposes of this subsection (2)(b), a rebuttable
8 presumption is established that the discharge of any employee who
9 engaged in any conduct allowed by this chapter within ninety days
10 after the employee engaged in the conduct is retaliatory and in
11 violation of section 1 of this act.

12 (iii) The employer may rebut the presumption by showing by clear
13 and convincing evidence that it had a legitimate, nondiscriminatory
14 reason to discharge the employee, which was not motivated in any part
15 by conduct allowed by this chapter.

16 (iv) If the employer fails to rebut the presumption, the agency
17 shall order the immediate reinstatement of the employee. The employer
18 may appeal the order of reinstatement pursuant to chapter 34.05 RCW.

19 NEW SECTION. **Sec. 10.** An agency has rule-making authority to
20 implement sections 1 through 8 of this act.

21 NEW SECTION. **Sec. 11.** The labor and industries worker
22 protection act account is created in the custody of the state
23 treasurer. All receipts from the penalties distributed to the
24 department of labor and industries under section 7 of this act must
25 be deposited into the account. Expenditures from the account may be
26 used only for enforcement of this title and education about the
27 rights and obligations enforceable through this title by the agency.
28 The account is subject to allotment procedures under chapter 43.88
29 RCW, but an appropriation is not required for expenditures.

30 NEW SECTION. **Sec. 12.** The Washington state human rights
31 commission worker protection act account is created in the custody of
32 the state treasurer. All receipts from the penalties distributed to
33 the Washington state human rights commission under section 7 of this
34 act must be deposited into the account. Expenditures from the account
35 may be used only for enforcement of chapter 49.60 RCW and education
36 about the rights and obligations enforceable through chapter 49.60
37 RCW by the agency. The account is subject to allotment procedures

1 under chapter 43.88 RCW, but an appropriation is not required for
2 expenditures.

3 NEW SECTION. **Sec. 13.** Sections 1 through 12 and 15 of this act
4 constitute a new chapter in Title 49 RCW.

5 NEW SECTION. **Sec. 14.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 15.** This chapter shall be known and cited as
10 the "Worker Protection Act."

11 NEW SECTION. **Sec. 16.** If specific funding for the purposes of
12 this act, referencing this act by bill or chapter number, is not
13 provided by June 30, 2020, in the omnibus appropriations act, this
14 act is null and void."

15 Correct the title.

EFFECT: (1) Makes the following changes related to definitions:
(a) Adds definitions for "aggrieved person" and "whistleblower"; (b)
specifies entities that may be a "relator"; and (c) replaces
references using the newly defined terms.

(2) Specifies that a local or political subdivision may be
designated to initiate a qui tam action on an individual's behalf,
and removes the requirement that a representative organization
regularly assist in enforcement.

(3) Removes default penalties that had applied where no penalty
is specifically provided by law.

(4) Makes the following changes to the distribution of penalties
and damages: (a) Requires equitable distribution of penalties among
the aggrieved parties; (b) allows for adjustment of the distribution
by the department of labor and industries, provided a service award
goes to relator; and (c) provides for distribution of damages to
aggrieved employees directly or through the department.

(5) Provides that a qui tam action not be stayed during
concurrent adjudication of private claims.

(6) Removes the requirement of an online database of notices
filed.

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