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SECOND SUBSTITUTE HOUSE BILL 1965

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State of Washington

66th Legislature

2019 Regular Session

**By** House Appropriations (originally sponsored by Representatives Hansen, Stonier, Sullivan, Riccelli, Lekanoff, Cody, Macri, Ormsby, Appleton, Fitzgibbon, Ortiz-Self, and Pollet)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to allowing whistleblowers to bring actions on  
2 behalf of the state for violations of workplace protections; adding a  
3 new chapter to Title 49 RCW; and creating a new section.

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

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

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

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

4 (2) "Person" means any natural person, partnership, corporation,  
5 association, or other legal entity, including any local or political  
6 subdivision of a state.

7 (3) "Qui tam relator" or "relator" means a person who brings or  
8 seeks to bring an action under section 3 of this act.

9 (4) "Qui tam action" means an action brought by a person under  
10 section 3 of this act.

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

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

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

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

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

38 (b) Where an employer has voluntarily entered into consultation  
39 under RCW 49.17.250, no qui tam action may be brought with respect to

1 any alleged violation included in the scope of the consultation. An  
2 employer who has been notified pursuant to section 5 of this act may  
3 not then enter into consultation under RCW 49.17.250 to avoid a qui  
4 tam action.

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

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

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

13 (9) A person who is an employee of the entity alleged to have  
14 violated a law enumerated in section 4 of this act may designate in  
15 writing a representative organization to initiate a qui tam action on  
16 the person's behalf. The representative organization, which may be a  
17 labor organization, must be one that regularly assists in enforcement  
18 of one or more of the laws enumerated in section 4 of this act.

19 NEW SECTION. **Sec. 4.** (1) A qui tam action may be brought to  
20 enforce the following laws:

21 (a) Chapter 49.46 RCW, known as the minimum wage act;

22 (b) Chapter 49.48 RCW, relating to the payment of wages;

23 (c) Chapter 49.52 RCW, relating to wage rebates;

24 (d) RCW 49.28.130 through 49.28.150, relating to health care  
25 facility employee overtime;

26 (e) Chapter 39.12 RCW, relating to prevailing wage;

27 (f) Chapter 49.40 RCW, relating to seasonal labor;

28 (g) Chapter 49.17 RCW, the Washington industrial safety and  
29 health act of 1973;

30 (h) Chapter 49.19 RCW, relating to safety in health care  
31 settings; chapter 49.22 RCW, relating to safety in late night retail  
32 establishments; chapter 49.24 RCW, relating to safety for underground  
33 workers, and chapter 49.26 RCW, relating to asbestos safety;

34 (i) Chapter 49.77 RCW, known as military family leave;

35 (j) Chapter 49.58 RCW, known as gender equal pay and advancement  
36 opportunities;

37 (k) Chapter 49.60 RCW, known as the Washington law against  
38 discrimination;

39 (l) Chapter 19.30 RCW, relating to farm labor contractors;

1 (m) Chapter 49.30 RCW, relating to agricultural labor;

2 (n) RCW 43.70.075, relating to health care employee whistleblower  
3 retaliation protection;

4 (o) Chapter 49.12 RCW, known as the industrial welfare act; and

5 (p) Section 8 of this act.

6 (2) For any provision of law referenced in this section where no  
7 civil penalty is specifically provided by law, a civil penalty of  
8 five hundred dollars is established. A penalty shall be awarded for  
9 each employee aggrieved by the violation during each two-week time  
10 period. A court may award a lesser amount of civil penalties than  
11 those specified in this subsection if, based on the fact and  
12 circumstances of the particular case, to do otherwise would result in  
13 an award that is unjust, arbitrary and oppressive or confiscatory.

14 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act  
15 may be commenced before written notice of the claim has been  
16 submitted by the relator to the agency, via online submission, and  
17 the relator has notified the employer by certified mail. The notice  
18 must be construed in the light most favorable to the relator, and  
19 must include the name, address, and contact information of the  
20 alleged violator; the name and contact information of the relator or  
21 the relator's legal counsel, should one exist; and a brief statement  
22 of the underlying claim. Where possible, the relator must also search  
23 the database established under section 9 of this act for any notices  
24 alleging the same facts and legal theories, and shall reference these  
25 notices or attest that no such notices exist.

26 (2) If the agency intends to investigate the alleged violation,  
27 the agency must notify the relator and make a determination within  
28 one hundred eighty days of receiving the notice under subsection (1)  
29 of this section. If the agency decides not to investigate the alleged  
30 violation, it must notify the relator within sixty business days of  
31 the date it receives the notification submitted by the relator. Upon  
32 receiving notice that the agency does not intend to investigate or if  
33 the agency does not make a determination within one hundred eighty  
34 days, the relator may commence a qui tam action.

35 (3) As part of its investigation, the agency may attempt to  
36 remedy the alleged violation through settlement. If the settlement  
37 obtained by the agency provides the aggrieved employee or employees  
38 with a full remedy of not less than one hundred percent of any  
39 wrongfully withheld wages or benefits, including twelve percent

1 interest per annum, and the aggrieved employees receive payment in  
2 full prior to the end of the one hundred eighty-day investigation  
3 period, the agency shall notify the relator that the agency will not  
4 commence an action and the settlement shall preclude further claims  
5 for the same wages or benefits paid in the settlement.

6 (4) If the agency objects to the state being represented by a  
7 particular attorney proposed by the relator, the agency may file an  
8 objection to the attorney general. Upon finding, after notice and  
9 hearing, that, based on the attorney's past conduct while  
10 representing a client or clients, the attorney does not meet the  
11 required professional standards of representatives, or,  
12 alternatively, if the attorney fails to zealously pursue the remedies  
13 available under this chapter, the attorney general may, within thirty  
14 days of receiving the objection, order that the qui tam action may  
15 not be filed or maintained by the particular attorney on behalf of  
16 the relator.

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

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

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

23 (2) If the agency intervenes in a qui tam action, the agency  
24 shall have primary responsibility for litigating the action and shall  
25 not be bound by an act of the relator in bringing the action. If the  
26 agency proposes to settle a qui tam action, the agency must give  
27 notice to the relator and the attorney general. The court may allow  
28 the attorney general to intervene and object to the settlement. If  
29 the agency proposes to dismiss a qui tam action, the agency must give  
30 notice to the relator and the relator must have an opportunity to be  
31 heard. The agency may dismiss or settle the action if court  
32 determines that the dismissal or settlement is fair, adequate,  
33 reasonable, and in the public interest.

34 (3) If the agency does not intervene, the relator shall have the  
35 right to litigate the action. The court must review and approve any  
36 settlement. The proposed settlement must be submitted to the agency  
37 and to the attorney general at the same time that it is submitted to  
38 the court, and the agency may present to the court its position on  
39 the proposed settlement or intervene as provided in subsection (1) of

1 this section. The court may also allow the attorney general to  
2 intervene and object to the dismissal. The court shall approve a  
3 settlement only upon a determination that it is fair, adequate,  
4 reasonable, and in the public interest.

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

6 NEW SECTION. **Sec. 7.** (1)(a) Penalty amounts recovered in a qui  
7 tam action must be distributed as follows:

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

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

12 (b) Amounts distributed to the agency shall be used for  
13 enforcement of this title and education about the rights and  
14 obligations enforceable through this title by the agency.

15 (2) Damages recovered in a qui tam action must be awarded to the  
16 agency for distribution to aggrieved employees. The agency may  
17 request the appointment of an administrative law judge or special  
18 master to assist in the distribution of the amounts.

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

22 NEW SECTION. **Sec. 8.** (1) A person may not discharge or in any  
23 manner discriminate against any employee because such employee has  
24 filed any written notice or instituted or caused to be instituted any  
25 proceeding under or related to this chapter or has testified or is  
26 about to testify in any such proceeding or because of the exercise by  
27 such employee on behalf of himself or herself or others of any right  
28 afforded by this chapter. The commencement of a peer review process,  
29 or an action by a duly constituted quality improvement committee  
30 under RCW 70.41.200, shall not be construed to be retaliation under  
31 this section if sufficient cause to initiate the peer review process  
32 or action under RCW 70.41.200 exists independently of the action  
33 being brought under this chapter.

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

35 (a) Bring an action in court for compensatory damages or  
36 equitable relief, including restraint of prohibited actions,  
37 restitution of wages or benefits, reinstatement, costs, reasonable  
38 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. 9.** The department of labor and industries  
20 must establish and publish online a database of notices filed under  
21 section 3 of this act, which shall include the names of the parties,  
22 the disposition, and any other information that the department of  
23 labor and industries shall by rule prescribe. The Washington state  
24 human rights commission shall provide appropriate information for the  
25 database to the department of labor and industries.

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

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

1        NEW SECTION.     **Sec. 12.**     The Washington state human rights  
2 commission worker protection act account is created in the custody of  
3 the state treasurer. All receipts from the penalties distributed to  
4 the Washington state human rights commission under section 7 of this  
5 act must be deposited into the account. Expenditures from the account  
6 may be used only for enforcement of chapter 49.60 RCW and education  
7 about the rights and obligations enforceable through chapter 49.60  
8 RCW by the agency. The account is subject to allotment procedures  
9 under chapter 43.88 RCW, but an appropriation is not required for  
10 expenditures.

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

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

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

19        NEW SECTION.     **Sec. 16.**     If specific funding for the purposes of  
20 this act, referencing this act by bill or chapter number, is not  
21 provided by June 30, 2019, in the omnibus appropriations act, this  
22 act is null and void.

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