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**SUBSTITUTE HOUSE BILL 1472**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Cole, Heavey, Prentice, Jacobsen, Wood, Zellinsky, R. Johnson, Jones, Winsley, Phillips, Braddock, R. King, Nelson, Leonard, Franklin, Valle, Rust, Roland, Haugen, Riley, Fraser, Belcher, Scott, Dorn, R. Fisher, Cooper, Pruitt, Ebersole, Appelwick, Brekke, Sheldon, Wang, Dellwo, Peery, Orr, Spanel, O'Brien, Hargrove and Wineberry).

Read first time February 18, 1991.

1       AN ACT Relating to employment; amending RCW 49.12.121, 49.12.170,  
2 49.46.100, 49.48.040, and 49.48.060; adding new sections to chapter  
3 49.12 RCW; creating new sections; repealing RCW 49.12.123; prescribing  
4 penalties; making an appropriation; providing an effective date; and  
5 declaring an emergency.

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

7       NEW SECTION.   **Sec. 1.**   The legislature finds that the future of  
8 the state depends on the education and well-being of the state's  
9 children.   Investigations of three hundred ninety-five workplace  
10 injuries to minors by the department of labor and industries indicates  
11 that over forty percent of the injuries occurred at worksites not in  
12 compliance with child labor laws.   Almost half of the injuries that  
13 resulted in time off work occurred at a worksite not in compliance with  
14 child labor laws.

1       The legislature finds that employment of minors requires strict  
2 adherence to standards that protect the safety and health of children  
3 and ensure that their education receives top priority. The purposes of  
4 this act are to protect children in the work force and provide the  
5 department of labor and industries the enforcement resources necessary  
6 to assure that minors are employed in accordance with the state's child  
7 labor standards.

8       NEW SECTION.   **Sec. 2.**   (1)(a) Except as otherwise provided in  
9 subsection (2) of this section, if the director, or the director's  
10 designee, finds that an employer has violated any of the requirements  
11 of RCW 49.12.121, or a rule or order adopted or variance granted under  
12 RCW 49.12.121, a citation stating the violations shall be issued to the  
13 employer. The citation shall be in writing, describing the nature of  
14 the violation including reference to the standards, rules, or orders  
15 alleged to have been violated. An initial citation for failure to  
16 comply with RCW 49.12.121 or rules requiring a minor work permit and  
17 maintenance of records shall state a specific time for abatement of the  
18 violation to allow the employer to correct the violation without  
19 penalty. The director or the director's designee may establish a  
20 specific time for abatement of other nonserious violations in lieu of  
21 a penalty for first time violations. The citation and a proposed  
22 penalty assessment shall be given to the highest management official  
23 available at the workplace or be mailed to the employer at the  
24 workplace. In addition, the department will mail a copy of the  
25 citation and proposed penalty assessment to the central personnel  
26 office of the employer. Citations issued under this section shall be  
27 posted at or near the place where the violation occurred.

28       (b) Except when an employer corrects a violation as provided in (a)  
29 of this subsection, he or she shall be assessed a civil penalty of not

1 more than one thousand dollars depending on the size of the business  
2 and the gravity of the violation. The employer shall pay the amount  
3 assessed within thirty days of receipt of the assessment or notify the  
4 director of his or her intent to appeal the citation or the assessment  
5 penalty as provided in section 3 of this act.

6 (2) If the director, or the director's designee, finds that an  
7 employer has committed a serious or repeated violation of the  
8 requirements of RCW 49.12.121, or any rule or order adopted or variance  
9 granted under RCW 49.12.121, the employer is subject to a civil penalty  
10 of not more than one thousand dollars for each day the violation  
11 continues. For the purposes of this subsection, a serious violation  
12 shall be deemed to exist if death or serious physical or emotional harm  
13 has resulted or could result from a condition that exists, or from one  
14 or more practices, means, methods, operations, or processes that have  
15 been adopted or are in use by the employer, unless the employer did  
16 not, and could not with the exercise of reasonable diligence, know of  
17 the presence of the violation.

18 (3) In addition to any other authority provided in this section,  
19 if, upon inspection or investigation, the director, or director's  
20 designee, believes that an employer has violated RCW 49.12.121, or a  
21 rule or order adopted or variance granted under RCW 49.12.121, and that  
22 the violation creates a danger from which there is a substantial  
23 probability that death or serious physical harm could result to a minor  
24 employee, the director, or director's designee, may issue an order  
25 immediately restraining the condition, practice, method, process, or  
26 means creating the danger in the workplace. An order issued under this  
27 subsection may require the employer to take steps necessary to avoid,  
28 correct, or remove the danger and to prohibit the employment or  
29 presence of a minor in locations or under conditions where the danger  
30 exists.

1 (4) An employer who violates any of the posting requirements of RCW  
2 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed  
3 a civil penalty of not more than one hundred dollars for each  
4 violation.

5 (5) A person who gives advance notice, without the authority of the  
6 director, of an inspection to be conducted under this chapter shall be  
7 assessed a civil penalty of not more than one thousand dollars.

8 (6) Penalties assessed under this section shall be paid to the  
9 director and deposited into the general fund.

10 NEW SECTION. **Sec. 3.** A person, firm, or corporation aggrieved by  
11 an action taken or decision made by the department under section 2 of  
12 this act may appeal the action or decision to the director by filing  
13 notice of the appeal with the director within thirty days of the  
14 department's action or decision. A notice of appeal filed under this  
15 section shall stay the effectiveness of a citation or notice of the  
16 assessment of a penalty pending review of the appeal by the director,  
17 but such appeal shall not stay the effectiveness of an order of  
18 immediate restraint issued under section 2 of this act. Upon receipt  
19 of an appeal, a hearing shall be held in accordance with chapter 34.05  
20 RCW. The director shall issue all final orders after the hearing. The  
21 final orders are subject to appeal in accordance with chapter 34.05  
22 RCW. Orders not appealed within the time period specified in chapter  
23 34.05 RCW are final and binding.

24 NEW SECTION. **Sec. 4.** An employer who knowingly or recklessly  
25 violates the requirements of RCW 49.12.121, or a rule or order adopted  
26 under RCW 49.12.121, is guilty of a gross misdemeanor. An employer  
27 whose practices in violation of the requirements of RCW 49.12.121, or

1 a rule or order adopted under RCW 49.12.121, result in the death or  
2 permanent disability of a minor employee is guilty of a class C felony.

3 **Sec. 5.** RCW 49.12.121 and 1989 c 1 s 3 are each amended to read as  
4 follows:

5 ~~((The committee, or the director,))~~ (1) The department may at any  
6 time inquire into wages, hours, and conditions of labor of minors  
7 employed in any trade, business or occupation in the state of  
8 Washington and may adopt special rules for the protection of the  
9 safety, health and welfare of minor employees. ~~((The minimum wage for  
10 minors shall be as prescribed in RCW 49.46.020.))~~

11 (2) The ~~((committee))~~ department shall issue work permits to  
12 employers for the employment of minors~~((, after being assured))~~ if the  
13 proposed employment ~~((of a minor))~~ meets the standards ~~((set forth  
14 concerning))~~ for the health, safety and welfare of minors ~~((as set  
15 forth in the rules and regulations promulgated by the committee))~~  
16 required by this chapter or adopted by department rule. To implement  
17 state policy to assure the attendance of children in the public  
18 schools, an employer employing a minor shall obtain a work permit  
19 issued by the department. The permit shall be kept on file during the  
20 employment of minors. No minor person shall be employed in any  
21 occupation, trade or industry subject to this 1973 amendatory act,  
22 unless a work permit has been properly issued, with the consent of the  
23 parent, guardian or other person having legal custody of the minor and  
24 with the approval of the school which ~~((such))~~ the minor may then be  
25 attending.

26 (3)(a) Minors legally required to attend school may not be employed  
27 during school hours except by special permission of school officials as  
28 provided in RCW 28A.225.010 and 28A.225.080.

1 (b) Minors under the age of sixteen may not work more than three  
2 hours a day on school days or more than eighteen hours a week during  
3 the school year.

4 (c) Minors who are sixteen and seventeen years of age may not work  
5 more than four hours a day on school days or more than twenty-eight  
6 hours a week during the school year.

7 (d) No minor may work more than eight hours a day or more than  
8 forty hours a week. No minor may work more than five days in a week.

9 (e) This subsection (3) shall not apply to minors sixteen years of  
10 age or older who are emancipated by court order.

11 (4) The minimum wage for minors shall be as prescribed in RCW  
12 49.46.020.

13 (5) For the purposes of this section, "school year" means the weeks  
14 during which school is in session in the school district attended by  
15 the minor or, if the minor is not enrolled in school, in the school  
16 district in which the minor resides.

17 **Sec. 6.** RCW 49.12.170 and 1973 2nd ex.s. c 16 s 16 are each  
18 amended to read as follows:

19 Except as otherwise provided in section 2 or 4 of this act, any  
20 employer employing any person for whom a minimum wage or standards,  
21 conditions, and hours of labor have been specified, at less than said  
22 minimum wage, or under standards, or conditions of labor or at hours of  
23 labor prohibited by the rules and regulations of the committee; or  
24 violating any other of the provisions of this 1973 amendatory act,  
25 shall be deemed guilty of a misdemeanor, and shall, upon conviction  
26 thereof, be punished by a fine of not less than twenty-five dollars nor  
27 more than one thousand dollars.

1        NEW SECTION.    **Sec. 7.**    The penalties established in sections 2 and  
2 4 of this act for violations of RCW 49.12.121 are exclusive remedies.

3        NEW SECTION.    **Sec. 8.**    The legislature finds that over twenty-five  
4 thousand state residents per year file cases and complaints with the  
5 department of labor and industries alleging they have been denied  
6 payment for work they performed. Each month an average of over one  
7 million dollars in back wages is sought by workers.

8        The legislature further finds that the Washington state minimum  
9 wage law and wage claim laws do not require payment of interest on back  
10 wages owed and do not authorize adequate penalties against violators.  
11 To improve compliance, the department of labor and industries should be  
12 allowed to assess interest on back wages and impose civil penalties  
13 against employers who are found to be not in compliance with chapters  
14 49.46 and 49.48 RCW.

15        **Sec. 9.**    RCW 49.46.100 and 1959 c 294 s 10 are each amended to read  
16 as follows:

17        (1) Any employer who hinders or delays the director or ~~((his))~~ the  
18 director's authorized representatives in the performance of ~~((his))~~ the  
19 director's duties in the enforcement of this chapter, or refuses to  
20 admit the director or ~~((his))~~ the director's authorized representatives  
21 to any place of employment, or fails to make, keep, and preserve any  
22 records as required under the provisions of this chapter, or falsifies  
23 any such record, or refuses to make any record accessible to the  
24 director or ~~((his))~~ the director's authorized representatives upon  
25 demand, or refuses to furnish a sworn statement of such record or any  
26 other information required for the proper enforcement of this chapter  
27 to the director or ~~((his))~~ the director's authorized representatives  
28 upon demand(~~(, or pays or agrees to pay wages at a rate less than the~~

1 ~~rate applicable under this chapter, or otherwise violates any provision~~  
2 ~~of this chapter or of any regulation issued under this chapter)) shall~~  
3 ~~be deemed in violation of this chapter and shall((, upon conviction~~  
4 ~~therefor, be guilty of a gross misdemeanor))~~ be assessed a civil  
5 penalty for each violation of not more than one thousand dollars  
6 depending on the size of the business and the gravity of the violation.

7 (2) ~~((Any))~~ (a) An employer who pays or agrees to pay wages at a  
8 rate less than the rate applicable under this chapter or any rule or  
9 order adopted under this chapter may be assessed civil penalties of an  
10 amount equal to twenty percent of the wage violation.

11 (b) An employer who willfully or repeatedly pays or agrees to pay  
12 wages at a rate less than the rate applicable under this chapter or a  
13 rule or order adopted under this chapter is in violation of this  
14 chapter, and shall, upon conviction, be guilty of a gross misdemeanor.

15 (3) Upon a finding by the director that an employer who discharges  
16 or in any other manner discriminates against any employee because such  
17 employee has made any complaint to his or her employer, to the  
18 director, or his or her authorized representatives that he or she has  
19 not been paid wages in accordance with the provisions of this chapter,  
20 or that the employer has violated any provision of this chapter, or  
21 because such employee has caused to be instituted or is about to cause  
22 to be instituted any proceeding under or related to this chapter, or  
23 because such employee has testified or is about to testify in any such  
24 proceeding ((shall be deemed in violation of this chapter and shall,  
25 upon conviction therefor, be guilty of a gross misdemeanor)), the  
26 director may require an employer who has discharged or discriminated  
27 against an employee in violation of this chapter to reinstate the  
28 employee to the same position with back pay and interest up to one  
29 percent per month.

1       (4) Civil penalties imposed under this chapter shall be paid to the  
2 director for deposit in the general fund. Civil penalties may be  
3 recovered and other civil remedies authorized by this chapter may be  
4 enforced in a civil action in the name of the department brought in the  
5 superior court of the county where the violation is alleged to have  
6 occurred, or the department may use the procedures for collection of  
7 wages set forth in chapter 49.48 RCW.

8       **Sec. 10.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read  
9 as follows:

10       (1) The department of labor and industries may:

11       (a) Conduct investigations to ensure compliance with chapters  
12 39.12, 49.46, and 49.48 RCW, upon obtaining information indicating an  
13 employer may be committing a violation under chapters 39.12, 49.46, and  
14 49.48 RCW(~~(, conduct investigations to ensure compliance with chapters~~  
15 39.12, ~~49.46, and 49.48~~ RCW));

16       (b) Order the payment of all wages owed the workers, including  
17 interest of up to one percent per month on back wages owed, and  
18 institute actions necessary for the collection of the sums determined  
19 owed; and

20       (c) Take assignments of wage claims and prosecute actions for the  
21 collection of wages and interest of up to one percent per month on back  
22 wages owed of persons who are financially unable to employ counsel when  
23 in the judgment of the director of the department the claims are valid  
24 and enforceable in the courts.

25       (2) Upon being informed of a wage claim against an employer or  
26 former employer, the director shall, if such claim appears to be just,  
27 immediately notify the employer or former employer, of such claim by  
28 mail. If the employer or former employer fails to pay the claim or  
29 make satisfactory explanation to the director of the failure to do so,

1 within thirty days thereafter, the employer or former employer shall be  
2 liable to a penalty of twenty percent of that portion of the claim  
3 found to be justly due. The director shall have a cause of action  
4 against the employer or former employer for the recovery of such  
5 penalty, and the same may be included in any subsequent action by the  
6 director on said wage claim, or may be exercised separately after  
7 adjustment of such wage claim without court action. Civil penalties  
8 imposed under this section shall be paid to the director for deposit in  
9 the general fund.

10 (3) The director of the department or any authorized representative  
11 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080:  
12 (a) Issue subpoenas to compel the attendance of witnesses or parties  
13 and the production of books, papers, or records; (b) administer oaths  
14 and examine witnesses under oath; (c) take the verification of proof of  
15 instruments of writing; and (d) take depositions and affidavits. If  
16 assignments for wage claims are taken, court costs shall not be payable  
17 by the department for prosecuting such suits.

18 ((+3+)) (4) The director shall have a seal inscribed "Department of  
19 Labor and Industries--State of Washington" and all courts shall take  
20 judicial notice of such seal. Obedience to subpoenas issued by the  
21 director or authorized representative shall be enforced by the courts  
22 in any county.

23 ((+4+)) (5) The director or authorized representative shall have  
24 free access to all places and works of labor. Any employer or any  
25 agent or employee of such employer who refuses the director or  
26 authorized representative admission therein, or who, when requested by  
27 the director or authorized representative, willfully neglects or  
28 refuses to furnish the director or authorized representative any  
29 statistics or information pertaining to his or her lawful duties, which

1 statistics or information may be in his or her possession or under the  
2 control of the employer or agent, shall be guilty of a misdemeanor.

3 (6) An action for relief under this section shall be commenced  
4 within three years after the cause of action accrues, unless a longer  
5 period of time applies under law.

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

8 (1) If upon investigation by the director, after taking assignments  
9 of any wage claim under RCW 49.48.040, it appears to the director that  
10 the employer is representing to ~~((his))~~ employees that ~~((he))~~ the  
11 employer is able to pay wages for their services and that the employees  
12 are not being paid for their services or if the director determines an  
13 employer has repeatedly violated the provisions of chapter 39.12, 49.46  
14 or 49.48 RCW requiring payment of wages, the director may require the  
15 employer to give a bond in such sum as the director deems reasonable  
16 and adequate in the circumstances, with sufficient surety, conditioned  
17 that the employer will for a definite future period not exceeding six  
18 months conduct ~~((his))~~ business and pay ~~((his))~~ employees in accordance  
19 with the laws of the state of Washington.

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

26 (3) If the court finds that there is just cause for requiring such  
27 bond and that the same is reasonable, necessary or appropriate to  
28 secure the prompt payment of the wages of the employees of such  
29 employer and his compliance with RCW 49.48.010 through 49.48.080, the

1 court shall enjoin such employer from doing business in this state  
2 until the requirement is met, or shall make other, and may make  
3 further, orders appropriate to compel compliance with the requirement.

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

16 NEW SECTION. Sec. 12. Sections 2 through 4 and 7 of this act  
17 are each added to chapter 49.12 RCW.

18 NEW SECTION. Sec. 13. RCW 49.12.123 and 1983 c 3 s 156 & 1973  
19 c 51 s 3 are each repealed.

20 NEW SECTION. Sec. 14. The sum of five hundred thousand  
21 dollars, or as much thereof as may be necessary, is appropriated for  
22 the biennium ending June 30, 1993, from the general fund to the  
23 department of labor and industries for additional full-time equivalents  
24 to enhance enforcement of employment standards.

25 NEW SECTION. Sec. 15. If any provision of this act or its  
26 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3       NEW SECTION.   **Sec. 16.**       Sections 1 through 7 and 13 of this act  
4 are necessary for the immediate preservation of the public peace,  
5 health, or safety, or support of the state government and its existing  
6 public institutions, and shall take effect July 1, 1991.