

# SENATE BILL REPORT

## SHB 3145

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As of February 24, 2010

**Title:** An act relating to improving administration of wage complaints by defining the limitations period for administrative wage claims through the department of labor and industries, clarifying the requirements for the department to extend the time period for wage complaint investigations, revising the department's bond authority, tolling the civil statute of limitations, increasing minimum penalties for violators, creating and affecting waiver of penalties for repeat willful violators, and providing for wage law violation liability for successor businesses.

**Brief Description:** Improving administration of wage complaints.

**Sponsors:** House Committee on Commerce & Labor (originally sponsored by Representatives McCoy, Roberts, Simpson, Goodman, Kenney, Conway and Ormsby).

**Brief History:** Passed House: 2/10/10, 95-0; 2/10/10, 96-0.

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/23/10.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Staff:** Mac Nicholson (786-7445)

**Background:** The state Minimum Wage Act and other laws establish standards for the payment of wages. These standards are enforced by the Department of Labor and Industries (L&I), which has authority to investigate wage violations, order the payment of wages owed to workers, and bring civil actions to collect wages. Employees are also permitted to bring civil actions to collect unpaid wages. When an employee files a wage complaint with L&I, L&I must investigate the complaint, and within 60 days of receiving the complaint, L&I must issue either a citation and notice of assessment or a determination of compliance. The citation or determination must be made no later than three years after the date upon which the wages were due.

If L&I determines the employer willfully violated a wage payment requirement, L&I can issue a civil penalty of at least \$500 or 10 percent of the amount of unpaid wages, whichever is greater. L&I must waive any civil penalty if the director determines the employer paid all wages and interest owed the employee within ten days of receipt of the citation and notice of assessment. L&I has the discretion to waive a civil penalty if the director determines the employer paid all wages owed an employee.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

An employee who has filed a wage complaint may elect to terminate L&I's administrative action and preserve a private right of action. If the employee elects to terminate L&I's administrative action, L&I must discontinue its action against the employer and vacate any citations already issued. The citation, related findings of fact or conclusions of law, and payments or offers of payment are not admissible in other proceedings. The statute of limitations on private rights of action under state minimum wage laws is three years.

**Summary of Bill:** L&I can extend the 60-day investigation period by providing written notice to the employee and employer setting forth good cause for the extension. When investigating a wage complaint, L&I is no longer required to issue a citation or determination of compliance within three years of the date when wages were due. Rather, L&I is prohibited from investigating a wage payment claim unless it is filed within three years of the date when the last wages were owed.

The minimum civil penalty for a willful violation of a wage payment requirement is changed from \$500 to \$1,000. The mandatory civil penalty waiver for employers who pay all wages and interest due within ten days of receipt of the complaint does not apply to repeat willful violators. An employer is considered a repeat willful violator if the employer has received a final and binding citation and notice of assessment within three years of the date of the most recent citation and notice of assessment. Civil penalties may be waived or reduced for any employer who pays all wages and interest owed to an employee. Employers can appeal an assessment of civil penalty for being a repeat willful violator.

The applicable statute of limitations is tolled during L&I's investigation of any wage complaint. The investigation begins on the date an employee files a wage complaint with L&I, and ends when L&I issues a citation, determination of compliance, or when L&I notifies the employer and employee that the claim has been otherwise resolved or that the employee has elected to terminate L&I's administrative action.

A successor becomes liable for the full amount of any outstanding citation or penalty against the business if the successor had actual knowledge of the citation or a prompt and reasonable means of accessing and verifying the existence of a citation. If the citation or penalty is not paid in full within ten days of the sale, the successor is liable for full payment and any payment made by the successor must be deemed a payment upon the purchase price. If the payment on the citation or penalty is greater than the purchase price, the amount of difference becomes a debt due the successor from the employer. A successor is any person to whom an employer sells or conveys more than 50 percent of the real or personal property of the employer's business.

L&I must assess a civil penalty of at least \$1,000 against any repeat willful violator. The penalty may be waived or reduced if L&I determines the employer has paid all wages and interest owed to the employee.

The director of L&I may require an employer to post a bond to cover wages upon investigation of a wage complaint if the director finds the employer is representing an ability to pay wages and the employees are not being paid.

**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 legislation was introduced because there are issues out there relating to repeat offenders of the Minimum Wage Act. The bill makes much needed changes to the wage complaint system that helps both workers and businesses. This bill is the product of a bipartisan, cooperative negotiation.

**Persons Testifying:** PRO: Representative McCoy, prime sponsor; Andrea Schmidt, Columbia Legal Services; Doug Smith, Littler Mendelson.