

SSB 5462 - S AMD 251

By Senators Keiser and Prentice

3/18/03 NOT ADOPTED

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

3 "NEW SECTION. **Sec. I.** The legislature finds that over 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. The department of labor and
7 industries currently does not have an effective means of addressing
8 these complaints in order to ensure workers are paid the wages they are
9 owed.

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

16 NEW SECTION. **Sec. II.** A new section is added to chapter 49.48 RCW
17 to read as follows:

18 (1) An employer shall pay each worker all wages due on an
19 established payday for each pay period.

20 (2) An employer found to have violated a provision requiring
21 payment of wages under chapter 49.12, 49.28, 49.30, 49.46, or 49.52 RCW
22 or this chapter in a citation or notice of assessment issued by the
23 director of labor and industries or the director's authorized
24 representative: Must pay the wages to the employee, including interest
25 of up to one percent per month on the unpaid wages, also to be paid to
26 the worker; shall be assessed a civil penalty of not less than one
27 hundred dollars and not more than one thousand dollars for each
28 violation per employee; and may be assessed a civil penalty of not more
29 than one thousand dollars for each subsequent violation found in the
30 citation or notice of assessment. Each day a violation occurs may

1 constitute a separate violation. The director or director's authorized
2 representative may also claim the remedies in RCW 49.52.070.

3 (3) The director of labor and industries may waive collection of a
4 portion or all of the penalties assessed under this chapter in favor of
5 the full payment of wages owed to the employee.

6 (4) The director of labor and industries, or the director's
7 authorized representative, may require payment of unpaid wages and may
8 assess all civil penalties authorized by this section. When
9 considering the amount of penalties for multiple violations found in a
10 citation and notice of assessment, the director, or the director's
11 authorized representative, may consider the appropriateness of the
12 penalty with respect to the number of affected employees of the
13 employer being charged for each violation, the gravity of the
14 violations, the duration of the violations, the size of the employer's
15 business, the good faith of the employer, the history of previous
16 violations, and other relevant factors.

17 (5) Civil penalties imposed under this chapter shall be paid to the
18 director of labor and industries for deposit in the supplemental
19 pension fund established under RCW 51.44.033.

20 (6) The employer shall pay wages and the civil penalty amount
21 assessed under this section within thirty days of receipt of the
22 assessment or notify the director of his or her intent to appeal the
23 citation or the assessment penalty as provided in section 9 of this
24 act.

25 NEW SECTION. **Sec. III.** A new section is added to chapter 49.46
26 RCW to read as follows:

27 (1) An employer found to have violated any of the provisions of
28 this chapter may be assessed a civil penalty of not less than one
29 hundred dollars and not more than one thousand dollars for each
30 violation per employee, and may be assessed a civil penalty of not more
31 than one thousand dollars for each subsequent violation found in the
32 citation or notice of assessment. Each day a violation occurs may
33 constitute a separate violation.

34 (2) Civil penalties imposed under this chapter shall be paid to the
35 director for deposit in the supplemental pension fund established under
36 RCW 51.44.033.

37 (3) The employer shall pay the civil penalty amount assessed under
38 this section within thirty days of receipt of the assessment or notify

1 the director of his or her intent to appeal the citation or the
2 assessment penalty as provided in section 10 of this act.

3 **Sec. IV.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to
4 read as follows:

5 (1) Any employer who hinders or delays the director or (~~his~~) the
6 director's authorized representatives in the performance of (~~his~~) the
7 director's duties in the enforcement of this chapter, or refuses to
8 admit the director or (~~his~~) the director's authorized representatives
9 to any place of employment, or fails to make, keep, and preserve any
10 records as required under the provisions of this chapter, or falsifies
11 any such record, or refuses to make any record accessible to the
12 director or (~~his~~) the director's authorized representatives upon
13 demand, or refuses to furnish a sworn statement of such record or any
14 other information required for the proper enforcement of this chapter
15 to the director or (~~his~~) the director's authorized representatives
16 upon demand, or pays or agrees to pay wages at a rate less than the
17 rate applicable under this chapter, or otherwise violates any provision
18 of this chapter or of any regulation issued under this chapter shall be
19 deemed in violation of this chapter and shall, upon conviction
20 therefor, be guilty of a gross misdemeanor.

21 (2) Any employer who discharges or in any other manner
22 discriminates against any employee because such employee has made any
23 complaint to his or her employer, to the director, or (~~his~~) the
24 director's authorized representatives that he or she has not been paid
25 wages in accordance with the provisions of this chapter, or that the
26 employer has violated any provision of this chapter, or because such
27 employee has caused to be instituted or is about to cause to be
28 instituted any proceeding under or related to this chapter, or because
29 such employee has testified or is about to testify in any such
30 proceeding shall be deemed in violation of this chapter and shall, upon
31 conviction therefor, be guilty of a gross misdemeanor.

32 **Sec. V.** RCW 49.48.020 and 1971 ex.s. c 55 s 2 are each amended to
33 read as follows:

34 Any person, firm, or corporation which violates any of the
35 provisions of RCW 49.48.010 through 49.48.030 (~~and~~), 49.48.060, and
36 section 2 of this act shall be guilty of a misdemeanor.

1 **Sec. VI.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read
2 as follows:

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

4 (a) Conduct investigations to enforce section 2 of this act and to
5 ensure compliance with this chapter and chapters 39.12, 49.12, 49.28,
6 49.30, 49.46, and 49.52 RCW, upon obtaining information indicating an
7 employer may be committing a violation under these chapters ((39.12,
8 49.46, and 49.48 RCW, conduct investigations to ensure compliance with
9 chapters 39.12, 49.46, and 49.48 RCW));

10 (b) Order the payment of all wages owed the workers, including
11 interest of up to one percent per month on the unpaid wages, also to be
12 paid to the worker, and institute actions necessary for the collection
13 of the sums determined owed either under section 2 of this act or in a
14 civil action in the name of the department brought in superior court or
15 other court of competent jurisdiction of the county where the violation
16 is alleged to have occurred, or the department may use the procedures
17 for collection of wages in a court action set forth in this chapter and
18 chapter 49.52 RCW; and

19 (c) ~~((Take assignments of wage claims and))~~ Prosecute actions for
20 the collection of wages ((of)), including interest of up to one percent
21 per month on the unpaid wages, also to be paid to the worker, for
22 persons who are financially unable to employ counsel when in the
23 judgment of the director of the department the claims are valid and
24 enforceable ((in the courts)).

25 (2) The director of the department or any authorized representative
26 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080
27 and section 2 of this act: (a) Issue subpoenas to compel the
28 attendance of witnesses or parties and the production of books, papers,
29 or records; (b) administer oaths and examine witnesses under oath; (c)
30 take the verification of proof of instruments of writing; and (d) take
31 depositions and affidavits. If assignments for wage claims are taken,
32 court costs shall not be payable by the department for prosecuting such
33 suits.

34 (3) The director shall have a seal inscribed "Department of Labor
35 and Industries--State of Washington" and all courts shall take judicial
36 notice of such seal. Obedience to subpoenas issued by the director or
37 authorized representative shall be enforced by the courts in any
38 county.

1 (4) The director or authorized representative shall have free
2 access to all places and works of labor. Any employer or any agent or
3 employee of such employer who refuses the director or authorized
4 representative admission therein, or who, when requested by the
5 director or authorized representative, willfully neglects or refuses to
6 furnish the director or authorized representative any statistics or
7 information pertaining to his or her lawful duties, which statistics or
8 information may be in his or her possession or under the control of the
9 employer or agent, shall be guilty of a misdemeanor.

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

13 **Sec. VII.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended
14 to read as follows:

15 (1) If upon investigation by the director, (~~after taking~~
16 ~~assignments of any wage claim under RCW 49.48.040,~~) it appears to the
17 director that the employer is representing to his or her employees that
18 he or she is able to pay wages for their services and that the
19 employees are not being paid for their services, the director may
20 require the employer to give a bond in such sum as the director deems
21 reasonable and adequate in the circumstances, with sufficient surety,
22 conditioned that the employer will for a definite future period not
23 exceeding six months conduct his or her business and pay his or her
24 employees in accordance with the laws of the state of Washington.

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

31 (3) If the court finds that there is just cause for requiring such
32 bond and that the same is reasonable, necessary or appropriate to
33 secure the prompt payment of the wages of the employees of such
34 employer and his or her compliance with RCW 49.48.010 through
35 49.48.080, the court shall enjoin such employer from doing business in
36 this state until the requirement is met, or shall make other, and may
37 make further, orders appropriate to compel compliance with the
38 requirement.

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

13 **Sec. VIII.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to
14 read as follows:

15 It shall be the duty of the director of labor and industries to
16 inquire diligently for any violations of RCW 49.48.040 through
17 49.48.080 and section 2 of this act, and to institute the actions for
18 penalties herein provided, and to enforce generally the provisions of
19 RCW 49.48.040 through 49.48.080 and section 2 of this act.

20 NEW SECTION. **Sec. IX.** A new section is added to chapter 49.48 RCW
21 to read as follows:

22 A person, firm, or corporation aggrieved by a citation or notice of
23 assessment issued by the department of labor and industries under this
24 chapter may appeal the action or decision to the director of labor and
25 industries by filing notice of the appeal with the director within
26 thirty days of the department's issuance of a citation or notice of
27 assessment, otherwise the citation or notice of assessment is final and
28 binding. A notice of appeal filed under this section shall stay the
29 effectiveness of a citation or notice of the assessment of a penalty
30 pending review of the appeal by the director. Upon receipt of an
31 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.
32 The director shall issue all final orders after the hearing. The final
33 orders are subject to appeal in accordance with chapter 34.05 RCW, with
34 the prevailing party entitled to recover reasonable costs and
35 attorneys' fees. Orders that are not appealed within the time period
36 specified in chapter 34.05 RCW are final and binding.

1 NEW SECTION. **Sec. X.** A new section is added to chapter 49.46 RCW
2 to read as follows:

3 A person, firm, or corporation aggrieved by a citation or notice of
4 assessment issued by the department of labor and industries under this
5 chapter may appeal the action or decision to the director of labor and
6 industries by filing notice of the appeal with the director within
7 thirty days of the department's issuance of a citation or notice of
8 assessment, otherwise the citation or notice of assessment is final and
9 binding. A notice of appeal filed under this section shall stay the
10 effectiveness of a citation or notice of the assessment of a penalty
11 pending review of the appeal by the director. Upon receipt of an
12 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.
13 The director shall issue all final orders after the hearing. The final
14 orders are subject to appeal in accordance with chapter 34.05 RCW, with
15 the prevailing party entitled to recover reasonable costs and
16 attorneys' fees. Orders that are not appealed within the time period
17 specified in chapter 34.05 RCW are final and binding.

18 NEW SECTION. **Sec. XI.** A new section is added to chapter 49.48 RCW
19 to read as follows:

20 Nothing in this chapter prohibits an employee from pursuing a
21 private right of action against an employer for unpaid wages. The
22 remedies provided for in this chapter are not exclusive and are
23 concurrent with any other remedy provided by law.

24 NEW SECTION. **Sec. XII.** A new section is added to chapter 49.46
25 RCW to read as follows:

26 Nothing in this chapter prohibits an employee from pursuing a
27 private right of action against an employer for unpaid wages. The
28 remedies provided for in this chapter are not exclusive and are
29 concurrent with any other remedy provided by law.

30 NEW SECTION. **Sec. XIII.** A new section is added to chapter 49.48
31 RCW to read as follows:

32 (1) If an employer defaults in a payment, penalty, or fine due to
33 the department of labor and industries after a final order is issued
34 under this chapter the director of labor and industries or the
35 director's designee may file with the clerk of any county within the
36 state, a warrant in the amount of the notice of assessment, plus

1 interest, penalties, and a filing fee of twenty dollars. The clerk of
2 the county in which the warrant is filed shall immediately designate a
3 superior court cause number for the warrant, and the clerk shall cause
4 to be entered in the judgment docket under the superior court cause
5 number assigned to the warrant, the name of the employer mentioned in
6 the warrant, the amount of payment, penalty, fine due on it, or filing
7 fee, and the date when the warrant was filed. The aggregate amount of
8 the warrant as docketed becomes a lien upon the title to, and interest
9 in, all real and personal property of the employer against whom the
10 warrant is issued, the same as a judgment in a civil case docketed in
11 the office of the clerk. The sheriff shall proceed upon the warrant in
12 all respects and with like effect as prescribed by law with respect to
13 execution or other process issued against rights or property upon
14 judgment in a court of competent jurisdiction. The warrant so docketed
15 is sufficient to support the issuance of writs of garnishment in favor
16 of the state in a manner provided by law in case of judgment, wholly or
17 partially unsatisfied. The clerk of the court is entitled to a filing
18 fee which will be added to the amount of the warrant. A copy of the
19 warrant shall be mailed to the employer within three days of filing
20 with the clerk.

21 (2)(a) The director of labor and industries or the director's
22 designee may issue to any person, firm, corporation, other entity,
23 municipal corporation, political subdivision of the state, a public
24 corporation, or any agency of the state, a notice and order to withhold
25 and deliver property of any kind when he or she has reason to believe
26 that there is in the possession of the person, firm, corporation, other
27 entity, municipal corporation, political subdivision of the state,
28 public corporation, or agency of the state, property that is or will
29 become due, owing, or belonging to an employer upon whom a notice of
30 assessment has been served by the department of labor and industries
31 for payments, penalties, or fines due to the department. The effect of
32 a notice and order is continuous from the date the notice and order is
33 first made until the liability out of which the notice and order arose
34 is satisfied or becomes unenforceable because of lapse of time. The
35 department shall release the notice and order when the liability out of
36 which the notice and order arose is satisfied or becomes unenforceable
37 by reason of lapse of time and shall notify the person against whom the
38 notice and order was made that the notice and order has been released.

1 (b) The notice and order to withhold and deliver must be served by
2 the sheriff of the county or by the sheriff's deputy, by certified
3 mail, return receipt requested, or by an authorized representative of
4 the director. A person, firm, corporation, other entity, municipal
5 corporation, political subdivision of the state, public corporation, or
6 agency of the state upon whom service has been made shall answer the
7 notice within twenty days exclusive of the day of service, under oath
8 and in writing, and shall make true answers to the matters inquired of
9 in the notice and order. Upon service of the notice and order, if the
10 party served possesses any property that may be subject to the claim of
11 the department, the party shall promptly deliver the property to the
12 director or the director's authorized representative. The director
13 shall hold the property in trust for application on the employer's
14 indebtedness to the department, or for return without interest, in
15 accordance with a final determination of a petition for review. In the
16 alternative, the party shall furnish a good and sufficient surety bond
17 satisfactory to the director conditioned upon final determination of
18 liability. If a party served and named in the notice fails to answer
19 the notice within the time prescribed in this section, the court may
20 render judgment by default against the party for the full amount
21 claimed by the director in the notice, together with costs. If a
22 notice is served upon an employer and the property subject to it is
23 wages, the employer may assert in the answer all exemptions provided
24 for by chapter 6.27 RCW to which the wage earner is entitled.

25 (3) In addition to the procedure for collection of a payment,
26 penalty, or fine due to the department of labor and industries as set
27 forth in this section, the department may recover civil penalties
28 imposed under this chapter in a civil action in the name of the
29 department brought in a court of competent jurisdiction of the county
30 where the violation is alleged to have occurred.

31 (4) This section does not affect other collection remedies that are
32 otherwise provided by law.

33 NEW SECTION. **Sec. XIV.** A new section is added to chapter 49.46
34 RCW to read as follows:

35 (1) If an employer defaults in a payment, penalty, or fine due to
36 the department of labor and industries after a final order is issued
37 under this chapter the director of labor and industries or director's
38 designee may file with the clerk of any county within the state, a

1 warrant in the amount of the notice of assessment, plus interest,
2 penalties, and a filing fee of twenty dollars. The clerk of the county
3 in which the warrant is filed shall immediately designate a superior
4 court cause number for the warrant, and the clerk shall cause to be
5 entered in the judgment docket under the superior court cause number
6 assigned to the warrant, the name of the employer mentioned in the
7 warrant, the amount of payment, penalty, fine due on it, or filing fee,
8 and the date when the warrant was filed. The aggregate amount of the
9 warrant as docketed becomes a lien upon the title to, and interest in,
10 all real and personal property of the employer against whom the warrant
11 is issued, the same as a judgment in a civil case docketed in the
12 office of the clerk. The sheriff shall proceed upon the warrant in all
13 respects and with like effect as prescribed by law with respect to
14 execution or other process issued against rights or property upon
15 judgment in a court of competent jurisdiction. The warrant so docketed
16 is sufficient to support the issuance of writs of garnishment in favor
17 of the state in a manner provided by law in case of judgment, wholly or
18 partially unsatisfied. The clerk of the court is entitled to a filing
19 fee which will be added to the amount of the warrant. A copy of the
20 warrant shall be mailed to the employer within three days of filing
21 with the clerk.

22 (2)(a) The director of labor and industries or the director's
23 designee may issue to any person, firm, corporation, other entity,
24 municipal corporation, political subdivision of the state, a public
25 corporation, or any agency of the state, a notice and order to withhold
26 and deliver property of any kind when he or she has reason to believe
27 that there is in the possession of the person, firm, corporation, other
28 entity, municipal corporation, political subdivision of the state,
29 public corporation, or agency of the state, property that is or will
30 become due, owing, or belonging to an employer upon whom a notice of
31 assessment has been served by the department of labor and industries
32 for payments, penalties, or fines due to the department. The effect of
33 a notice and order is continuous from the date the notice and order is
34 first made until the liability out of which the notice and order arose
35 is satisfied or becomes unenforceable because of lapse of time. The
36 department shall release the notice and order when the liability out of
37 which the notice and order arose is satisfied or becomes unenforceable
38 by reason of lapse of time and shall notify the person against whom the
39 notice and order was made that the notice and order has been released.

1 (b) The notice and order to withhold and deliver must be served by
2 the sheriff of the county or by the sheriff's deputy, by certified
3 mail, return receipt requested, or by an authorized representative of
4 the director. A person, firm, corporation, other entity, municipal
5 corporation, political subdivision of the state, public corporation, or
6 agency of the state upon whom service has been made shall answer the
7 notice within twenty days exclusive of the day of service, under oath
8 and in writing, and shall make true answers to the matters inquired of
9 in the notice and order. Upon service of the notice and order, if the
10 party served possesses any property that may be subject to the claim of
11 the department, the party shall promptly deliver the property to the
12 director or the director's authorized representative. The director
13 shall hold the property in trust for application on the employer's
14 indebtedness to the department, or for return without interest, in
15 accordance with a final determination of a petition for review. In the
16 alternative, the party shall furnish a good and sufficient surety bond
17 satisfactory to the director conditioned upon final determination of
18 liability. If a party served and named in the notice fails to answer
19 the notice within the time prescribed in this section, the court may
20 render judgment by default against the party for the full amount
21 claimed by the director in the notice, together with costs. If a
22 notice is served upon an employer and the property subject to it is
23 wages, the employer may assert in the answer all exemptions provided
24 for by chapter 6.27 RCW to which the wage earner is entitled.

25 (3) In addition to the procedure for collection of a payment,
26 penalty, or fine due to the department of labor and industries as set
27 forth in this section, the department may recover civil penalties
28 imposed under this chapter in a civil action in the name of the
29 department brought in a court of competent jurisdiction of the county
30 where the violation is alleged to have occurred.

31 (4) This section does not affect other collection remedies that are
32 otherwise provided by law.

33 NEW SECTION. **Sec. XV.** A new section is added to chapter 49.48 RCW
34 to read as follows:

35 The director of labor and industries may adopt rules to carry out
36 the purposes of this chapter.

