

1 **SHB 1471 - H AMD 243 Failed 3-18-91**

2 By Representative Vance

3 On page 19, after line 12, strike all material through
4 "remedies." on line 3, page 25, and insert:

5 **Sec. 401.** RCW 49.12.121 and 1989 c 1 s 3 are each amended to
6 read as follows:

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

13 (2) The ((committee)) department shall issue work permits to
14 employers for the employment of minors~~((, after being assured))~~ if
15 the proposed employment ~~((of a minor))~~ meets the standards ~~((set
16 forth concerning))~~ for the health, safety and welfare of minors
17 ~~((as set forth in the rules and regulations promulgated by the
18 committee))~~ required by this chapter or adopted by department rule.
19 To implement state policy to assure the attendance of children in
20 the public schools, an employer employing a minor shall obtain a
21 work permit issued by the department. The permit shall be kept on
22 file during the employment of minors. No minor person shall be

1 employed in any occupation, trade or industry subject to this 1973
2 amendatory act, unless a work permit has been properly issued, with
3 the consent of the parent, guardian or other person having legal
4 custody of the minor and with the approval of the school which
5 (~~such~~) the minor may then be attending.

6 "(3)(a) Minors may not be employed at a time during school hours
7 which will interfere with their education except by special
8 permission of school officials as provided in RCW 28A.225.010 and
9 28A.225.080.

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

13 (c) Minors who are sixteen and seventeen years of age may not
14 work after 10 p.m. on consecutive school nights.

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

17 (4) The minimum wage for minors shall be as prescribed in RCW
18 49.46.020.

19 (5) For the purposes of this section, "school year" means the
20 weeks during which school is in session in the school district
21 attended by the minor or, if the minor is not enrolled in school,
22 in the school district in which the minor resides.

23 (6) By November 1, 1991, the department shall adopt rules to
24 implement this section. The rules shall take effect no earlier
25 than May 1, 1992. Consistency of coordination between the federal
26 rules and state regulations to avoid unnecessary confusion shall be

1 of paramount importance and shall take precedence over minor or
2 technical variations in the development of the rules required under
3 this section.

4 (7) Not more than 60 days following the formal adoption of
5 the rules required under this section, the department shall
6 undertake a broad public education program to ensure that the
7 greatest number of effected individuals as is practicable are
8 informed of the rule changes and their operation. The public
9 education program shall inform employers, parents, minor workers,
10 schools and educators of the new child labor regulatory
11 requirements and penalties. The program shall include mailings,
12 public service announcements, press releases, seminars, and any
13 other efficient means to communicate the changes to the state child
14 labor laws. This educational campaign shall be in place and
15 initiated not less than four months prior to the effective date of
16 the rules.

17 NEW SECTION. Sec. 402. RCW 49.12.123 and 1983 c
18 3 s 156 & 1973 c 51 s 3 are each repealed.

19 "B. Enforcement of Child Labor Standards"

20 "NEW SECTION. **Sec. 403.** The legislature finds that employment
21 of minors requires strict adherence to standards that protect the

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

7 NEW SECTION. **Sec. 404.** (1)(a) Except as otherwise provided
8 in subsection (2) of this section, if the director, or the
9 director's designee, finds that an employer has violated any of the
10 requirements of RCW 49.12.121, or a rule or order adopted or
11 variance granted under RCW 49.12.121, a citation stating the
12 violations shall be issued to the employer. The citation shall be
13 in writing, describing the nature of the violation including
14 reference to the standards, rules, or orders alleged to have been
15 violated. An initial citation for failure to comply with RCW
16 49.12.121 or rules requiring a minor work permit and maintenance of
17 records shall state a specific and reasonable time for abatement of
18 the violation to allow the employer to correct the violation
19 without penalty. The director or the director's designee shall
20 establish a specific time for abatement of other nonserious
21 violations in lieu of a penalty for first time violations. The
22 citation and a proposed penalty assessment shall be given to the
23 highest management official available at the work place and be
24 mailed to the central personnel office of the employer. Citations

1 issued under this section shall be posted at or near the place
2 where the violation occurred.

3 (b) Except when an employer corrects a violation as provided
4 in (a) of this subsection, he or she shall be assessed a civil
5 penalty of not more than one thousand dollars depending on the size
6 of the business and the gravity of the violation. The employer
7 shall pay the amount assessed within thirty days of receipt of the
8 assessment or notify the director of his or her intent to appeal
9 the citation or the assessment penalty as provided in section 3 of
10 this act.

11 (2) If the director, or the director's designee, finds that an
12 employer has committed a serious or repeated violation of the
13 requirements of RCW 49.12.121, or any rule or order adopted or
14 variance granted under RCW 49.12.121, the employer is subject to a
15 civil penalty of not more than one thousand dollars for each day
16 the violation continues. For the purposes of this subsection, a
17 serious violation shall be deemed to exist where the violation has
18 caused a substantial probability that death or serious physical
19 harm could result to a minor employee, unless the employer did not,
20 and could not with the exercise of reasonable diligence, know of
21 the presence of the violation.

22 (3) In addition to any other authority provided in this
23 section, if, upon inspection or investigation, the director, or
24 director's designee, believes that an employer has violated RCW
25 49.12.121, or a rule or order adopted or variance granted under RCW

1 49.12.121, and that the violation creates a danger from which there
2 is a substantial probability that death or serious physical harm
3 could result to a minor employee, the director, or director's
4 designee, may issue an order immediately restraining the condition,
5 practice, method, process, or means creating the danger in the work
6 place. An order issued under this subsection may require the
7 employer to take steps necessary to avoid, correct, or remove the
8 danger and to prohibit the employment or presence of a minor in
9 locations or under conditions where the danger exists.

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

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

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

20 NEW SECTION. **Sec. 405.** A person, firm, or corporation
21 aggrieved by an action taken or decision made by the department
22 under section 404 of this act may appeal the action or decision to
23 the director by filing notice of the appeal with the director
24 within thirty days of the department's action or decision. A

1 notice of appeal filed under this section shall stay the
2 effectiveness of a citation or notice of the assessment of a
3 penalty pending review of the appeal by the director, but such
4 appeal shall not stay the effectiveness of an order of immediate
5 restraint issued under section 404 of this act. Upon receipt of an
6 appeal, a hearing shall be held in accordance with chapter 34.05
7 RCW. The director shall issue all final orders after the hearing.
8 The final orders are subject to appeal in accordance with chapter
9 34.05 RCW. Orders not appealed within the time period specified in
10 chapter 34.05 RCW are final and binding.

11 NEW SECTION. **Sec. 406.** An employer who knowingly or
12 recklessly violates the requirements of RCW 49.12.121, or a rule or
13 order adopted under RCW 49.12.121, is guilty of a gross
14 misdemeanor. An employer whose practices in violation of the
15 requirements of RCW 49.12.121, or a rule or order adopted under RCW
16 49.12.121, result in the death or permanent disability of a minor
17 employee is guilty of a class C felony.

18 **Sec. 407.** RCW 49.12.170 and 1973 2nd ex.s. c 16 s
19 16 are each amended to read as follows:

20 The committee shall not knowingly issue a variance under
21 the provisions of RCW 49.12.105 which places an employer in
22 conflict with the Federal Fair Labor Standards Act. Except as
23 otherwise provided in section 404 or 406 of this act, any employer

1 employing any person for whom a minimum wage or standards,
2 conditions, and hours of labor have been specified, at less than
3 said minimum wage, or under standards, or conditions of labor or at
4 hours of labor prohibited by the rules and regulations of the
5 committee; or violating any other of the provisions of this 1973
6 amendatory act, shall be deemed guilty of a misdemeanor, and shall,
7 upon conviction thereof, be punished by a fine of not less than
8 twenty-five dollars nor more than one thousand dollars.

9 NEW SECTION. **Sec. 408.** The penalties established in sections
10 404 and 406 of this act for violations of RCW 49.12.121 are
11 exclusive remedies.

12 **Sec. 409.** RCW 49.46.100 and 1959 c 294 s 10 are each amended
13 to read as follows:

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

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

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

14 (3) Upon a finding by the director that an employer who
15 discharges or in any other manner discriminates against any
16 employee because such employee has made any complaint to his or her
17 employer, to the director, or his or her authorized representatives
18 that he or she has not been paid wages in accordance with the
19 provisions of this chapter, or that the employer has violated any
20 provision of this chapter, or because such employee has caused to
21 be instituted or is about to cause to be instituted any proceeding
22 under or related to this chapter, or because such employee has
23 testified or is about to testify in any such proceeding (~~(shall be~~
24 deemed in violation of this chapter and shall, upon conviction
25 therefor, be guilty of a gross misdemeanor)), the director may

1 require an employer who has discharged or discriminated against an
2 employee in violation of this chapter to reinstate the employee to
3 the same position with back pay.

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

12 **Sec. 410.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each
13 amended to read as follows:

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

1 conduct ((his)) business and pay ((his)) employees in accordance
2 with the laws of the state of Washington.

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

9 (3) If the court finds that there is just cause for requiring
10 such bond and that the same is reasonable, necessary or appropriate
11 to secure the prompt payment of the wages of the employees of such
12 employer and his compliance with RCW 49.48.010 through 49.48.080,
13 the court shall enjoin such employer from doing business in this
14 state until the requirement is met, or shall make other, and may
15 make further, orders appropriate to compel compliance with the
16 requirement.

17 ~~((Upon being informed of a wage claim against an employer or
18 former employer, the director shall, if such claim appears to be
19 just, immediately notify the employer or former employer, of such
20 claim by mail. If the employer or former employer fails to pay the
21 claim or make satisfactory explanation to the director of his
22 failure to do so, within thirty days thereafter, the employer or
23 former employer shall be liable to a penalty of ten percent of that
24 portion of the claim found to be justly due. The director shall
25 have a cause of action against the employer or former employer for~~

1 the recovery of such penalty, and the same may be included in any
2 subsequent action by the director on said wage claim, or may be
3 exercised separately after adjustment of such wage claim without
4 court action.))

5 **Sec. 411.** RCW 49.48.030 and 1971 ex s c 55 s 3 are each
6 amended to read as follows:

7 In any action under this chapter for wages or salary owed in
8 which any person is (~~successful in recovering judgment for wages~~
9 ~~or salary owed to him~~) the prevailing party, reasonable attorney's
10 fees, in an amount to be determined by the court, shall be
11 (~~assessed against said employer or former employer~~) awarded to
12 the prevailing party: Provided, however, That this section shall
13 not apply if the amount of recovery is less than or equal to the
14 amount admitted by the employer or claimed by the employee to be
15 owing for said wages or salary.

16 NEW SECTION. **Sec. 412.** Sections 404 through 406 and 409 of
17 this act are each added to chapter 49.12 RCW.

18 NEW SECTION. **Sec. 413.** Sections 401, 404 through 406 and 409
19 of this act shall take effect May 1, 1992."

20 Renumbering remaining sections consecutively and change

1 internal references accordingly.

EFFECT: The amendment makes the following changes to the bill:

- (1) Adds a requirement that citations for child labor law violations allow a reasonable time for correction of the violation.
- (2) Amends the provisions limiting hours of work for minors.
- (3) Requires the Department of Labor and Industries to adopt new rules for child labor with respect to hours and prohibited occupations, to take effect May 1, 1992.
- (4) Requires the department to implement an education program for employers on the new child labor rules.
- (5) Deletes the authority for the department to impose a 20 percent civil penalty for violations of the minimum wage chapter and for wage claims violations.
- (6) Requires attorneys' fees to be paid to the prevailing party in a wage claim action.
- (7) Prohibits knowingly issuing a variance which places an employer in conflict with the Federal Fair Labor Standards Act.