

CERTIFICATION OF ENROLLMENT

SENATE BILL 5558

Chapter 303, Laws of 1991
(partial veto)

52nd Legislature
1991 Regular Session

CHILD LABOR LAWS ENFORCEMENT

EFFECTIVE DATE: 7/28/91 - Except Sections 2 & 8 which become effective on 5/20/91; & Sections 3 through 7 which become effective on 4/1/92.

Passed by the Senate March 15, 1991
Yeas 47 Nays 0

 JOEL PRITCHARD
President of the Senate

Passed by the House April 16, 1991
Yeas 98 Nays 0

 JOE KING
Speaker of the
House of Representatives

Approved May 20, 1991, with
the exception of section 1,
which is vetoed.

 BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5558** as passed by the Senate and the House of Representatives on the dates hereon set forth.

 GORDON A. GOLOB
Secretary

FILED

May 20, 1991 - 2:14 p.m.

Secretary of State
State of Washington

SENATE BILL 5558

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senators Sellar, Owen, Matson and Wojahn.

Read first time February 6, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to child labor regulation; amending RCW 49.12.121,
2 49.12.170, and 49.12.123; adding new sections to chapter 49.12 RCW;
3 prescribing penalties; providing an effective date; and declaring an
4 emergency.

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

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

8 *((~~The committee, or the director,~~) The department may at any time*
9 *inquire into wages, hours, and conditions of labor of minors employed*
10 *in any trade, business or occupation in the state of Washington ((and*
11 *may)). The department shall, by October 1, 1991, adopt special rules*
12 *for the protection of the safety, health and welfare of minor*
13 *employees, that replace existing rules and are consistent with federal*
14 *law governing the employment of minors. The rules shall be revised as*
15 *necessary to remain consistent with federal law. The minimum wage for*
16

1 minors shall be as prescribed in RCW 49.46.020. The committee shall
2 issue work permits to employers for the employment of minors, after
3 being assured the proposed employment of a minor meets the standards
4 set forth concerning the health, safety and welfare of minors as set
5 forth in the rules and regulations promulgated by the committee. No
6 minor person shall be employed in any occupation, trade or industry
7 subject to this 1973 amendatory act, unless a work permit has been
8 properly issued, with the consent of the parent, guardian or other
9 person having legal custody of the minor and with the approval of the
10 school which such minor may then be attending.

11 *Sec. 1 was vetoed, see message at end of chapter.

12 NEW SECTION. **Sec. 2.** Upon adoption of the rules under section
13 1 of this act, the department of labor and industries shall implement
14 a comprehensive program to inform employers of the rules adopted. The
15 program shall include mailings, public service announcements, seminars,
16 and any other means deemed appropriate to inform all Washington
17 employers of their rights and responsibilities regarding the employment
18 of minors.

19 NEW SECTION. **Sec. 3.** (1)(a) Except as otherwise provided in
20 subsection (2) of this section, if the director, or the director's
21 designee, finds that an employer has violated any of the requirements
22 of RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance
23 granted under RCW 49.12.121 or 49.12.123, a citation stating the
24 violations shall be issued to the employer. The citation shall be in
25 writing, describing the nature of the violation including reference to
26 the standards, rules, or orders alleged to have been violated. An
27 initial citation for failure to comply with RCW 49.12.123 or rules
28 requiring a minor work permit and maintenance of records shall state a

1 specific and reasonable time for abatement of the violation to allow
2 the employer to correct the violation without penalty. The director or
3 the director's designee may establish a specific time for abatement of
4 other nonserious violations in lieu of a penalty for first time
5 violations. The citation and a proposed penalty assessment shall be
6 given to the highest management official available at the workplace or
7 be mailed to the employer at the workplace. In addition, the
8 department shall mail a copy of the citation and proposed penalty
9 assessment to the central personnel office of the employer. Citations
10 issued under this section shall be posted at or near the place where
11 the violation occurred.

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

19 (2) If the director, or the director's designee, finds that an
20 employer has committed a serious or repeated violation of the
21 requirements of RCW 49.12.121 or 49.12.123, or any rule or order
22 adopted or variance granted under RCW 49.12.121 or 49.12.123, the
23 employer is subject to a civil penalty of not more than one thousand
24 dollars for each day the violation continues. For the purposes of this
25 subsection, a serious violation shall be deemed to exist if death or
26 serious physical harm has resulted or is imminent from a condition that
27 exists, or from one or more practices, means, methods, operations, or
28 processes that have been adopted or are in use by the employer, unless
29 the employer did not, and could not with the exercise of reasonable
30 diligence, know of the presence of the violation.

1 (3) In addition to any other authority provided in this section,
2 if, upon inspection or investigation, the director, or director's
3 designee, believes that an employer has violated RCW 49.12.121 or
4 49.12.123, or a rule or order adopted or variance granted under RCW
5 49.12.121 or 49.12.123, and that the violation creates a danger from
6 which there is a substantial probability that death or serious physical
7 harm could result to a minor employee, the director, or director's
8 designee, may issue an order immediately restraining the condition,
9 practice, method, process, or means creating the danger in the
10 workplace. An order issued under this subsection may require the
11 employer to take steps necessary to avoid, correct, or remove the
12 danger and to prohibit the employment or presence of a minor in
13 locations or under conditions where the danger exists.

14 (4) An employer who violates any of the posting requirements of RCW
15 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed
16 a civil penalty of not more than one hundred dollars for each
17 violation.

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

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

23 NEW SECTION. **Sec. 4.** A person, firm, or corporation aggrieved
24 by an action taken or decision made by the department under section 3
25 of this act may appeal the action or decision to the director by filing
26 notice of the appeal with the director within thirty days of the
27 department's action or decision. A notice of appeal filed under this
28 section shall stay the effectiveness of a citation or notice of the
29 assessment of a penalty pending review of the appeal by the director,

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

8 NEW SECTION. **Sec. 5.** An employer who knowingly or recklessly
9 violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or
10 order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross
11 misdemeanor. An employer whose practices in violation of the
12 requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted
13 under RCW 49.12.121 or 49.12.123, result in the death or permanent
14 disability of a minor employee is guilty of a class C felony.

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

17 Except as otherwise provided in section 3 or 5 of this act, any
18 employer employing any person for whom a minimum wage or standards,
19 conditions, and hours of labor have been specified, at less than said
20 minimum wage, or under standards, or conditions of labor or at hours of
21 labor prohibited by the rules and regulations of the committee; or
22 violating any other of the provisions of this 1973 amendatory act,
23 shall be deemed guilty of a misdemeanor, and shall, upon conviction
24 thereof, be punished by a fine of not less than twenty-five dollars nor
25 more than one thousand dollars.

1 NEW SECTION. **Sec. 7.** The penalties established in sections 3
2 and 5 of this act for violations of RCW 49.12.121 and 49.12.123 are
3 exclusive remedies.

4 **Sec. 8.** RCW 49.12.123 and 1983 c 3 s 156 are each amended to read
5 as follows:

6 In implementing state policy to assure the attendance of children
7 in the public schools it shall be required of any person, firm or
8 corporation employing any minor under the age of eighteen years to
9 obtain a work permit as set forth in RCW 49.12.121 and keep such permit
10 on file during the employment of such minor, and upon termination of
11 such employment of such minor to return such permit to the ((~~industrial~~
12 ~~welfare committee of the~~)) department of labor and industries.

13 NEW SECTION. **Sec. 9.** Sections 2 through 5 and 7 of this act
14 are each added to chapter 49.12 RCW.

15 NEW SECTION. **Sec. 10.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 11.** Sections 1, 2, and 8 of this act are
20 necessary for the immediate preservation of the public peace, health,
21 or safety, or support of the state government and its existing public
22 institutions, and shall take effect immediately.

23 NEW SECTION. **Sec. 12.** Sections 3 through 7 of this act shall
24 take effect April 1, 1992.

Passed the Senate March 15, 1991.
Passed the House April 16, 1991.
Approved by the Governor May 20, 1991, with the exception of
certain items which were vetoed.
Filed in Office of Secretary of State May 20, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 1,
3 Senate Bill No. 5558, entitled:

4 "AN ACT Relating to child labor regulation."

5 This bill would authorize the Department of Labor and Industries to
6 issue civil penalties for violations of the state's child labor laws.
7 I strongly support this authority.

8 Section 1 of this bill would require the Department of Labor and
9 Industries to replace existing rules governing the employment of minors
10 with rules which are consistent with federal law. Section 1 also
11 requires the Department of Labor and Industries to revise child labor
12 rules in the future as necessary to remain consistent with federal law.
13 These requirements would be an unacceptable abdication of the State's
14 responsibility and duty to its children.

15 Section 1 may be an unconstitutional delegation of legislative
16 authority. Even if section 1 were upheld, provisions of state child
17 labor law which were inconsistent with federal law might be legally
18 unenforceable, leaving the state with no law under which to enforce
19 some areas of child labor.

20 Beyond the problems of authority and process, I also object to the
21 policy implications of section 1. Under current federal law, section
22 1 might effectively repeal important state policies, such as regulation
23 of the hours of employment for sixteen- and seventeen-year-old
24 children. The state might also be required to repeal its regulation of
25 meal and rest breaks for children. Further, section 1 might place in
26 jeopardy the state's newly enacted regulations of agricultural
27 employment of children.

28 The remainder of the bill establishes new tools to protect our
29 children from working conditions and hours of employment which are
30 detrimental to their health, safety and education. It is crucial that
31 the state be able to regulate hours of employment for children to
32 ensure that education, not employment, is the first priority for
33 Washington's children.

34 For the reasons stated, I have vetoed section 1 of Senate Bill No.
35 5558.

36 With the exception of section 1, Senate Bill No. 5558 is approved."