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SENATE BILL 5252

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State of Washington

56th Legislature

1999 Regular Session

By Senators Fraser, Franklin, Kline and Prentice

Read first time 01/18/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to wage claims and collection; amending RCW  
2 49.48.020, 49.48.040, 49.48.050, 49.48.060, 49.48.070, 43.84.092, and  
3 43.84.092; adding new sections to chapter 49.48 RCW; prescribing  
4 penalties; providing an effective date; and providing an expiration  
5 date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.48 RCW  
8 to read as follows:

9 (1) Every employer shall establish and maintain a regular payday,  
10 when all employees shall be paid the wages due them.

11 (2) The regular payday shall be at least once per month.

12 (3) This section does not prevent the employer from establishing  
13 and maintaining regular paydays at more frequent intervals.

14 (4) This section does not prevent the employer from implementing a  
15 regular payroll system in which wages from up to seven days before the  
16 regular payday may be withheld from the covered pay period and included  
17 in the next pay period.

18 (5) This section does not prevent any employer from entering into  
19 a written agreement, prior to the rendering of any services, and

1 mutually satisfactory with the employees, as to the payment of wages at  
2 a future date.

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

5 Any person, firm, or corporation which violates any of the  
6 provisions of (~~RCW 49.48.010 through 49.48.030 and 49.48.060 shall~~  
7 ~~be~~) this chapter is guilty of a misdemeanor.

8 **Sec. 3.** 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~~) shall:

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

15 (b) Upon completing an investigation, issue a written  
16 determination, including findings of fact, as to the alleged violation  
17 of this chapter or chapter 39.12 or 49.46 RCW:

18 (c) Upon determining that a violation of this chapter or chapter  
19 39.12 or 49.46 RCW has occurred, order the payment of all wages owed  
20 the workers and institute actions necessary for the collection of the  
21 sums determined owed; and

22 (~~e~~) (d) Take assignments of wage claims and prosecute actions  
23 for the collection of wages (~~of persons who are financially unable to~~  
24 employ counsel) when in the judgment of the director of the department  
25 the claims are valid and enforceable in the courts, unless the workers  
26 cancel such assignments or prosecute such actions with the assistance  
27 of independent legal counsel or pro se.

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

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

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

16 **Sec. 4.** RCW 49.48.050 and 1935 c 96 s 2 are each amended to read  
17 as follows:

18 Nothing herein contained shall be construed to limit the authority  
19 of the prosecuting attorney of any county to prosecute actions, both  
20 civil and criminal, for ~~((such))~~ violations of ~~((RCW 49.48.040 through~~  
21 ~~49.48.080 as may come to his knowledge))~~ this chapter, or to enforce  
22 the provisions ~~((hereof))~~ of this chapter independently and without  
23 specific direction of the director of labor and industries.

24 **Sec. 5.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to  
25 read as follows:

26 (1) If upon investigation by the director, after taking assignments  
27 of any wage claim under RCW 49.48.040, it appears to the director that  
28 the employer is representing to ~~((his))~~ employees that ~~((he))~~ the  
29 employer is able to pay wages for their services and that the employees  
30 are not being paid for their services, the director may require the  
31 employer to give a bond in such sum as the director deems reasonable  
32 and adequate in the circumstances, with sufficient surety, conditioned  
33 that the employer will for a definite future period not exceeding six  
34 months conduct ~~((his))~~ business and pay ~~((his))~~ employees in accordance  
35 with the laws of the state of Washington.

36 (2) If within ten days after demand for such bond the employer  
37 fails to provide the same, the director may commence a suit against the

1 employer in the superior court of appropriate jurisdiction to compel  
2 ((him)) the employer to furnish such bond or cease doing business until  
3 ((he)) the employer has done so. The employer shall have the burden of  
4 proving the amount thereof to be excessive.

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

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

25 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.48 RCW  
26 to read as follows:

27 The wage claim collection account is created in the custody of the  
28 state treasurer. All monetary penalties collected under this chapter  
29 shall be deposited into the account. Expenditures from the account may  
30 be used only for the purposes of administering and enforcing this  
31 chapter. Only the director or the director's designee may authorize  
32 expenditures from the account. The account is subject to allotment  
33 procedures under chapter 43.88 RCW, but an appropriation is not  
34 required for expenditures.

35 **Sec. 7.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read  
36 as follows:

1 It shall be the duty of the director of labor and industries to  
2 inquire diligently for any violations of (~~RCW 49.48.040 through~~  
3 ~~49.48.080~~) this chapter, and to institute the actions for penalties  
4 herein provided, and to enforce generally the provisions of (~~RCW~~  
5 ~~49.48.040 through 49.48.080~~) this chapter.

6 **Sec. 8.** RCW 43.84.092 and 1997 c 218 s 5 are each amended to read  
7 as follows:

8 (1) All earnings of investments of surplus balances in the state  
9 treasury shall be deposited to the treasury income account, which  
10 account is hereby established in the state treasury.

11 (2) The treasury income account shall be utilized to pay or receive  
12 funds associated with federal programs as required by the federal cash  
13 management improvement act of 1990. The treasury income account is  
14 subject in all respects to chapter 43.88 RCW, but no appropriation is  
15 required for refunds or allocations of interest earnings required by  
16 the cash management improvement act. Refunds of interest to the  
17 federal treasury required under the cash management improvement act  
18 fall under RCW 43.88.180 and shall not require appropriation. The  
19 office of financial management shall determine the amounts due to or  
20 from the federal government pursuant to the cash management improvement  
21 act. The office of financial management may direct transfers of funds  
22 between accounts as deemed necessary to implement the provisions of the  
23 cash management improvement act, and this subsection. Refunds or  
24 allocations shall occur prior to the distributions of earnings set  
25 forth in subsection (4) of this section.

26 (3) Except for the provisions of RCW 43.84.160, the treasury income  
27 account may be utilized for the payment of purchased banking services  
28 on behalf of treasury funds including, but not limited to, depository,  
29 safekeeping, and disbursement functions for the state treasury and  
30 affected state agencies. The treasury income account is subject in all  
31 respects to chapter 43.88 RCW, but no appropriation is required for  
32 payments to financial institutions. Payments shall occur prior to  
33 distribution of earnings set forth in subsection (4) of this section.

34 (4) Monthly, the state treasurer shall distribute the earnings  
35 credited to the treasury income account. The state treasurer shall  
36 credit the general fund with all the earnings credited to the treasury  
37 income account except:

1 (a) The following accounts and funds shall receive their  
2 proportionate share of earnings based upon each account's and fund's  
3 average daily balance for the period: The capitol building  
4 construction account, the Cedar River channel construction and  
5 operation account, the Central Washington University capital projects  
6 account, the charitable, educational, penal and reformatory  
7 institutions account, the common school construction fund, the county  
8 criminal justice assistance account, the county sales and use tax  
9 equalization account, the data processing building construction  
10 account, the deferred compensation administrative account, the deferred  
11 compensation principal account, the department of retirement systems  
12 expense account, the drinking water assistance account, the Eastern  
13 Washington University capital projects account, the education  
14 construction fund, the emergency reserve fund, the federal forest  
15 revolving account, the health services account, the public health  
16 services account, the health system capacity account, the personal  
17 health services account, the highway infrastructure account, the  
18 industrial insurance premium refund account, the judges' retirement  
19 account, the judicial retirement administrative account, the judicial  
20 retirement principal account, the local leasehold excise tax account,  
21 the local real estate excise tax account, the local sales and use tax  
22 account, the medical aid account, the mobile home park relocation fund,  
23 the municipal criminal justice assistance account, the municipal sales  
24 and use tax equalization account, the natural resources deposit  
25 account, the perpetual surveillance and maintenance account, the public  
26 employees' retirement system plan I account, the public employees'  
27 retirement system plan II account, the Puyallup tribal settlement  
28 account, the resource management cost account, the site closure  
29 account, the special wildlife account, the state employees' insurance  
30 account, the state employees' insurance reserve account, the state  
31 investment board expense account, the state investment board commingled  
32 trust fund accounts, the supplemental pension account, the teachers'  
33 retirement system plan I account, the teachers' retirement system plan  
34 II account, the transportation infrastructure account, the tuition  
35 recovery trust fund, the University of Washington bond retirement fund,  
36 the University of Washington building account, the volunteer fire  
37 fighters' relief and pension principal account, the volunteer fire  
38 fighters' relief and pension administrative account, the wage claim  
39 collection account, the Washington judicial retirement system account,

1 the Washington law enforcement officers' and fire fighters' system plan  
2 I retirement account, the Washington law enforcement officers' and fire  
3 fighters' system plan II retirement account, the Washington state  
4 patrol retirement account, the Washington State University building  
5 account, the Washington State University bond retirement fund, the  
6 water pollution control revolving fund, and the Western Washington  
7 University capital projects account. Earnings derived from investing  
8 balances of the agricultural permanent fund, the normal school  
9 permanent fund, the permanent common school fund, the scientific  
10 permanent fund, and the state university permanent fund shall be  
11 allocated to their respective beneficiary accounts. All earnings to be  
12 distributed under this subsection (4)(a) shall first be reduced by the  
13 allocation to the state treasurer's service fund pursuant to RCW  
14 43.08.190.

15 (b) The following accounts and funds shall receive eighty percent  
16 of their proportionate share of earnings based upon each account's or  
17 fund's average daily balance for the period: The aeronautics account,  
18 the aircraft search and rescue account, the central Puget Sound public  
19 transportation account, the city hardship assistance account, the  
20 county arterial preservation account, the department of licensing  
21 services account, the economic development account, the essential rail  
22 assistance account, the essential rail banking account, the ferry bond  
23 retirement fund, the gasohol exemption holding account, the grade  
24 crossing protective fund, the high capacity transportation account, the  
25 highway bond retirement fund, the highway construction stabilization  
26 account, the highway safety account, the marine operating fund, the  
27 motor vehicle fund, the motorcycle safety education account, the  
28 pilotage account, the public transportation systems account, the Puget  
29 Sound capital construction account, the Puget Sound ferry operations  
30 account, the recreational vehicle account, the rural arterial trust  
31 account, the safety and education account, the small city account, the  
32 special category C account, the state patrol highway account, the  
33 transfer relief account, the transportation capital facilities account,  
34 the transportation equipment fund, the transportation fund, the  
35 transportation improvement account, the transportation revolving loan  
36 account, and the urban arterial trust account.

37 (5) In conformance with Article II, section 37 of the state  
38 Constitution, no treasury accounts or funds shall be allocated earnings  
39 without the specific affirmative directive of this section.

1       **Sec. 9.** RCW 43.84.092 and 1998 c 341 s 708 are each amended to  
2 read as follows:

3       (1) All earnings of investments of surplus balances in the state  
4 treasury shall be deposited to the treasury income account, which  
5 account is hereby established in the state treasury.

6       (2) The treasury income account shall be utilized to pay or receive  
7 funds associated with federal programs as required by the federal cash  
8 management improvement act of 1990. The treasury income account is  
9 subject in all respects to chapter 43.88 RCW, but no appropriation is  
10 required for refunds or allocations of interest earnings required by  
11 the cash management improvement act. Refunds of interest to the  
12 federal treasury required under the cash management improvement act  
13 fall under RCW 43.88.180 and shall not require appropriation. The  
14 office of financial management shall determine the amounts due to or  
15 from the federal government pursuant to the cash management improvement  
16 act. The office of financial management may direct transfers of funds  
17 between accounts as deemed necessary to implement the provisions of the  
18 cash management improvement act, and this subsection. Refunds or  
19 allocations shall occur prior to the distributions of earnings set  
20 forth in subsection (4) of this section.

21       (3) Except for the provisions of RCW 43.84.160, the treasury income  
22 account may be utilized for the payment of purchased banking services  
23 on behalf of treasury funds including, but not limited to, depository,  
24 safekeeping, and disbursement functions for the state treasury and  
25 affected state agencies. The treasury income account is subject in all  
26 respects to chapter 43.88 RCW, but no appropriation is required for  
27 payments to financial institutions. Payments shall occur prior to  
28 distribution of earnings set forth in subsection (4) of this section.

29       (4) Monthly, the state treasurer shall distribute the earnings  
30 credited to the treasury income account. The state treasurer shall  
31 credit the general fund with all the earnings credited to the treasury  
32 income account except:

33       (a) The following accounts and funds shall receive their  
34 proportionate share of earnings based upon each account's and fund's  
35 average daily balance for the period: The capitol building  
36 construction account, the Cedar River channel construction and  
37 operation account, the Central Washington University capital projects  
38 account, the charitable, educational, penal and reformatory  
39 institutions account, the common school construction fund, the county

1 criminal justice assistance account, the county sales and use tax  
2 equalization account, the data processing building construction  
3 account, the deferred compensation administrative account, the deferred  
4 compensation principal account, the department of retirement systems  
5 expense account, the drinking water assistance account, the Eastern  
6 Washington University capital projects account, the education  
7 construction fund, the emergency reserve fund, the federal forest  
8 revolving account, the health services account, the public health  
9 services account, the health system capacity account, the personal  
10 health services account, the highway infrastructure account, the  
11 industrial insurance premium refund account, the judges' retirement  
12 account, the judicial retirement administrative account, the judicial  
13 retirement principal account, the local leasehold excise tax account,  
14 the local real estate excise tax account, the local sales and use tax  
15 account, the medical aid account, the mobile home park relocation fund,  
16 the municipal criminal justice assistance account, the municipal sales  
17 and use tax equalization account, the natural resources deposit  
18 account, the perpetual surveillance and maintenance account, the public  
19 employees' retirement system plan I account, the public employees'  
20 retirement system plan II account, the Puyallup tribal settlement  
21 account, the resource management cost account, the site closure  
22 account, the special wildlife account, the state employees' insurance  
23 account, the state employees' insurance reserve account, the state  
24 investment board expense account, the state investment board commingled  
25 trust fund accounts, the supplemental pension account, the teachers'  
26 retirement system plan I account, the teachers' retirement system  
27 combined plan II and plan III account, the transportation  
28 infrastructure account, the tuition recovery trust fund, the University  
29 of Washington bond retirement fund, the University of Washington  
30 building account, the volunteer fire fighters' relief and pension  
31 principal account, the volunteer fire fighters' relief and pension  
32 administrative account, the wage claim collection account, the  
33 Washington judicial retirement system account, the Washington law  
34 enforcement officers' and fire fighters' system plan I retirement  
35 account, the Washington law enforcement officers' and fire fighters'  
36 system plan II retirement account, the Washington school employees'  
37 retirement system combined plan II and III account, the Washington  
38 state patrol retirement account, the Washington State University  
39 building account, the Washington State University bond retirement fund,

1 the water pollution control revolving fund, and the Western Washington  
2 University capital projects account. Earnings derived from investing  
3 balances of the agricultural permanent fund, the normal school  
4 permanent fund, the permanent common school fund, the scientific  
5 permanent fund, and the state university permanent fund shall be  
6 allocated to their respective beneficiary accounts. All earnings to be  
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13 the aircraft search and rescue account, the central Puget Sound public  
14 transportation account, the city hardship assistance account, the  
15 county arterial preservation account, the department of licensing  
16 services account, the economic development account, the essential rail  
17 assistance account, the essential rail banking account, the ferry bond  
18 retirement fund, the gasohol exemption holding account, the grade  
19 crossing protective fund, the high capacity transportation account, the  
20 highway bond retirement fund, the highway construction stabilization  
21 account, the highway safety account, the marine operating fund, the  
22 motor vehicle fund, the motorcycle safety education account, the  
23 pilotage account, the public transportation systems account, the Puget  
24 Sound capital construction account, the Puget Sound ferry operations  
25 account, the recreational vehicle account, the rural arterial trust  
26 account, the safety and education account, the small city account, the  
27 special category C account, the state patrol highway account, the  
28 transfer relief account, the transportation capital facilities account,  
29 the transportation equipment fund, the transportation fund, the  
30 transportation improvement account, the transportation revolving loan  
31 account, and the urban arterial trust account.

32 (5) In conformance with Article II, section 37 of the state  
33 Constitution, no treasury accounts or funds shall be allocated earnings  
34 without the specific affirmative directive of this section.

35 NEW SECTION. **Sec. 10.** Section 8 of this act expires September 1,  
36 2000.

1        NEW SECTION.    **Sec. 11.**    Section 9 of this act takes effect  
2    September 1, 2000.

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