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**ENGROSSED SENATE BILL 5720**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Hawkins, Hobbs, Takko, Baumgartner, Sheldon, King, Brown, and Schoesler

AN ACT Relating to payment of production-based compensation wages for the employment and use of labor in agricultural activities and in the production, handling, and storage of farm products; adding a new section to chapter 49.48 RCW; and declaring an emergency.

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

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

(1)(a) To encourage and expedite full compensation for break times or rest and recovery periods that occurred prior to the effective date of this section for employees paid on a production basis or piece work basis in connection with work related to the growing, production, handling, or storage of farm products as defined in RCW 7.48.310(4) or in performing agricultural activities as defined in RCW 7.48.310(1), employers may elect to pursue one of the two following remedies:

(i) The employer may make payments, including interest at the rate of twelve percent per annum from the date the payments were due, to each of its employees for previously uncompensated or undercompensated break times or rest and recovery periods for the prior three years from the effective date of this section; or

(ii) The employer may pay each employee an amount equal to four and thirty-five one-hundredths percent of the employee's gross earnings, including interest at the rate of twelve percent per annum from the date the wages were due to the employee, for work performed on a production basis or piece work basis during the three-year period prior to the effective date of this section, less the amounts previously and separately paid to that employee for break times or rest and recovery periods, if any.

(b) Employers must make reasonable and good faith efforts to locate and pay employees the amounts required under this section, and if after reasonable and good faith efforts, employers are unable to locate any employees entitled to the payments described in (a) of this subsection, employers must pay the amounts due the employees under (a) of this subsection to the department of labor and industries, with the supporting records of the employees entitled to this compensation, which, if paid, shall have the same effect as though the compensation was paid to the employees entitled to that compensation and shall satisfy the remedies under (a) of this subsection as to those employees.

(i) Funds collected under this subsection (1)(b) must be held in a separate trust on behalf of agricultural employees. The department of labor and industries shall act as trustee and administrator of such trust and shall establish a system for tracking, locating, and paying out funds to these employees. The department may contract with a nonprofit entity in Washington state to achieve the purposes of this section.

(ii) If, after January 30, 2021, moneys are still available in the trust established under (b)(i) of this subsection, a committee consisting of the director of the department of labor and industries or the director's designee, the chair and ranking member on the senate and house of representatives committees on agriculture, and a representative from an association representing agricultural workers and a labor union association appointed by the director shall determine how the moneys should be spent on behalf of agriculture employees in the state.

(2) Employers that have paid the compensation as provided in subsection (1) of this section by January 1, 2018, shall not be held liable for any claim or cause of action arising under this chapter or chapter 49.52 RCW, based solely upon the employer's failure to timely pay the employee compensation for break times or rest and recovery periods during the three-year period prior to the effective date of this section.

(3) An employer who makes a reasonable and good faith effort to pay the compensation as provided in subsection (1) of this section, but who solely through good faith error fails to make a payment to one or more employees shall not be held liable for any claim or cause of action arising under this chapter or chapter 49.52 RCW, based solely upon the employer's failure to timely pay the employee compensation for break times or rest and recovery periods during the three-year period prior to the effective date of this section, if the employer, within thirty days of discovery or notice of the error, pays the compensation as described in subsection (1) of this section to the employee.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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