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**SECOND SUBSTITUTE HOUSE BILL 1965**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Hansen, Stonier, Sullivan, Riccelli, Lekanoff, Cody, Macri, Ormsby, Appleton, Fitzgibbon, Ortiz-Self, and Pollet)

AN ACT Relating to allowing whistleblowers to bring actions on behalf of the state for violations of workplace protections; adding a new chapter to Title 49 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that while most employers pay their workers wages owed, provide safe working conditions, provide a workplace free from discrimination, and otherwise follow the law, violations of workplace protections persist. The legislature further finds that state resources available to rectify workplace violations are limited, which allows abuses to go unpunished. Lack of enforcement means workers work for less than minimum wage, sustain serious injuries, and suffer other violations. In addition, it is unfair to law-abiding employers to have to compete with employers that disregard the law. Therefore, the legislature intends to permit qui tam actions, allowing private persons, acting as relators, to bring public enforcement actions of worker protection laws on behalf of the state.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the department of labor and industries, except that for purposes of chapter 49.60 RCW "agency" means the Washington state human rights commission.

(2) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any local or political subdivision of a state.

(3) "Qui tam relator" or "relator" means a person who brings or seeks to bring an action under section 3 of this act.

(4) "Qui tam action" means an action brought by a person under section 3 of this act.

NEW SECTION. **Sec.**  (1) A person, on behalf of an agency and in the name of the agency, may bring a qui tam action in court for any relief the agency may pursue under the laws specified in section 4 of this act, including equitable relief, penalties, and any relief specified in rule. The granting of relief shall be subject to the same conditions and limitations that apply to the agency, including any requirements for conference and conciliation and any conditions and limitations specified in rule, including penalty amounts. The action may allege multiple violations that have affected different employees aggrieved by the same employer. The relator must follow the procedures specified in section 5 of this act.

(2) A relator that prevails in a qui tam action is entitled to an award of reasonable attorneys' fees and costs.

(3) No qui tam action may be brought if the agency, regarding the same facts as alleged in the qui tam action, issued a notice of assessment, determination of compliance, or order, or otherwise resolved the complaint.

(4) A qui tam action must be commenced within the same period of time that the agency would have to take action based on the same set of alleged facts. The statute of limitations for bringing a qui tam action is tolled from the date a relator files a notice with the agency or the date the agency commences an investigation.

(5)(a) No qui tam action may be brought with respect to modifying, revoking, or suspending a license, variance, or permit; or for any violation of a posting, notice, agency reporting, or filing requirement, except where the filing or reporting requirement involves injury reporting or a safety or health violation.

(b) Where an employer has voluntarily entered into consultation under RCW 49.17.250, no qui tam action may be brought with respect to any alleged violation included in the scope of the consultation. An employer who has been notified pursuant to section 5 of this act may not then enter into consultation under RCW 49.17.250 to avoid a qui tam action.

(6) The requirements of Rule 23 of the superior court rules of civil procedure do not apply to a qui tam action.

(7) The right to bring a qui tam action under this section may not be impaired by any private agreement.

(8) A qui tam action is a public action and does not preclude a cause of action by an individual or individuals or operate as an estoppel for relief based on the same set of alleged facts, except that a court may not permit a double recovery.

(9) A person who is an employee of the entity alleged to have violated a law enumerated in section 4 of this act may designate in writing a representative organization to initiate a qui tam action on the person's behalf. The representative organization, which may be a labor organization, must be one that regularly assists in enforcement of one or more of the laws enumerated in section 4 of this act.

NEW SECTION. **Sec.**  (1) A qui tam action may be brought to enforce the following laws:

(a) Chapter 49.46 RCW, known as the minimum wage act;

(b) Chapter 49.48 RCW, relating to the payment of wages;

(c) Chapter 49.52 RCW, relating to wage rebates;

(d) RCW 49.28.130 through 49.28.150, relating to health care facility employee overtime;

(e) Chapter 39.12 RCW, relating to prevailing wage;

(f) Chapter 49.40 RCW, relating to seasonal labor;

(g) Chapter 49.17 RCW, the Washington industrial safety and health act of 1973;

(h) Chapter 49.19 RCW, relating to safety in health care settings; chapter 49.22 RCW, relating to safety in late night retail establishments; chapter 49.24 RCW, relating to safety for underground workers, and chapter 49.26 RCW, relating to asbestos safety;

(i) Chapter 49.77 RCW, known as military family leave;

(j) Chapter 49.58 RCW, known as gender equal pay and advancement opportunities;

(k) Chapter 49.60 RCW, known as the Washington law against discrimination;

(l) Chapter 19.30 RCW, relating to farm labor contractors;

(m) Chapter 49.30 RCW, relating to agricultural labor;

(n) RCW 43.70.075, relating to health care employee whistleblower retaliation protection;

(o) Chapter 49.12 RCW, known as the industrial welfare act; and

(p) Section 8 of this act.

(2) For any provision of law referenced in this section where no civil penalty is specifically provided by law, a civil penalty of five hundred dollars is established. A penalty shall be awarded for each employee aggrieved by the violation during each two-week time period. A court may award a lesser amount of civil penalties than those specified in this subsection if, based on the fact and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or confiscatory.

NEW SECTION. **Sec.**  (1) No action under section 3 of this act may be commenced before written notice of the claim has been submitted by the relator to the agency, via online submission, and the relator has notified the employer by certified mail. The notice must be construed in the light most favorable to the relator, and must include the name, address, and contact information of the alleged violator; the name and contact information of the relator or the relator's legal counsel, should one exist; and a brief statement of the underlying claim. Where possible, the relator must also search the database established under section 9 of this act for any notices alleging the same facts and legal theories, and shall reference these notices or attest that no such notices exist.

(2) If the agency intends to investigate the alleged violation, the agency must notify the relator and make a determination within one hundred eighty days of receiving the notice under subsection (1) of this section. If the agency decides not to investigate the alleged violation, it must notify the relator within sixty business days of the date it receives the notification submitted by the relator. Upon receiving notice that the agency does not intend to investigate or if the agency does not make a determination within one hundred eighty days, the relator may commence a qui tam action.

(3) As part of its investigation, the agency may attempt to remedy the alleged violation through settlement. If the settlement obtained by the agency provides the aggrieved employee or employees with a full remedy of not less than one hundred percent of any wrongfully withheld wages or benefits, including twelve percent interest per annum, and the aggrieved employees receive payment in full prior to the end of the one hundred eighty-day investigation period, the agency shall notify the relator that the agency will not commence an action and the settlement shall preclude further claims for the same wages or benefits paid in the settlement.

(4) If the agency objects to the state being represented by a particular attorney proposed by the relator, the agency may file an objection to the attorney general. Upon finding, after notice and hearing, that, based on the attorney's past conduct while representing a client or clients, the attorney does not meet the required professional standards of representatives, or, alternatively, if the attorney fails to zealously pursue the remedies available under this chapter, the attorney general may, within thirty days of receiving the objection, order that the qui tam action may not be filed or maintained by the particular attorney on behalf of the relator.

NEW SECTION. **Sec.**  (1) The agency may intervene in a qui tam action and proceed with any and all claims in the action:

(a) As of right within thirty days after the filing of the qui tam action;

(b) For good cause shown, as determined by the court, after the expiration of the thirty-day period.

(2) If the agency intervenes in a qui tam action, the agency shall have primary responsibility for litigating the action and shall not be bound by an act of the relator in bringing the action. If the agency proposes to settle a qui tam action, the agency must give notice to the relator and the attorney general. The court may allow the attorney general to intervene and object to the settlement. If the agency proposes to dismiss a qui tam action, the agency must give notice to the relator and the relator must have an opportunity to be heard. The agency may dismiss or settle the action if court determines that the dismissal or settlement is fair, adequate, reasonable, and in the public interest.

(3) If the agency does not intervene, the relator shall have the right to litigate the action. The court must review and approve any settlement. The proposed settlement must be submitted to the agency and to the attorney general at the same time that it is submitted to the court, and the agency may present to the court its position on the proposed settlement or intervene as provided in subsection (1) of this section. The court may also allow the attorney general to intervene and object to the dismissal. The court shall approve a settlement only upon a determination that it is fair, adequate, reasonable, and in the public interest.

(4) Any settlement of a qui tam action may not be confidential.

NEW SECTION. **Sec.**  (1)(a) Penalty amounts recovered in a qui tam action must be distributed as follows:

(i) If the agency has not intervened, forty percent to the relator and sixty percent to the agency.

(ii) If the agency has intervened, twenty percent to the relator and eighty percent to the agency.

(b) Amounts distributed to the agency shall be used for enforcement of this title and education about the rights and obligations enforceable through this title by the agency.

(2) Damages recovered in a qui tam action must be awarded to the agency for distribution to aggrieved employees. The agency may request the appointment of an administrative law judge or special master to assist in the distribution of the amounts.

(3) This section does not limit the state's right to seek restitution and damages, where available, for aggrieved employees as part of a qui tam action in which it has intervened.

NEW SECTION. **Sec.**  (1) A person may not discharge or in any manner discriminate against any employee because such employee has filed any written notice or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter. The commencement of a peer review process, or an action by a duly constituted quality improvement committee under RCW 70.41.200, shall not be construed to be retaliation under this section if sufficient cause to initiate the peer review process or action under RCW 70.41.200 exists independently of the action being brought under this chapter.

(2) Any employee aggrieved by a violation of this section may:

(a) Bring an action in court for compensatory damages or equitable relief, including restraint of prohibited actions, restitution of wages or benefits, reinstatement, costs, reasonable attorneys' fees, and any other appropriate relief; and, in addition,

(b) If the aggrieved employee has been discharged from employment because of the exercise of the rights afforded by this chapter, provide notice to the agency pursuant to section 5 of this act.

(i) Upon receipt of such notification, the agency shall commence an expedited investigation within ten days to be completed within thirty days.

(ii) For purposes of this subsection (2)(b), a rebuttable presumption is established that the discharge of any employee who engaged in any conduct allowed by this chapter within ninety days after the employee engaged in the conduct is retaliatory and in violation of section 1 of this act.

(iii) The employer may rebut the presumption by showing by clear and convincing evidence that it had a legitimate, nondiscriminatory reason to discharge the employee, which was not motivated in any part by conduct allowed by this chapter.

(iv) If the employer fails to rebut the presumption, the agency shall order the immediate reinstatement of the employee. The employer may appeal the order of reinstatement pursuant to chapter 34.05 RCW.

NEW SECTION. **Sec.**  The department of labor and industries must establish and publish online a database of notices filed under section 3 of this act, which shall include the names of the parties, the disposition, and any other information that the department of labor and industries shall by rule prescribe. The Washington state human rights commission shall provide appropriate information for the database to the department of labor and industries.

NEW SECTION. **Sec.**  An agency has rule-making authority to implement sections 1 through 8 of this act.

NEW SECTION. **Sec.**  The labor and industries worker protection act account is created in the custody of the state treasurer. All receipts from the penalties distributed to the department of labor and industries under section 7 of this act must be deposited into the account. Expenditures from the account may be used only for enforcement of this title and education about the rights and obligations enforceable through this title by the agency. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  The Washington state human rights commission worker protection act account is created in the custody of the state treasurer. All receipts from the penalties distributed to the Washington state human rights commission under section 7 of this act must be deposited into the account. Expenditures from the account may be used only for enforcement of chapter 49.60 RCW and education about the rights and obligations enforceable through chapter 49.60 RCW by the agency. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  Sections 1 through 12 and 15 of this act constitute a new chapter in Title 49 RCW.

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

NEW SECTION. **Sec.**  This chapter shall be known and cited as the "Worker Protection Act."

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void.

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