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SECOND SUBSTITUTE HOUSE BILL 1076

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State of Washington

67th Legislature

2021 Regular Session

**By** House Appropriations (originally sponsored by Representatives Hansen, Fitzgibbon, Berry, Dolan, J. Johnson, Ramos, Simmons, Ramel, Ortiz-Self, Gregerson, Ryu, Bronoske, Valdez, Callan, Kloba, Hackney, Chopp, Ormsby, Stonier, Frame, Santos, Macri, Pollet, and Harris-Talley)

READ FIRST TIME 02/22/21.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that while most  
6 employers pay their workers wages owed, provide safe working  
7 conditions, provide a workplace free from discrimination, and  
8 otherwise follow the law, violations of workplace protections  
9 persist. The legislature further finds that state resources available  
10 to rectify workplace violations are limited, which allows abuses to  
11 go unpunished. Lack of enforcement means workers work for less than  
12 minimum wage, sustain serious injuries, and suffer other violations.  
13 In addition, it is unfair to law-abiding employers to have to compete  
14 with employers that disregard the law. Therefore, the legislature  
15 intends to permit qui tam actions, allowing private persons, acting  
16 as relators, to bring public enforcement actions of worker protection  
17 laws on behalf of the state.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply  
19 throughout this chapter unless the context clearly requires  
20 otherwise.

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

4 (2) "Aggrieved person" means a person against whom one or more  
5 violations of the provisions of this act was committed, and includes  
6 an individual who is asserting a claim that he or she is or was  
7 misclassified as an independent contractor in violation of the  
8 provisions of law under section 4 of this act.

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

12 (4) "Qui tam relator" or "relator" means an aggrieved person,  
13 whistleblower, or representative organization or local or political  
14 subdivision of a state designated under section 3(9) of this act,  
15 that brings a public enforcement action under section 3 of this act.

16 (5) "Qui tam action" means an action brought by a relator under  
17 section 3 of this act.

18 (6) "Whistleblower" means a current or former employee,  
19 contractor, subcontractor, or employee of a contractor or  
20 subcontractor with knowledge of facts that the individual reasonably  
21 believes constitute a violation of the provisions of this act.

22 NEW SECTION. **Sec. 3.** (1) A relator, on behalf of an agency and  
23 in the name of the agency, may bring a qui tam action in court for  
24 any relief the agency may pursue under the laws specified in section  
25 4 of this act, including equitable relief, penalties, and any relief  
26 specified in rule or regulation. The granting of relief shall be  
27 subject to the same conditions and limitations that apply to the  
28 agency, including any requirements for conference and conciliation  
29 and any conditions and limitations specified in rule, including  
30 penalty amounts; provided that a relator may simultaneously pursue  
31 the relief available to an agency under the agency's administrative  
32 enforcement authority and under the agency's authority to bring a  
33 civil action, where applicable. The action may allege multiple  
34 violations that have affected different employees aggrieved by the  
35 same employer. The relator must follow the procedures specified in  
36 section 5 of this act.

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

1 (3) No qui tam action may be brought for a violation alleged in  
2 the notice required by section 5 of this act if the employer  
3 demonstrates that the agency already resolved the merits of that  
4 violation, including through settlement, in relation to the same  
5 facts and aggrieved employees.

6 (4) A qui tam action must be commenced within 60 days of the date  
7 on which the relator receives notice that the agency will not  
8 investigate any of the alleged violations; otherwise, a qui tam  
9 action must be commenced within 240 days of the date the relator  
10 submitted the written notice of the claim. If the agency notifies the  
11 relator that it intends to investigate some but not all of the  
12 alleged violations, the relator may commence a qui tam action as to  
13 the uninvestigated violations at any time but must do so no later  
14 than 240 days from the date the relator submitted the written notice  
15 of the claim. Any other actionable violations may then be added to  
16 the lawsuit within 240 days of the date the relator submitted the  
17 written notice. A statute of limitations applicable to a claim in the  
18 qui tam action shall be tolled as of the date the relator submits the  
19 written notice of the claim to the agency or the date the agency  
20 commenced an investigation regarding the same facts and violations  
21 alleged in the notice, whichever is earlier.

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

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

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

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

38 (8) A qui tam action is a public action and does not preclude a  
39 cause of action by an individual or individuals or operate as an  
40 estoppel for relief based on the same set of alleged facts, except

1 that a court shall offset any award of restitution or damages to an  
2 aggrieved employee in one action by the amount of restitution or  
3 damages awarded or paid in settlement to the same aggrieved employee  
4 in another action.

5 (9) An aggrieved person or whistleblower of the entity alleged to  
6 have violated a law enumerated in section 4 of this act may designate  
7 in writing a representative organization or local or political  
8 subdivision of a state to initiate a qui tam action on the person's  
9 behalf.

10 NEW SECTION. **Sec. 4.** A qui tam action may be brought to enforce  
11 the following laws and all associated rules and regulations:

- 12 (1) Chapter 49.46 RCW, known as the minimum wage act;
- 13 (2) Chapter 49.48 RCW, relating to the payment of wages;
- 14 (3) Chapter 49.52 RCW, relating to wage rebates;
- 15 (4) RCW 49.28.130 through 49.28.150, relating to health care  
16 facility employee overtime;
- 17 (5) Chapter 39.12 RCW, relating to prevailing wage;
- 18 (6) Chapter 49.17 RCW, the Washington industrial safety and  
19 health act of 1973;
- 20 (7) Chapter 49.58 RCW, known as gender equal pay and advancement  
21 opportunities;
- 22 (8) Chapter 49.60 RCW, known as the Washington law against  
23 discrimination;
- 24 (9) Chapter 19.30 RCW, relating to farm labor contractors;
- 25 (10) Chapter 49.12 RCW, known as the industrial welfare act; and
- 26 (11) Section 9 of this act.

27 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act  
28 may be commenced before written notice of the claim has been  
29 submitted by the relator to the agency, via online submission, and  
30 the relator has notified the employer by certified mail. The relator  
31 must submit written notice of the claim to the agency within the time  
32 frame required by law for filing a complaint with the agency based on  
33 the same set of facts or, if there is no such deadline, for the  
34 filing of a private right of action. The written notice of the claim  
35 must be construed in the light most favorable to the relator, and  
36 must include the name, address, and contact information of the  
37 alleged violator; the name and contact information of the relator or

1 the relator's legal counsel, should one exist; and a brief statement  
2 of each alleged violation.

3 (2) If the agency intends to investigate an alleged violation,  
4 any resolution by the agency of the merits of that violation must  
5 occur within 180 days of receiving the notice under subsection (1) of  
6 this section. If the agency decides not to investigate an alleged  
7 violation, it must notify the relator within 60 business days of the  
8 date it receives the notification submitted by the relator. While  
9 investigating an alleged violation, the agency may simultaneously  
10 pursue all relief available to it under the agency's administrative  
11 enforcement authority and under the agency's authority to bring a  
12 civil action, where applicable.

13 (3) As part of its investigation, the agency may attempt to  
14 remedy an alleged violation through settlement. If the settlement  
15 obtained by the agency provides the aggrieved employee or employees  
16 with not less than 100 percent of any wrongfully withheld wages or  
17 benefits, including 12 percent interest per annum, and the aggrieved  
18 employees receive payment in full before the end of the 180-day  
19 investigation period, the agency shall notify the relator that the  
20 agency will not commence an action in relation to that violation, and  
21 the settlement shall preclude further claims for the same wages or  
22 benefits paid in the settlement.

23 (4) If the agency objects to the state being represented by a  
24 particular attorney proposed by the relator, the agency may file an  
25 objection to the attorney general. Upon finding, after notice and  
26 hearing, that, based on the attorney's past conduct while  
27 representing a client or clients, the attorney does not meet the  
28 required professional standards of representatives, or,  
29 alternatively, if the attorney fails to zealously pursue the remedies  
30 available under this chapter, the attorney general may, within 30  
31 days of receiving the objection, order that the qui tam action may  
32 not be filed or maintained by the particular attorney on behalf of  
33 the relator.

34 NEW SECTION. **Sec. 6.** (1) The agency may intervene in a qui tam  
35 action and proceed with any and all claims in the action:

36 (a) As of right within 30 days after the filing of the qui tam  
37 action;

38 (b) For good cause shown, as determined by the court, after the  
39 expiration of the 30-day period.

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

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

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

23 NEW SECTION. **Sec. 7.** (1)(a) Civil penalty amounts recovered in  
24 a qui tam action must be distributed as follows:

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

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

29 (b) The relator shall equitably distribute the share of penalties  
30 due the relator among the parties aggrieved by the practices  
31 complained of in the qui tam action. The relator shall submit a  
32 distribution summary to the agency, which may order a different  
33 distribution within sixty days after receipt of the distribution  
34 summary, provided that the relator shall receive a service award that  
35 reflects the burdens and risks assumed by the relator in prosecuting  
36 the action.

37 (2) Damages recovered in a qui tam action shall be awarded for  
38 distribution to the aggrieved employees, whether directly or through  
39 the agency. The agency may request the appointment of an

1 administrative law judge or special master to assist in the  
2 distribution of the amounts.

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

6 NEW SECTION. **Sec. 8.** A qui tam action shall not be stayed  
7 during concurrent adjudication of private claims.

8 NEW SECTION. **Sec. 9.** (1) A person may not discharge or in any  
9 manner discriminate against any employee because such employee has  
10 filed any written notice or instituted or caused to be instituted any  
11 proceeding under or related to this chapter or has testified or is  
12 about to testify in any such proceeding or because of the exercise by  
13 such employee on behalf of himself or herself or others of any right  
14 afforded by this chapter. The commencement of a peer review process,  
15 or an action by a duly constituted quality improvement committee  
16 under RCW 70.41.200, shall not be construed to be retaliation under  
17 this section if sufficient cause to initiate the peer review process  
18 or action under RCW 70.41.200 exists independently of the action  
19 being brought under this chapter.

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

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

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

28 (i) Upon receipt of such notification, the agency shall commence  
29 an expedited investigation within 10 days to be completed within 90  
30 days.

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

36 (iii) The employer may rebut the presumption by showing by clear  
37 and convincing evidence that it had a legitimate, nondiscriminatory

1 reason to discharge the employee, which was not motivated in any part  
2 by conduct allowed by this chapter.

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

6 NEW SECTION. **Sec. 10.** An agency has rule-making authority to  
7 implement sections 1 through 9 of this act.

8 NEW SECTION. **Sec. 11.** All receipts from the civil penalties  
9 distributed to the department of labor and industries or the human  
10 rights commission under section 7 of this act must be deposited in  
11 accordance with the laws under which the penalties were assessed.

12 NEW SECTION. **Sec. 12.** Sections 1 through 11 and 15 of this act  
13 constitute a new chapter in Title 49 RCW.

14 NEW SECTION. **Sec. 13.** If any part of this act is found to be in  
15 conflict with federal requirements that are a prescribed condition to  
16 the allocation of federal funds to the state or to qualify a state  
17 plan under the occupational safety and health administration, the  
18 conflicting part of this act is inoperative solely to the extent of  
19 the conflict, and the finding or determination does not affect the  
20 operation of the remainder of this act. Rules adopted under this act  
21 must meet federal requirements that are a necessary condition to the  
22 receipt of federal funds by the state or to qualify a state plan  
23 under the occupational safety and health administration.

24 NEW SECTION. **Sec. 14.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 15.** This chapter shall be known and cited as  
29 the worker protection act.

30 NEW SECTION. **Sec. 16.** If specific funding for the purposes of  
31 this act, referencing this act by bill or chapter number, is not



1 provided by June 30, 2021, in the omnibus appropriations act, this  
2 act is null and void.

--- **END** ---