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**SENATE BILL 5662**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Saldaña and Nguyen

AN ACT Relating to creating the cannabis employee job retention act; adding a new chapter to Title 49 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) Washington voters legalized recreational cannabis just 10 years ago through the passage of Initiative Measure No. 502, and in many ways the industry is still nascent. The state has taken modest steps to ensure better equity in the industry to mitigate harms done to communities that were disproportionately impacted by the war on drugs, but the state still has more work to do. Studies by respected industry publications state that a majority of frontline cannabis workers are women and people of color.

(2) The liquor and cannabis board sets the number of licenses and manages the process when a retail establishment changes their licensure status through a change in ownership or a change in business location. Of the 463 active retail licenses, 143 (31 percent) have undergone some kind of change in ownership, many of them more than once. This high turnover in ownership fosters job insecurity in what is already a challenging industry.

(3) The legislature finds that, given the uniqueness of an industry where the number of retail licenses are fixed by statute, where jobs are limited to those establishments with a state license, and where the ownership of those licenses has a high degree of turnover, it is necessary to ensure job retention in a continually changing industry.

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

(1) "Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by this chapter. Adverse action for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and conditions of employment.

(2) "Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this chapter.

(3) "Cannabis business" means an organization licensed and regulated or required to be licensed and regulated by the liquor and cannabis board under chapter 69.50 RCW.

(4) "Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a cannabis business or a discrete portion of the cannabis business that continues in operation as a cannabis business of the same business type, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing cannabis employer or any person who controls the outgoing cannabis employer.

(5) "Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses. For reimbursement for employer expenses, an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

(6) "Department" means the department of labor and industries.

(7) "Director" means the director of the department of labor and industries.

(8) "Employ" means to suffer or permit to work.

(9) "Employee" means any individual employed by an employer, including but not limited to full-time employees, part-time employees, and temporary workers.

(10) "Employer" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee. More than one entity may be the employer if employment by one employer is not completely disassociated from employment by any other employer.

(11) "Employment commencement date" means the date on which an employee retained by the incoming cannabis employer pursuant to this chapter commences work for the incoming cannabis employer in exchange for benefits and compensation under the terms and conditions established by the incoming cannabis employer or as required by law.

(12) "Incoming cannabis employer" means an employer that owns, controls, or operates a cannabis business that is subject to a change in control after the change in control.

(13) "Outgoing cannabis employer" means an employer that owns, controls, or operates a cannabis business that is subject to a change in control prior to the change in control.

(14) "Preferential hiring list" means a list of the names, addresses, dates of hire, and job classifications for all employees that worked in the state for the outgoing cannabis employer for at least 30 calendar days within the last 180 days prior to the execution of a transfer document.

(15) "Rate of inflation" means 100 percent of the annual average growth rate of the bimonthly Seattle-Tacoma-Bellevue Area consumer price index for urban wage earners and clerical workers, termed CPI-W, for the 12-month period ending in August, provided that the percentage increase may not be less than zero.

(16) "Reactivating cannabis employer" means any employer that recommences operations within nine months after ceasing to be fully operational and hires additional nonmanagerial employees within 180 calendar days of recommencing operations.

(17) "Respondent" means an employer or any person who is alleged to have committed a violation of this chapter.

(18) "Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this subsection, "person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

(19) "Transfer document" means the purchase agreement or other document(s) creating a binding agreement to effect a change in control.

NEW SECTION. **Sec.**  (1) Employees covered under this chapter are limited to those who have worked in the state for an outgoing cannabis employer for at least 30 calendar days within the last 180 days prior to the execution of a transfer document.

(2) Regarding whether an individual is an employee, the employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.

NEW SECTION. **Sec.**  (1) Except as provided in subsection (3) of this section, employers covered under this chapter are limited to those who own, control, or operate a cannabis business in the state, including but not limited to integrated enterprises.

(2) Separate entities that form an integrated enterprise will be considered a single employer under this chapter. Separate entities will be considered an integrated enterprise and a single employer under this chapter where a separate entity controls the operation of another entity. The factors to consider include but are not limited to:

(a) Degree of interrelation between the operations of multiple entities;

(b) Degree to which the entities share common management;

(c) Centralized control of labor relations;

(d) Degree of common ownership or financial control over the entities; and

(e) Use of a common brand, trade, business, or operating name.

(3) An employer holding a cannabis retail license issued by the liquor and cannabis board under the social equity program established in RCW 69.50.335 is not covered under this chapter until January 1, 2030, if the employer did not previously hold a cannabis retail license issued under chapter 69.50 RCW.

NEW SECTION. **Sec.**  (1) When a cannabis business undergoes a change in control, the outgoing cannabis employer shall, within 15 calendar days after the execution of a transfer document, provide a preferential hiring list to the incoming cannabis employer.

(2)(a) The outgoing cannabis employer shall post written notice of the change in control at the affected business within five business days following the execution of the transfer document. Notice must be posted in a conspicuous place so as to be readily viewed by employees and applicants for employment.

(b) Notice must include, but not be limited to, the name of the outgoing cannabis employer and its contact information, the name of the incoming cannabis employer and its contact information, the effective date of the change in control, and the name and any trade ("doing business as") names used by any associated integrated enterprise.

NEW SECTION. **Sec.**  (1) The incoming cannabis employer shall keep the notice required by section 5 of this act posted during any closure of the cannabis business and for 180 calendar days after the cannabis business is open to the public under its control.

(2) The incoming cannabis employer shall:

(a) Maintain the preferential hiring list provided by the outgoing cannabis employer; and

(b) Hire from that preferential hiring list for a period beginning upon the execution of the transfer document and continuing for 180 calendar days after the cannabis business is open to the public under the incoming cannabis employer. The incoming cannabis employer must hire by seniority within each job classification to the extent that comparable job classifications exist.

(3) If the incoming cannabis employer extends an offer of employment to an employee, the offer must be in writing and remain open for at least 10 business days.

(4)(a) If the employee accepts the written job offer, the incoming cannabis employer shall retain that employee for no fewer than 90 calendar days following the employee's employment commencement date.

(b) During the 90-day transition employment period, the employer must employ the employee under the same terms and conditions, including wages and benefits, established by the outgoing cannabis employer, or as required by law.

(5) During the 90-day transition employment period established by this section, the incoming cannabis employer may not:

(a) Lay off employees unless the incoming cannabis employer determines that fewer cannabis employees were required than by the outgoing cannabis employer. In this circumstance, the incoming cannabis employer shall retain employees by seniority within each job classification to the extent that comparable job classifications exist; or

(b) Discharge an employee unless there is just cause for the discharge.

(6)(a) At the end of the 90-day transition employment period, the incoming cannabis employer shall provide a written performance evaluation to each employee.

(b) If the employee's performance during the 90-day transition employment period is satisfactory, the incoming cannabis employer shall consider offering the employee continued employment under the terms and conditions, including wages and benefits, established by the outgoing cannabis employer, or as required by law.

(7) The requirements for incoming cannabis employers established in this section and section 5 of this act apply to reactivating cannabis employers.

NEW SECTION. **Sec.**  (1) The department shall create and make available a poster that gives notice of the rights afforded by this chapter. The department shall create the poster in English, Spanish, and other languages the department determines is appropriate. The poster must give notice of:

(a) The right to notice that the cannabis business is changing ownership;

(b) The right to be offered a job with the incoming cannabis employer;

(c) The right to just cause employment for the first 90 days of employment;

(d) If layoff is required, the right to be laid off by seniority within one's job classification for the first 90 days of employment;

(e) The right to a written performance evaluation after 90 days of employment;

(f) The right to be protected from retaliation for exercising in good faith the rights protected by this chapter; and

(g) The right to file a complaint with the department or bring a civil action for violation of this chapter.

(2) Employers shall display the poster in a conspicuous and accessible place at every workplace or jobsite where any of their employees work. Employers shall display the poster in English and in the primary language of the employee(s) at the particular workplace. Employers shall make a good faith effort to determine the primary languages of the employees at that particular workplace. If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace or jobsite, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

NEW SECTION. **Sec.**  (1) Each employer shall retain records that document compliance with this chapter, including:

(a) A written copy of the preferential hiring list;

(b) Written verification of offers of employment extended to each employee as required under section 6 of this act. The verification must include the name, address, date of hire, and employment occupation classification of each employee;

(c) Written records of the performance evaluations required under section 6 of this act; and

(d) Pursuant to the department's rules, other records that are material and necessary to effectuate the terms of this chapter.

(2) Records required by this section must be retained for a period of three years.

(3) If the employer fails to retain adequate records required under this section, a presumption is created, rebuttable by clear and convincing evidence, that the employer violated this chapter for the periods for which records were not retained for each employee for whom records were not retained.

NEW SECTION. **Sec.**  (1) An employer or any other person may not interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this section.

(2) An employer or any other person may not take any adverse action against any person because the person has exercised in good faith the rights protected under this section. Rights protected under this section include but are not limited to the right to:

(a) Make inquiries about protected rights under this chapter;

(b) Inform others about their rights under this chapter;

(c) Inform the person's employer, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this chapter;

(d) File an oral or written complaint with the department or bring a civil action for an alleged violation of this chapter;

(e) Cooperate with the department in its investigations of this chapter;

(f) Testify in a proceeding under or related to this chapter;

(g) Refuse to participate in an activity that would result in a violation of city, state, or federal law; and

(h) Oppose any policy, practice, or act that is unlawful under this chapter.

(3) An employer or any other person may not communicate to a person exercising rights protected in this section, directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency, because the employee has exercised a right under this chapter.

(4) There is a rebuttable presumption of retaliation if the employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this section. However, in the case of seasonal employment that ended before the close of the 90-calendar day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(5) Proof of retaliation under this section is sufficient upon a showing that the employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this section was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.

(6) The protections under this section apply to any person who mistakenly but in good faith alleges violations of this chapter.

(7) A complaint or other communication by any person to the department triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

NEW SECTION. **Sec.**  The department shall administer and enforce this chapter. The director may adopt rules necessary, appropriate, or convenient to administer, evaluate, and enforce this chapter, providing affected entities with due process of law and in conformity with the intent and purpose of this chapter.

NEW SECTION. **Sec.**  (1)(a) The department may investigate any alleged violations of this chapter by any respondent.

(b) The department may initiate an investigation upon receiving a complaint or report by an employee or any other person of an alleged violation of this chapter.

(c) The department may not investigate any alleged violation of this chapter that occurred more than three years before the date that the employee or any other person reported the alleged violation.

(d) The department may prioritize investigations of workforces that are vulnerable to violations of this chapter. The department may initiate an investigation pursuant to the department's rules including, but not limited to, situations when the director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because either the workforce contains significant numbers of workers who are vulnerable to violations of this chapter or the workforce is unlikely to volunteer information regarding such violations.

(2) An employee or other person may report to the department any suspected violation of this chapter. The department shall encourage reporting pursuant to this section by taking the following measures:

(a) The department shall keep confidential, to the maximum extent permitted by law, the name and other identifying information of the employee or person reporting the violation. However, with the authorization of such person, the department may disclose the employee's or person's name and identifying information as necessary to enforce this chapter or for other appropriate purposes;

(b) The department may require the employer to post or otherwise notify other employees working for the employer that the department is conducting an investigation. The employer shall provide the notice of investigation in a form, place, and manner designated by the department. The department shall create the notice of investigation in English and other languages the department deems appropriate; and

(c) The department may certify the eligibility of eligible persons for "U" visas under the provisions of 8 U.S.C. Sec. 1184(p) and 8 U.S.C. Sec. 1101(a)(15)(U). This certification is subject to applicable federal laws and regulations, and department rules.

(3)(a) The director or any authorized representative may, for the purpose of enforcing this chapter:

(i) Issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records;

(ii) Administer oaths and examine witnesses under oath;

(iii) Take the verification of proof of instruments of writing; and

(iv) Take depositions and affidavits.

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

(4)(a) To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this chapter and any administrative enforcement proceeding under this chapter based upon the same facts.

(b) For purposes of this section:

(i) The department's investigation begins on the earlier date of when the department receives a complaint from a person under this chapter, or the department provides notice to the respondent that an investigation has commenced under this chapter; and

(ii) The department's investigation ends when the department issues a final order concluding the matter and any appeals have been exhausted; the time to file any appeal has expired; or the department notifies the respondent in writing that the investigation has been otherwise resolved.

(5) Where the director has reason to believe that a violation has occurred, the director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with section 16 of this act.

NEW SECTION. **Sec.**  The failure of any respondent to comply with any requirement imposed on the respondent under this chapter is a violation of this chapter.

NEW SECTION. **Sec.**  (1)(a) Except when there is an agreed upon settlement, the director shall issue a written determination with findings of fact resulting from the investigation and a statement of whether a violation of this chapter has or has not occurred based on a preponderance of the evidence before the director.

(b) If the director determines that there is no violation of this chapter, the director shall issue a determination of compliance with notice of an employee or other person's right to appeal the decision.

(c) If the director determines that a violation of this chapter has occurred, the director shall issue a citation and notice of assessment that must identify the violation or violations.

(d) The department shall send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) The citation and notice of assessment:

(a) Must state with specificity the amounts due under this chapter for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest;

(b) May specify that civil penalties and fines due to the department can be mitigated for the respondent's timely payment of remedy due to an aggrieved party under section 14 of this act;

(c) May specify that civil penalties and fines are due to the aggrieved party rather than due to the department;

(d) May direct the respondent to take such corrective action as is necessary to comply with the requirements of this chapter including, but not limited to, monitored compliance for a reasonable time period; and

(e) Must include notice of the respondent's right to appeal the decision.

NEW SECTION. **Sec.**  (1) The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this chapter, is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

(2) The amounts of all civil penalties, penalties payable to aggrieved parties, and fines must be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1st of each year thereafter. The department shall determine the amounts and publish a schedule of such amounts on the department's website.

(3) If a violation is ongoing when the department receives a complaint or opens an investigation, the director may order payment of unpaid compensation plus interest that accrues after receipt of the complaint or after the investigation opens and before the date of the citation and notice of assessment.

(4) Interest will accrue from the date the unpaid compensation was first due at 12 percent annum, or the maximum rate permitted under RCW 19.52.020.

(5)(a) If there is a remedy due to an aggrieved party, the director may waive part or all civil penalties and fines due to the department based on timely payment of the full remedy due to the aggrieved party.

(b) The director may waive the total amount of civil penalties and fines due to the department if the director determines that the respondent paid the full remedy due to the aggrieved party within 10 days of service of the citation and notice of assessment.

(c) The director may waive half the amount of civil penalties and fines due to the department if the director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the citation and notice of assessment.

(d) The director may not waive any amount of civil penalties and fines due to the department if the director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the citation and notice of assessment.

(6) When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due for a settlement agreement or citation and notice of assessment, including but not limited to the mitigation of civil penalties and fines due to the department for timely payment of remedy due to an aggrieved party under this section, the director may consider:

(a) The total amount of unpaid compensation, liquidated damages, penalties, fines, and interest due;

(b) The nature and persistence of the violations;

(c) The extent of the respondent's culpability;

(d) The substantive or technical nature of the violations;

(e) The size, revenue, and human resources capacity of the respondent;

(f) The circumstances of each situation;

(g) The amount of penalties in similar situations; and

(h) Pursuant to department rules, other factors that are material and necessary to effectuate the terms of this chapter.

NEW SECTION. **Sec.**  (1)(a) Unpaid compensation. A respondent found to be in violation of this chapter will be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this chapter, and other equitable relief.

(b) If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the director may:

(i) Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or

(ii) Assess a daily amount for unpaid compensation in a minimum amount of $150 for each day that each violation occurred or continued. This amount must be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1st of each year thereafter. The department shall determine the amounts and publish a schedule of such amounts on the department's website.

(c) For a first violation of this chapter, the director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

(d) For subsequent violations of this chapter, the director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

(e) For purposes of establishing a first and subsequent violation for this section, the violation must have occurred within 10 years of the settlement agreement or citation and notice of assessment.

(2) Penalties for retaliation. A respondent found to be in violation of this chapter for retaliation under section 9 of this act will be subject to any appropriate relief at law or equity including, but not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this chapter, and liquidated damages in an additional amount of up to twice the unpaid compensation. The director also shall order the imposition of a penalty payable to the aggrieved party of up to $5,755.31.

(3)(a) Civil penalties. The director may assess civil penalties for a violation of this chapter and may specify that civil penalties are due to the aggrieved party rather than due to the department.

(b) For a first violation of this chapter, the director may assess a civil penalty of up to $575.31 per aggrieved party.

(c) For a second violation of this chapter, the director shall assess a civil penalty of up to $1,150.63 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater.

(d) For a third or any subsequent violation of this chapter, the director shall assess a civil penalty of up to $5,755.31 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater.

(e) For purposes of this subsection, a violation is a second, third, or subsequent violation if one or both of the following have occurred: (i) The respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; or (ii) one, two, or more than two citations and notices of assessments, respectively, have issued against the respondent in the 10 years preceding the date of the violation.

(4)(a) Fines for other violations. The director may assess fines for a violation of this chapter and may specify that fines are due to the aggrieved party rather than due to the department. The director may assess fines as follows:

(i) Failure to post notice of the change in control of cannabis business as required under section 5 of this act: $575.31 per aggrieved party;

(ii) Failure to hire from the preferential hiring list as required under section 6 of this act: $575.31 per aggrieved party;

(iii) Failure to retain an employee for at least 90 days as required under section 6 of this act: $575.31 per aggrieved party;

(iv) Failure to provide employees with written notice of rights as required under section 7 of this act: $575.31 per aggrieved party;

(v) Failure to retain records for three years as required under section 8 of this act: $575.31 per missing record;

(vi) Failure to comply with prohibitions against retaliation for exercising rights protected under section 9 of this act: $1,150.63 per aggrieved party;

(vii) Failure to provide notice of investigation to employees as required under section 11 of this act: $575.31 per aggrieved party; and

(viii) Failure to provide notice of failure to comply with final order to the public as required under section 18 of this act: $575.31 per aggrieved party.

(b) The maximum amount that may be imposed in fines in a one-year period for each type of violation listed in this subsection (4) is $5,755.31 per aggrieved party. If a fine for retaliation is issued, the maximum amount that may be imposed is $23,020 per aggrieved party.

(5) Penalties for hinderance. A respondent that willfully hinders, prevents, impedes, or interferes with the director or administrative law judge in the performance of their duties under this chapter is subject to a civil penalty of not less than $1,150.63 and not more than $5,755.31.

(6) Reasonable costs and attorneys' fees. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the department may assess against the respondent in favor of the department the reasonable costs incurred in enforcing this chapter, including but not limited to reasonable attorneys' fees.

(7) Future bidding on state contracts. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred, or subject to a final order for which all appeal rights have been exhausted, may not bid, or have a bid considered, on any state contract until such amounts due under the final order have been paid in full to the director. If the respondent is the subject of a final order two times or more within a five-year period, the respondent may not bid on any state contract for two years. This subsection must be construed to provide grounds for debarment separate from, and in addition to, those contained in any other provision of law.

(8) The department shall deposit fines and civil penalties paid to the department in the supplemental pension fund established under RCW 51.44.033.

(9) Collections of amounts owed for unpaid citations and notices of assessment, as detailed in this section, may be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION. **Sec.**  (1)(a) An aggrieved party receiving a citation and notice of assessment or a determination of compliance issued by the department or aggrieved by the assessment of any penalties or fines or other orders under this chapter may appeal the citation and notice of assessment, the determination of compliance, the assessment of penalties or fines or other orders, to the director by filing a notice of appeal with the director within 30 days of the issuance of the citation and notice of assessment, the determination of compliance, the assessment of penalties or fines, or other orders.

(b) A citation and notice of assessment, a determination of compliance, an assessment of penalties or fines, or other order not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section stays the effectiveness of the citation and notice of assessment, the determination of compliance, the assessment of penalties or fines, or other order, pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures must be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment, an appealed determination of compliance, an appealed assessment of penalties or fines, or other order must be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of wages owed or penalty assessed.

NEW SECTION. **Sec.**  (1) An employee who has filed a complaint or otherwise initiated an investigation with the department may elect to terminate the department's administrative action, thereby preserving any private right of action, by providing written notice to the department within 10 business days after the employee's receipt of the department's citation and notice of assessment.

(2) If the employee elects to terminate the department's administrative action: (a) The department shall immediately discontinue its action against the employer; (b) the department shall vacate a citation and notice of assessment already issued by the department to the employer; and (c) the citation and notice of assessment, and any related findings of fact or conclusions of law by the department, and any payment or offer of payment by the employer of the unpaid compensation, including interest, assessed by the department in the citation and notice of assessment, is not admissible in any court action or other judicial or administrative proceeding.

(3) Nothing in this section may be construed to limit or affect: (a) The right of any employee to pursue any judicial, administrative, or other action available with respect to an employer; (b) the right of the department to pursue any judicial, administrative, or other action available with respect to an employee that is identified as a result of a complaint or investigation; or (c) the right of the department to pursue any judicial, administrative, or other action available with respect to an employer in the absence of a complaint. For purposes of this subsection, "employee" means an employee other than an employee who has filed a complaint with the department and who thereafter has elected to terminate the department's administrative action as provided in subsection (1) of this section.

NEW SECTION. **Sec.**  If a respondent fails to comply within 30 days of service of any settlement agreement with the department, or with any final order issued by the director or the administrative law judge for which all appeal rights have been exhausted, the department may pursue, but is not limited to, the following measures to secure compliance:

(1) The director may require the respondent to post or distribute public notice of the respondent's failure to comply in a form and manner determined by the department; and

(2) The director may request that the liquor and cannabis board or department of revenue deny, suspend, refuse to renew, or revoke any cannabis business license held or requested by the employer or person until such time as the employer complies with the remedy as defined in the settlement agreement or final order. The liquor and cannabis board and the department of revenue are authorized to deny, refuse to renew, or revoke any cannabis business license in accordance with this subsection.

NEW SECTION. **Sec.**  (1) A respondent that is the subject of a settlement agreement or final order issued under this chapter may not quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the department and without first notifying the respondent's successor of the amounts owed under the settlement agreement or final order at least three business days prior to such transaction.

(2) At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in the settlement agreement or the final order issued by the director or the administrative law judge, will be immediately due and payable.

(3)(a) If the amount due under the settlement agreement or final order is not paid by the respondent within 10 days from the date of the sale, exchange, conveyance, or disposal, the successor becomes liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due.

(b) The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment is considered a payment upon the purchase price in the amount paid, and if the payment is greater in amount than the purchase price, the amount of the difference becomes a debt owed to the successor by the employer.

NEW SECTION. **Sec.**  (1) Any person or class of persons that suffers an injury as a result of a violation of this chapter or is the subject of prohibited retaliation under section 9 of this act may bring a civil action in a court of competent jurisdiction against the employer or other person violating this chapter. Upon prevailing, the plaintiff may be awarded reasonable attorney fees and costs and legal or equitable relief as may be appropriate to remedy the violation including, without limitation: The payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to $5,755.31 if the aggrieved party was subject to prohibited retaliation. Interest will accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

(2) For purposes of this section, "person" includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered injury or retaliation.

(3)(a) For purposes of determining membership within a class of persons entitled to bring an action under this section, two or more employees are similarly situated if they:

(i) Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period;

(ii) Allege one or more violations that raise similar questions as to liability; and

(iii) Seek similar forms of relief.

(b) For purposes of this subsection, employees are not dissimilar solely because:

(i) The employees' claims seek damages that differ in amount; or

(ii) The job titles or other means of classifying employees differ in ways that are unrelated to their claims.

(4) An order issued by the court may include a requirement for an employer to submit a compliance report to the court and to the department.

NEW SECTION. **Sec.**  Any waiver by an individual of any provisions of this chapter is contrary to public policy and is void and unenforceable.

NEW SECTION. **Sec.**  (1) The provisions of this chapter:

(a) Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;

(b) Do not preempt, limit, or otherwise affect the applicability of any other law, local ordinance, regulation, requirement, policy, or standard for minimum labor and compensation requirements, or which extends other protections to employees of a cannabis business; and

(c) Must not be interpreted or applied to create any power or duty in conflict with federal or state law.

(2) This chapter does not preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person. Nothing in this section restricts an employee's right to pursue any other remedies at law or equity for violation of the employee's rights.

NEW SECTION. **Sec.**  This act may be known and cited as the cannabis employee job retention act.

NEW SECTION. **Sec.**  Sections 1 through 23 of this act constitute a new chapter in Title 49 RCW.

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