

SHB 1311 - H AMD

By Representative _____

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.48
4 RCW to read as follows:

5 DEFINITIONS. For purposes of this chapter:

6 (1) "Citation" means a written determination from the
7 department to an employer that a recordkeeping requirement or a
8 wage payment requirement has been violated.

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

10 (3) "Director" means the director of the department of labor
11 and industries, or the director's authorized representative.

12 (4) "Employee" has the meaning provided in RCW 49.12.005(4).

13 (5) "Employer" has the meaning provided in RCW 49.46.010(4),
14 except that "employer" shall not be construed to provide for
15 individual liability for penalties assessed under section 5 of this
16 act.

17 (6) "Notice of assessment" means a written notice from the
18 department to an employer that, on the basis of a citation, wages,
19 interest, or penalties, or a combination thereof, are due and
20 payable to the employee or department as set forth in section 5 of
21 this act.

22 (7) "Recordkeeping requirement" means a recordkeeping
23 requirement set forth in RCW 49.12.041, 49.12.050, 49.12.105,
24 49.46.040, 49.46.070, or 49.52.050, and any related rules adopted
25 by the department.

26 (8) "Wage" has the meaning provided in RCW 49.46.010(2).

27 (9) "Wage payment requirement" means a wage payment requirement
28 set forth in chapter 49.12, 49.30, 49.46, or 49.52 RCW or this
29 chapter, and any related rules adopted by the department. "Wage

1 payment requirement" does not include any conditions of labor set
2 forth in chapter 49.12 RCW.

3 **Sec. 2.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to
4 read as follows:

5 ENFORCEMENT OF WAGE CLAIMS. (1) The department (~~of labor and~~
6 ~~industries~~) may:

7 (a) Conduct investigations to enforce and ensure compliance
8 with this chapter and chapters 39.12, 49.12, 49.30, 49.46, and
9 49.52 RCW, including investigations commenced upon obtaining
10 information indicating an employer may be committing a violation
11 under these chapters ((39.12, 49.46, and 49.48 RCW, conduct
12 investigations to ensure compliance with chapters 39.12, 49.46, and
13 49.48 RCW));

14 (b) (~~Order the payment of~~) Issue a citation or notice of
15 assessment ordering an employer to pay all wages owed the
16 ((workers)) employees, including interest of up to one percent per
17 month on the unpaid wages to the employee, and any penalties
18 assessed under section 5 of this act; and

19 (c) Institute actions necessary ((for the collection of the
20 sums determined owed; and

21 ~~(c) Take assignments of wage claims and prosecute actions for~~
22 ~~the collection of wages of persons who are financially unable to~~
23 ~~employ counsel when in the judgment of the director of the~~
24 ~~department the claims are valid and enforceable in the courts)) to~~
25 recover wages determined to be owed to employees in any superior
26 court or other court of competent jurisdiction of the county where
27 the violation is alleged to have occurred, or the department may
28 use the procedures for recovery of wages in a court action set
29 forth in this chapter and chapter 49.52 RCW.

30 (2) The director (~~of the department or any authorized~~
31 ~~representative~~) may, for the purpose of carrying out RCW 49.48.010
32 and 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the
33 attendance of witnesses or parties and the production of books,
34 papers, or records; (b) administer oaths and examine witnesses
35 under oath; (c) take the verification of proof of instruments of
36 writing; and (d) take depositions and affidavits. If assignments
37 for wage claims are taken, court costs shall not be payable by the
38 department for prosecuting such suits.

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

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

16 (5) The director shall commence a civil action on any citation
17 or notice of assessment within three years after the cause of
18 action accrues, unless a longer period of time applies under law.
19 The cause of action for wage claims accrues from the date when the
20 wages are due.

21 **Sec. 3.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended
22 to read as follows:

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

34 (2) If within ten business days after demand for such bond the
35 employer fails to provide the same, the director may commence a
36 suit against the employer in the superior court of appropriate
37 jurisdiction to compel him or her to furnish such bond or cease

1 doing business until he or she has done so. The employer shall
2 have the burden of proving the amount thereof to be excessive.

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

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

24 **Sec. 4.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to
25 read as follows:

26 ENFORCEMENT. It shall be the duty of the director ~~((of labor
27 and industries))~~ to inquire diligently for any violations of RCW
28 49.48.010 and 49.48.040 through 49.48.080, and to institute the
29 actions for penalties herein provided, and to enforce generally the
30 provisions of RCW 49.48.010 and 49.48.040 through 49.48.080.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.48
32 RCW to read as follows:

33 CITATIONS AND ASSESSMENTS OF CIVIL PENALTIES. (1) An employer
34 determined to have violated a wage payment requirement in a
35 citation or notice of assessment issued by the director shall pay
36 the wages due, including interest of up to one percent per month on
37 the unpaid wages, to the employee, and may be assessed a civil

1 penalty of not less than one hundred dollars and not more than one
2 thousand dollars for each violation per employee. Each day a
3 violation occurs is a separate violation. The director may also
4 claim the remedies in RCW 49.52.070. If the employer pays all
5 wages due to the employee, the director may waive collection of a
6 penalty assessed under this subsection in whole or in part.

7 (2) An employer determined to have violated a recordkeeping
8 requirement that results in a violation of a wage payment
9 requirement may be assessed a civil penalty of not less than one
10 hundred dollars and not more than one thousand dollars for each
11 violation per employee, and may be assessed a civil penalty of not
12 more than one thousand dollars for each subsequent violation found
13 in the citation or notice of assessment. Each day a violation
14 occurs is a separate violation.

15 (3) Civil penalties under this section may be assessed only if
16 the director determines that the violation was a knowing violation.
17 For purposes of this subsection, "knowing violation" means a
18 violation that is intentional and is neither accidental nor the
19 result of a bona fide dispute over an issue of doubtful legal
20 certainty, as evaluated under the standards applicable to wage
21 payment violations under RCW 49.52.050(2).

22 (4) Civil penalties under this section shall not be assessed if
23 the employer reasonably relied on: (a) A rule related to any wage
24 payment requirement or recordkeeping requirement; (b) a written
25 order, ruling, approval, determination or interpretation of the
26 director; or (c) an interpretive or administrative policy issued by
27 the department and filed with the office of the code reviser.

28 (5) An employer assessed civil penalties under this section
29 must, within thirty days of the department's issuance of the
30 citation or notice of assessment, either pay the wages and interest
31 owed or appeal the citation or notice of assessment as provided in
32 section 6 of this act.

33 (6) Civil penalties collected under this section shall be paid
34 to the director for deposit in the supplemental pension fund
35 established under RCW 51.44.033.

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

38 ADMINISTRATIVE APPEALS. (1) A person, firm, or corporation

1 aggrieved by a citation or notice of assessment issued by the
2 department under this chapter may appeal the action or decision to
3 the director by filing notice of the appeal with the director
4 within thirty days of the department's issuance of a citation or
5 notice of assessment. A citation or notice of assessment not
6 appealed within the thirty-day period is final and binding, and not
7 subject to further appeal.

8 (2) Upon receipt of an appeal, the director shall assign the
9 hearing to an administrative law judge of the office of
10 administrative hearings to conduct the hearing and issue an initial
11 order. The hearing and review procedures shall be conducted in
12 accordance with chapter 34.05 RCW, and the standard of review by
13 the administrative law judge of an appealed citation or notice of
14 assessment shall be de novo. A party aggrieved by the initial
15 order may file a petition for administrative review of the initial
16 order with the chief administrative law judge within thirty days of
17 the administrative law judge's issuance of the initial order.

18 (3) The chief administrative law judge shall issue all final
19 orders after appeal of the initial order. The final order of the
20 chief administrative law judge is subject to judicial review in
21 accordance with chapter 34.05 RCW.

22 (4) A notice of appeal filed with the director under this
23 section shall stay the effectiveness of a citation or notice of
24 assessment of a penalty pending final review of the appeal by the
25 director as provided for in chapter 34.05 RCW.

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

29 (6) An employer who failed to allow adequate inspection of
30 records subject to investigation by the department under this
31 chapter within a reasonable time period may not use such records in
32 any appeal under this section as to the correctness of any wage
33 determination by the department related to such records.

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

36 COLLECTION PROCEDURES. (1) If an employer defaults in a
37 payment of wages and civil penalties payable to the department
38 after a final order is issued under this chapter, the director may

1 file with the clerk of any county within the state, a warrant in
2 the amount of the notice of assessment, plus interest, penalties,
3 and any filing fees. The clerk of the county in which the warrant
4 is filed shall immediately designate a superior court cause number
5 for the warrant, and the clerk shall cause to be entered in the
6 judgment docket under the superior court cause number assigned to
7 the warrant, the name of the employer mentioned in the warrant, the
8 amount of payment, penalty, fine due on it, or filing fee, and the
9 date when the warrant was filed. The aggregate amount of the
10 warrant as docketed becomes a lien upon the title to, and interest
11 in, all real and personal property of the employer against whom the
12 warrant is issued, the same as a judgment in a civil case docketed
13 in the office of the clerk. The sheriff shall proceed upon the
14 warrant in all respects and with like effect as prescribed by law
15 with respect to execution or other process issued against rights or
16 property upon judgment in a court of competent jurisdiction. The
17 warrant so docketed is sufficient to support the issuance of writs
18 of garnishment in favor of the state in a manner provided by law in
19 case of judgment, wholly or partially unsatisfied. The clerk of
20 the court is entitled to a filing fee which will be added to the
21 amount of the warrant. A copy of the warrant shall be mailed to
22 the employer within three days of filing with the clerk.

23 (2)(a) The director may issue to any person, firm, corporation,
24 other entity, municipal corporation, political subdivision of the
25 state, a public corporation, or any agency of the state, a notice
26 and order to withhold and deliver property of any kind when he or
27 she has reason to believe that there is in the possession of the
28 person, firm, corporation, other entity, municipal corporation,
29 political subdivision of the state, public corporation, or agency
30 of the state, property that is or will become due, owing, or
31 belonging to an employer upon whom a notice of assessment has been
32 served by the department for payments or civil penalties due to the
33 department. The effect of a notice and order is continuous from
34 the date the notice and order is first made until the liability out
35 of which the notice and order arose is satisfied or becomes
36 unenforceable because of lapse of time. The department shall
37 release the notice and order when the liability out of which the
38 notice and order arose is satisfied or becomes unenforceable by
39 reason of lapse of time and shall notify the person against whom

1 the notice and order was made that the notice and order has been
2 released.

3 (b) The notice and order to withhold and deliver must be served
4 by the sheriff of the county or by the sheriff's deputy, by
5 certified mail, return receipt requested, or by the director. A
6 person, firm, corporation, other entity, municipal corporation,
7 political subdivision of the state, public corporation, or agency
8 of the state upon whom service has been made shall answer the
9 notice within twenty days exclusive of the day of service, under
10 oath and in writing, and shall make true answers to the matters
11 inquired of in the notice and order. Upon service of the notice
12 and order, if the party served possesses any property that may be
13 subject to the claim of the department, the party shall promptly
14 deliver the property to the director. The director shall hold the
15 property in trust for application on the employer's indebtedness to
16 the department, or for return without interest, in accordance with
17 a final determination of a petition for review. In the
18 alternative, the party shall furnish a good and sufficient surety
19 bond satisfactory to the director conditioned upon final
20 determination of liability. If a party served and named in the
21 notice fails to answer the notice within the time prescribed in
22 this section, the court may render judgment by default against the
23 party for the full amount claimed by the director in the notice,
24 together with costs. If a notice is served upon an employer and
25 the property subject to it is wages, the employer may assert in the
26 answer all exemptions provided for by chapter 6.27 RCW to which the
27 wage earner is entitled.

28 (3) In addition to the procedure for collection of a payment,
29 penalty, or fine due to the department as set forth in this
30 section, the department may recover civil penalties or wages
31 imposed under this chapter in a civil action brought in a court of
32 competent jurisdiction of the county where the violation is alleged
33 to have occurred.

34 (4) This section does not affect other collection remedies that
35 are otherwise provided by law.

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

38 EMPLOYMENT LAW ADVISORY COMMITTEE. (1) The director shall

1 appoint an employment law advisory committee composed of nine
2 members: Four members representing employees, each of whom shall
3 be appointed from a list of at least three names submitted by a
4 recognized statewide organization of employees, representing a
5 majority of employees; four members representing employers, each of
6 whom shall be appointed from a list of at least three names
7 submitted by a recognized statewide organization of employers,
8 representing a majority of employers; and one ex officio member
9 representing the department. The member representing the
10 department shall be chairperson.

11 (2) The members of the committee shall be appointed for a term
12 of three years commencing on July 1, 2005, and the terms of the
13 members representing the employees and employers shall be staggered
14 so that the director shall designate one member from each group
15 initially appointed whose term shall expire on June 30, 2006, and
16 one member from each group whose term shall expire on June 30,
17 2007.

18 (3)(a) The committee shall provide comment on department rule
19 making, policies, and other initiatives related to wage and hour
20 laws. The committee may also conduct a continuing study of any
21 aspect of wage and hour law the committee determines to require its
22 consideration. The committee shall report its findings to the
23 department for action as deemed appropriate.

24 (b) During the 2005-07 biennium, the committee shall review
25 wage payment and recordkeeping requirements as defined in this
26 chapter, and comparable requirements in 29 U.S.C. Secs. 202 through
27 262 and related regulations adopted by the United States department
28 of labor, and make findings and recommendations as to appropriate
29 legislative action and/or rule-making activities by December 1 of
30 each year.

31 (4) The members shall serve without compensation, but are
32 entitled to travel expenses as provided in RCW 43.03.050 and
33 43.03.060. The committee may utilize such experts, if any, as it
34 requires to discharge its duties and may utilize such personnel and
35 facilities of the department as it needs, without charge. All
36 expenses of the committee must be paid by the department.

37 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.48
38 RCW to read as follows:

1 RULE-MAKING AUTHORITY. The director may adopt rules to carry
2 out the purposes of this chapter.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.46
4 RCW to read as follows:

5 RULE-MAKING AUTHORITY. The director may adopt rules to carry
6 out the purposes of this chapter.

7 NEW SECTION. **Sec. 11.** CAPTIONS. Captions used in this act
8 are not any part of the law."

9 Correct the title.

EFFECT:

- Ø Adds definitions of "citation," "employee," "employer," and "notice of assessment." Clarifies that "wage payment requirement" does not include certain conditions of labor.
- Ø Deletes a section that would have codified a rule that employers must pay employees all wages due on established paydays.
- Ø Specifies that the director of the Department of Labor and Industries (Department) must commence civil actions within three years after the date when wages were due.
- Ø Specifies that civil penalties may be assessed only for knowing violations, and defines "knowing violation" as a violation that is intentional and neither accidental nor the result of a bona fide dispute over an issue of doubtful legal certainty.
- Ø Specifies that civil penalties shall not be assessed if the employer reasonably relied on rules, written orders, rulings, approvals, determinations, or interpretations of the director, or policies issue by the Department and filed with the Code Reviser.
- Ø Specifies that civil penalties for recordkeeping violations may be assessed only for recordkeeping violations that result in wage payment violations.
- Ø Requires employers who are assessed civil penalties to pay the wages and interested owed or appeal the citation or notice of assessment within 30 days.

- Ø Specifies that the standard of review applicable to administrative appeals is de novo.
- Ø Specifies that parties aggrieved by initial orders may petition for administrative review of initial orders by the chief administrative law judge.
- Ø Provides that an employer who fails to allow adequate inspection of records within a reasonable time period may not use those records in an appeal as to the correctness of the Department's wage determination.