

SENATE BILL REPORT

SHB 3185

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 23, 2006

Title: An act relating to violations of wage payment requirements.

Brief Description: Concerning violations of wage payment requirements.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representative McCoy).

Brief History: Passed House: 2/11/06, 98-0.

Committee Activity: Labor, Commerce, Research & Development: 2/21/06, 2/23/06 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Brown, Honeyford, Keiser and Prentice.

Staff: Jennifer Strus (786-7316)

Background: The state Minimum Wage Act and other laws establish standards for the payment of wages. These standards are enforced by the Department of Labor and Industries (L&I), which has authority to investigate wage violations, order the payment of wages owed to workers, and bring civil actions to collect wages. Employees are also permitted to bring civil actions to collect unpaid wages. Criminal penalties apply to certain violations.

An employer who pays an employee less than the amount to which the employee is entitled is liable in a civil action to the employee, even if the employee agreed to work for less. If the employee is successful in obtaining a judgment for wages owed, attorneys' fees are assessed against the employer, unless the recovery is equal to or less than the amount the employer admitted to be owing.

An employer is also liable in a civil action to the employee or employee's assignee for collecting a rebate from employees' wages and for paying a lower wage than obligated by law or contract when the paying of lower wages is willful and is done with intent to deprive. In this case, the employer is subject to exemplary damages of twice the amount of wages withheld.

L&I may investigate wage violations, order employers to pay, and institute actions to collect after a determination that sums are owed. L&I also may take assignments of wage claims and prosecute actions for employees who are financially unable to employ an attorney.

Summary of Bill: If an employee files a wage complaint, L&I must investigate the complaint. A "wage complaint" is a complaint from an employee to L&I that an employer has violated one or more wage payment requirements. A "wage payment requirement" includes

the requirements to pay minimum wages, overtime compensation, and final wages, and the requirement to withhold only lawful deductions from wages.

L&I must issue either a citation and notice of assessment (citation) or a determination of compliance (determination) no later than 60 days after receiving the complaint and within three years after the date upon which the wages were due.

L&I may order the employer to pay employees all wages owed, including interest of 1 percent per month. If the violation is willful, L&I may also order the employer to pay a civil penalty.

Civil penalties for willful violations of wage payment requirements must be the greater of \$500 or 10 percent of unpaid wages, but not more than \$20,000. Civil penalties must be deposited in the Supplemental Pension Fund.

L&I may not assess civil penalties if the employer reasonably relied on a rule or an interpretive or administrative policy. In addition, an employer is immune from civil penalties if the employer reasonably relied on a written order, ruling, approval, opinion, advice, determination, or interpretation of the L&I director. Records of such written orders, rulings, approvals, opinions, advice, determinations, and interpretations must be maintained by L&I.

L&I must waive civil penalties if the employer paid the wages owed, including interest, within 10 business days of receiving the citation. L&I may waive civil penalties if the employer paid the wages owed.

An employee who has accepted payment of the wages owed, including interest, is barred from initiating or pursuing other actions based on such requirements.

An employee who has filed a wage complaint may elect to terminate the L&I administrative action, and preserve a private right of action by providing written notice to L&I within 10 business days of L&I's issuance of a citation. If the employee elects to terminate L&I's administrative action, L&I must discontinue its action against the employer and vacate a citation already issued. The citation, related findings of fact or conclusions of law, and payments or offers of payment are not admissible in other proceedings. The election of remedy provision does not limit another employee's right to pursue an action or L&I's right to pursue an action identified as a result of a wage complaint or in the absence of a wage complaint.

Procedures are established for administrative review of citations, as well as collection of unpaid wages and civil penalties.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill does three things: 1) provides a meaningful remedy to workers; 2) provides business with a good faith out if they have relied on an L&I rule; and 3) provides a

safe harbor for business to avoid paying the penalty if they promptly pay the wages owed. This bill is a model of compromise between business, labor and L&I.

Testimony Against: None

Who Testified: PRO: Rep. McCoy, Prime Sponsor; Patrick Woods, L&I; Dan Fazio, Farm Bureau; Bruce Neas, Columbia Legal Services; Kris Tefft, AWB.