

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 3185

59th Legislature
2006 Regular Session

Passed by the House February 11, 2006
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 1, 2006
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 3185** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 3185

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representative McCoy)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to violations of wage payment requirements; adding
2 new sections to chapter 49.48 RCW; creating a new section; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this section and sections 2 through 5 of this
7 act:

8 (1) "Citation" means a written determination by the department that
9 a wage payment requirement has been violated.

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

11 (3) "Determination of compliance" means a written determination by
12 the department that wage payment requirements have not been violated.

13 (4) "Director" means the director of the department of labor and
14 industries, or the director's authorized representative.

15 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
16 purposes of a wage payment requirement set forth in RCW 49.46.020 or
17 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment
18 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

1 (6) "Employer" has the meaning provided in RCW 49.46.010 for
2 purposes of a wage payment requirement set forth in RCW 49.46.020,
3 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

4 (7) "Notice of assessment" means a written notice by the department
5 that, based on a citation, the employer shall pay the amounts assessed
6 under section 2 of this act.

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

8 (9) "Wage complaint" means a complaint from an employee to the
9 department that asserts that an employer has violated one or more wage
10 payment requirements and that is reduced to writing.

11 (10) "Wage payment requirement" means a wage payment requirement
12 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
13 49.52.060, and any related rules adopted by the department.

14 (11) "Willful" means a knowing and intentional action that is
15 neither accidental nor the result of a bona fide dispute, as evaluated
16 under the standards applicable to wage payment violations under RCW
17 49.52.050(2).

18 NEW SECTION. **Sec. 2.** CITATIONS AND NOTICES OF ASSESSMENT--CIVIL
19 PENALTIES. (1) If an employee files a wage complaint with the
20 department, the department shall investigate the wage complaint.
21 Unless otherwise resolved, the department shall issue either a citation
22 and notice of assessment or a determination of compliance: (a) No
23 later than sixty days after the date on which the department received
24 the wage complaint, unless the department extends this time period for
25 good cause; and (b) no later than three years after the date on which
26 the cause of action accrued, unless a longer period of time applies
27 under law. Such cause of action for wage claims accrues from the date
28 when the wages are due. The department shall send the citation and
29 notice of assessment or the determination of compliance to both the
30 employer and the employee by service of process or certified mail to
31 their last known addresses.

32 (2) If the department determines that an employer has violated a
33 wage payment requirement and issues to the employer a citation and
34 notice of assessment, the department may order the employer to pay
35 employees all wages owed, including interest of one percent per month
36 on all wages owed, to the employee.

1 (3) If the department determines that the violation of the wage
2 payment requirement was a willful violation, the department also may
3 order the employer to pay the department a civil penalty as specified
4 in (a) of this subsection.

5 (a) A civil penalty for a willful violation of a wage payment
6 requirement shall be not less than five hundred dollars or an amount
7 equal to ten percent of the total amount of unpaid wages, whichever is
8 greater. The maximum civil penalty for a willful violation of a wage
9 payment requirement shall be twenty thousand dollars.

10 (b) The department may not assess a civil penalty if the employer
11 reasonably relied on: (i) A rule related to any wage payment
12 requirement; (ii) a written order, ruling, approval, opinion, advice,
13 determination, or interpretation of the director; or (iii) an
14 interpretive or administrative policy issued by the department and
15 filed with the office of the code reviser. In accordance with the
16 department's retention schedule obligations under chapter 40.14 RCW,
17 the department shall maintain a complete and accurate record of all
18 written orders, rulings, approvals, opinions, advice, determinations,
19 and interpretations for purposes of determining whether an employer is
20 immune from civil penalties under (b)(ii) of this subsection.

21 (c) The department shall waive any civil penalty assessed against
22 an employer under this section if the director determines that the
23 employer has provided payment to the employee of all wages that the
24 department determined that the employer owed to the employee, including
25 interest, within ten business days of the employer's receipt of the
26 citation and notice of assessment from the department.

27 (d) The department may waive at any time a civil penalty assessed
28 under this section, in whole or in part, if the director determines
29 that the employer paid all wages owed to an employee.

30 (e) The department shall deposit civil penalties paid under this
31 section in the supplemental pension fund established under RCW
32 51.44.033.

33 (4) Upon payment by an employer, and acceptance by an employee, of
34 all wages and interest assessed by the department in a citation and
35 notice of assessment issued to the employer, the fact of such payment
36 by the employer, and of such acceptance by the employee, shall: (a)
37 Constitute a full and complete satisfaction by the employer of all
38 specific wage payment requirements addressed in the citation and notice

1 of assessment; and (b) bar the employee from initiating or pursuing any
2 court action or other judicial or administrative proceeding based on
3 the specific wage payment requirements addressed in the citation and
4 notice of assessment. The citation and notice of assessment shall
5 include a notification and summary of the specific requirements of this
6 subsection.

7 NEW SECTION. **Sec. 3.** ADMINISTRATIVE APPEALS. (1) A person, firm,
8 or corporation aggrieved by a citation and notice of assessment or a
9 determination of compliance issued by the department under section 2 of
10 this act may appeal the citation and notice of assessment or the
11 determination of compliance to the director by filing a notice of
12 appeal with the director within thirty days of the department's
13 issuance of the citation and notice of assessment or the determination
14 of compliance. A citation and notice of assessment or a determination
15 of compliance not appealed within thirty days is final and binding, and
16 not subject to further appeal.

17 (2) A notice of appeal filed with the director under this section
18 shall stay the effectiveness of the citation and notice of assessment
19 or the determination of compliance pending final review of the appeal
20 by the director as provided for in chapter 34.05 RCW.

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

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

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

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

6 NEW SECTION. **Sec. 4.** ELECTION OF REMEDY. (1) An employee who has
7 filed a wage complaint with the department may elect to terminate the
8 department's administrative action, thereby preserving any private
9 right of action, by providing written notice to the department within
10 ten business days after the employee's receipt of the department's
11 citation and notice of assessment.

12 (2) If the employee elects to terminate the department's
13 administrative action: (a) The department shall immediately
14 discontinue its action against the employer; (b) the department shall
15 vacate a citation and notice of assessment already issued by the
16 department to the employer; and (c) the citation and notice of
17 assessment, and any related findings of fact or conclusions of law by
18 the department, and any payment or offer of payment by the employer of
19 the wages, including interest, assessed by the department in the
20 citation and notice of assessment, shall not be admissible in any court
21 action or other judicial or administrative proceeding.

22 (3) Nothing in this section shall be construed to limit or affect:
23 (a) The right of any employee to pursue any judicial, administrative,
24 or other action available with respect to an employer; (b) the right of
25 the department to pursue any judicial, administrative, or other action
26 available with respect to an employee that is identified as a result of
27 a wage complaint; or (c) the right of the department to pursue any
28 judicial, administrative, or other action available with respect to an
29 employer in the absence of a wage complaint. For purposes of this
30 subsection, "employee" means an employee other than an employee who has
31 filed a wage complaint with the department and who thereafter has
32 elected to terminate the department's administrative action as provided
33 in subsection (1) of this section.

34 NEW SECTION. **Sec. 5.** COLLECTION PROCEDURES. (1) After a final
35 order is issued under section 3 of this act, if an employer defaults in
36 the payment of: (a) Any wages determined by the department to be owed

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

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

1 which the notice and order arose is satisfied or becomes unenforceable
2 by reason of lapse of time and shall notify the person against whom the
3 notice and order was made that the notice and order has been released.

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

27 (3) In addition to the procedure for collection of wages owed,
28 including interest, and civil penalties as set forth in this section,
29 the department may recover wages owed, including interest, and civil
30 penalties assessed under section 2 of this act in a civil action
31 brought in a court of competent jurisdiction of the county where the
32 violation is alleged to have occurred.

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

35 NEW SECTION. **Sec. 6.** RULE-MAKING AUTHORITY. The director may
36 adopt rules to carry out the purposes of sections 1 through 5 of this
37 act.

1 NEW SECTION. **Sec. 7.** CODIFICATION. Sections 1 through 6 of this
2 act are each added to chapter 49.48 RCW.

3 NEW SECTION. **Sec. 8.** CAPTIONS. Captions used in this act are not
4 any part of the law.

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