

**SHB 1467 - H AMD 188**

By Representative Reykdal

ADOPTED 03/08/2013

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

3 "Sec. 1. RCW 49.48.086 and 2010 c 42 s 4 are each amended to read  
4 as follows:

5 (1) After a final order is issued under RCW 49.48.084, if an  
6 employer defaults in the payment of: (a) Any wages determined by the  
7 department to be owed to an employee, including interest; or (b) any  
8 civil penalty ordered by the department under RCW 49.48.083, the  
9 director may file with the clerk of any county within the state a  
10 warrant in the amount of the payment plus any filing fees. The clerk  
11 of the county in which the warrant is filed shall immediately  
12 designate a superior court cause number for the warrant, and the clerk  
13 shall cause to be entered in the judgment docket under the superior  
14 court cause number assigned to the warrant, the name of the employer  
15 mentioned in the warrant, the amount of payment due on it plus any  
16 filing fees, and the date when the warrant was filed. The aggregate  
17 amount of the warrant as docketed becomes a lien upon the title to,  
18 and interest in, all real and personal property of the employer  
19 against whom the warrant is issued, the same as a judgment in a civil  
20 case docketed in the office of the clerk. The sheriff shall proceed  
21 upon the warrant in all respects and with like effect as prescribed by  
22 law with respect to execution or other process issued against rights  
23 or property upon judgment in a court of competent jurisdiction. The  
24 warrant so docketed is sufficient to support the issuance of writs of  
25 garnishment in favor of the state in a manner provided by law in case  
26 of judgment, wholly or partially unsatisfied. The clerk of the court  
27 is entitled to a filing fee which will be added to the amount of the

1 warrant. A copy of the warrant shall be mailed to the employer within  
2 three days of filing with the clerk.

3 (2)(a) The director may issue to any person, firm, corporation,  
4 other entity, municipal corporation, political subdivision of the  
5 state, a public corporation, or any agency of the state, a notice and  
6 order to withhold and deliver property of any kind when he or she has  
7 reason to believe that there is in the possession of the person, firm,  
8 corporation, other entity, municipal corporation, political  
9 subdivision of the state, public corporation, or agency of the state,  
10 property that is or will become due, owing, or belonging to an  
11 employer upon whom a notice of assessment has been served by the  
12 department for payments or civil penalties due to the department. The  
13 effect of a notice and order is continuous from the date the notice  
14 and order is first made until the liability out of which the notice  
15 and order arose is satisfied or becomes unenforceable because of lapse  
16 of time. The department shall release the notice and order when the  
17 liability out of which the notice and order arose is satisfied or  
18 becomes unenforceable by reason of lapse of time and shall notify the  
19 person against whom the notice and order was made that the notice and  
20 order has been released.

21 (b) The notice and order to withhold and deliver must be served by  
22 the sheriff of the county or by the sheriff's deputy, by certified  
23 mail, return receipt requested, or by the director. A person, firm,  
24 corporation, other entity, municipal corporation, political  
25 subdivision of the state, public corporation, or agency of the state  
26 upon whom service has been made shall answer the notice within twenty  
27 days exclusive of the day of service, under oath and in writing, and  
28 shall make true answers to the matters inquired of in the notice and  
29 order. Upon service of the notice and order, if the party served  
30 possesses any property that may be subject to the claim of the  
31 department, the party shall promptly deliver the property to the  
32 director. The director shall hold the property in trust for  
33 application on the employer's indebtedness to the department, or for  
34 return without interest, in accordance with a final determination of a

1 petition for review. In the alternative, the party shall furnish a  
2 good and sufficient surety bond satisfactory to the director  
3 conditioned upon final determination of liability. If a party served  
4 and named in the notice fails to answer the notice within the time  
5 prescribed in this section, the court may render judgment by default  
6 against the party for the full amount claimed by the director in the  
7 notice, together with costs. If a notice is served upon an employer  
8 and the property subject to it is wages, the employer may assert in  
9 the answer all exemptions provided for by chapter 6.27 RCW to which  
10 the wage earner is entitled.

11 (c) As an alternative to the methods of service described in this  
12 section, the department may electronically serve a financial  
13 institution with a notice and order to withhold and deliver as  
14 described in subsection (i) or (ii) of this subsection (c).

15 (i) The department may provide a list of its outstanding warrants,  
16 except those for which a payment agreement is in good standing, to the  
17 department of revenue. The department of revenue shall include the  
18 warrants provided by the department in any notice and order to  
19 withhold and deliver served under RCW 82.32.235(3). A financial  
20 institution that is served with a notice and order to withhold and  
21 deliver under this subsection (c)(i) must answer the notice within the  
22 time period applicable to service under RCW 82.32.235(3).

23 (ii) The department may match its outstanding warrants, except  
24 those for which a payment is in good standing, against deposit  
25 accounts held by financial institutions registered in Washington by  
26 using the same format and process as the department of revenue uses  
27 for electronic service of a notice and order to withhold and deliver  
28 under RCW 82.32.235(3). A financial institution that is served with a  
29 notice and order to withhold and deliver under this subsection (c)(ii)  
30 must answer the notice within thirty days, exclusive of the day of  
31 service.

32 (iii) The department and the department of revenue may adopt rules  
33 to implement this subsection (c).

34

1 (3) In addition to the procedure for collection of wages owed,  
2 including interest, and civil penalties as set forth in this section,  
3 the department may recover wages owed, including interest, and civil  
4 penalties assessed under RCW 49.48.083 in a civil action brought in a  
5 court of competent jurisdiction of the county where the violation is  
6 alleged to have occurred.

7 (4) Whenever any employer quits business, sells out, exchanges, or  
8 otherwise disposes of the employer's business or stock of goods, any  
9 person who becomes a successor to the business becomes liable for the  
10 full amount of any outstanding citation and notice of assessment or  
11 penalty against the employer's business under this chapter if, at the  
12 time of the conveyance of the business, the successor has: (a) Actual  
13 knowledge of the fact and amount of the outstanding citation and  
14 notice of assessment or (b) a prompt, reasonable, and effective means  
15 of accessing and verifying the fact and amount of the outstanding  
16 citation and notice of assessment from the department. If the  
17 citation and notice of assessment or penalty is not paid in full by  
18 the employer within ten days of the date of the sale, exchange, or  
19 disposal, the successor is liable for the payment of the full amount  
20 of the citation and notice of assessment or penalty, and payment  
21 thereof by the successor must, to the extent thereof, be deemed a  
22 payment upon the purchase price. If the payment is greater in amount  
23 than the purchase price, the amount of the difference becomes a debt  
24 due the successor from the employer.

25 (5) This section does not affect other collection remedies that  
26 are otherwise provided by law.

27

28 **Sec. 2.** RCW 82.32.235 and 2009 c 562 s 1 are each amended to read  
29 as follows:

30 (1) In addition to the remedies provided in this chapter the  
31 department is authorized to issue to any person, a notice and order to  
32 withhold and deliver property of any kind whatsoever when there is  
33 reason to believe that there is in the possession of such person,  
34

1 property which is or will become due, owing, or belonging to any  
2 taxpayer against whom a warrant has been filed.

3 (2) The sheriff of the county where the service is made, or his or  
4 her deputy, or any duly authorized representative of the department  
5 may personally serve the notice and order to withhold and deliver upon  
6 the person to whom it is directed or may do so by certified mail, with  
7 return receipt requested.

8 (3)(a) The department is authorized to issue a notice and order to  
9 withhold and deliver to any financial institution in the form of a  
10 listing of all or a portion of the unsatisfied tax warrants filed  
11 under this chapter and outstanding warrants under RCW 49.48.086 with  
12 the clerk of the superior court of a county of the state, except tax  
13 warrants subject to a payment agreement, which is not in default,  
14 between the department and the taxpayer.

15 (b) As an alternative to the methods of service in subsection (2)  
16 of this section, the department may serve the notice and order to  
17 withhold and deliver authorized under this subsection electronically.  
18 The remedy in this subsection (3) is in addition to any other remedies  
19 authorized by law.

20 (c) No more than one notice and order to withhold and deliver  
21 under this subsection (3) may be served on the same financial  
22 institution in a calendar month.

23 (d) Notice and order to withhold and deliver under this subsection  
24 (3) must include the federal taxpayer identification number of each  
25 taxpayer.

26 (e) For purposes of this subsection, "financial institution" means  
27 a bank, trust company, mutual savings bank, savings and loan  
28 association, or credit union authorized to do business and accept  
29 deposits in this state under state or federal law.

30 (f) The department may provide a financial institution relief from  
31 a notice and order to withhold and deliver in the form provided under  
32 this subsection (3) upon the request of the financial institution.  
33 The department must consider the size, customer base, and geographic  
34 location of the financial institution when considering whether to

1 provide relief. The department must serve any financial institution  
2 so relieved under subsection (1) of this section.

3 (4) Any person who has been served with a notice and order to  
4 withhold and deliver under subsection (1) of this section must answer  
5 the notice within twenty days, exclusive of the day of service. Any  
6 person who has been served with a notice and order to withhold and  
7 deliver under subsection (3) of this section must answer the notice  
8 within thirty days, exclusive of the day of service. The answer must  
9 be in writing, under oath if required by the department, and include  
10 true answers to the matters inquired of in the notice. Any person  
11 served under subsection (3) of this section may answer in aggregate  
12 within thirty days, but must answer separately as to each taxpayer  
13 listed and specify any property by taxpayer which is delivered. The  
14 department must allow any person served electronically under  
15 subsection (3) of this section to answer the notice and order to  
16 withhold and deliver electronically in a format provided or approved  
17 by the department.

18 (5) In the event there is in the possession of any person served  
19 with a notice and order to withhold and deliver, any property which  
20 may be subject to the claim of the department, such property must be  
21 delivered immediately to the department of revenue or its duly  
22 authorized representative upon demand. The department must hold the  
23 property in trust for application on the indebtedness involved or for  
24 return, without interest, in accordance with final determination of  
25 liability or nonliability. Instead of delivering the property to the  
26 department or the department's duly authorized representative, the  
27 person may furnish a bond satisfactory to the department conditioned  
28 upon final determination of liability.

29 (6) Should any person, having been served with a notice and order  
30 to withhold and deliver, fail to answer the notice and order to  
31 withhold and deliver within the time prescribed in this section or  
32 otherwise fail to comply with the duties imposed in this section, the  
33 department may bring a proceeding, in the superior court of Thurston  
34 county or of the county in which service of the notice was made, to

1 enforce the notice and order to withhold and deliver. The court may  
2 render judgment by default against such person for the full amount  
3 claimed by the department in the notice and order to withhold and  
4 deliver or may grant such other relief as the court deems just,  
5 together with costs.

6 (7) For purposes of this section, "person" has the same meaning as  
7 in RCW 82.04.030 and also includes any agency, department, or  
8 institution of the state."

9

10 Correct the title.

11

EFFECT: Strikes the provisions of the substitute bill and:

- Permits the Department of Labor & Industries (L&I) to electronically serve a financial institution with a Notice and Order to Withhold and Deliver (NWD) by either providing a list of its outstanding warrants to the Department of Revenue (DOR) or by using the same format and process as the DOR;
- Requires the DOR to include the L&I warrants in any NWD it electronically serves on a financial institution if the L&I elects to serve the financial institution through the DOR;
- Requires a financial institution served with an NWD to answer within 30 days; and
- Grants rulemaking authority to the L&I and the DOR.

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