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SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1467

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State of Washington

63rd Legislature

2014 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Green, Sells, Reykdal, Ormsby, McCoy, Van De Wege, Appleton, and Bergquist; by request of Department of Labor & Industries)

READ FIRST TIME 02/18/13.

1 AN ACT Relating to the collection of unpaid wages; amending RCW  
2 49.48.086 and 82.32.235.

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

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

6 (1) After a final order is issued under RCW 49.48.084, if an  
7 employer defaults in the payment of: (a) Any wages determined by the  
8 department to be owed to an employee, including interest; or (b) any  
9 civil penalty ordered by the department under RCW 49.48.083, the  
10 director may file with the clerk of any county within the state a  
11 warrant in the amount of the payment plus any filing fees. The clerk  
12 of the county in which the warrant is filed shall immediately designate  
13 a superior court cause number for the warrant, and the clerk shall  
14 cause to be entered in the judgment docket under the superior court  
15 cause number assigned to the warrant, the name of the employer  
16 mentioned in the warrant, the amount of payment due on it plus any  
17 filing fees, and the date when the warrant was filed. The aggregate  
18 amount of the warrant as docketed becomes a lien upon the title to, and  
19 interest in, all real and personal property of the employer against

1 whom the warrant is issued, the same as a judgment in a civil case  
2 docketed in the office of the clerk. The sheriff shall proceed upon  
3 the warrant in all respects and with like effect as prescribed by law  
4 with respect to execution or other process issued against rights or  
5 property upon judgment in a court of competent jurisdiction. The  
6 warrant so docketed is sufficient to support the issuance of writs of  
7 garnishment in favor of the state in a manner provided by law in case  
8 of judgment, wholly or partially unsatisfied. The clerk of the court  
9 is entitled to a filing fee which will be added to the amount of the  
10 warrant. A copy of the warrant shall be mailed to the employer within  
11 three days of filing with the clerk.

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

29 (b) The notice and order to withhold and deliver must be served by  
30 the sheriff of the county or by the sheriff's deputy, by certified  
31 mail, return receipt requested, or by the director. A person, firm,  
32 corporation, other entity, municipal corporation, political subdivision  
33 of the state, public corporation, or agency of the state upon whom  
34 service has been made shall answer the notice within twenty days  
35 exclusive of the day of service, under oath and in writing, and shall  
36 make true answers to the matters inquired of in the notice and order.  
37 Upon service of the notice and order, if the party served possesses any  
38 property that may be subject to the claim of the department, the party

1 shall promptly deliver the property to the director. The director  
2 shall hold the property in trust for application on the employer's  
3 indebtedness to the department, or for return without interest, in  
4 accordance with a final determination of a petition for review. In the  
5 alternative, the party shall furnish a good and sufficient surety bond  
6 satisfactory to the director conditioned upon final determination of  
7 liability. If a party served and named in the notice fails to answer  
8 the notice within the time prescribed in this section, the court may  
9 render judgment by default against the party for the full amount  
10 claimed by the director in the notice, together with costs. If a  
11 notice is served upon an employer and the property subject to it is  
12 wages, the employer may assert in the answer all exemptions provided  
13 for by chapter 6.27 RCW to which the wage earner is entitled.

14 (c) As an alternative to the methods of service described in this  
15 section, the department may electronically serve a financial  
16 institution with a notice and order to withhold and deliver by  
17 providing a list of its outstanding warrants, except those for which a  
18 payment agreement is in good standing, to the department of revenue.  
19 The department of revenue may include the warrants provided by the  
20 department in a notice and order to withhold and deliver served under  
21 RCW 82.32.235(3). A financial institution that is served with a notice  
22 and order to withhold and deliver under this subsection (c) must answer  
23 the notice within the time period applicable to service under RCW  
24 82.32.235(3). The department and the department of revenue may adopt  
25 rules to implement this subsection (c).

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

32 (4) Whenever any employer quits business, sells out, exchanges, or  
33 otherwise disposes of the employer's business or stock of goods, any  
34 person who becomes a successor to the business becomes liable for the  
35 full amount of any outstanding citation and notice of assessment or  
36 penalty against the employer's business under this chapter if, at the  
37 time of the conveyance of the business, the successor has: (a) Actual  
38 knowledge of the fact and amount of the outstanding citation and notice

1 of assessment or (b) a prompt, reasonable, and effective means of  
2 accessing and verifying the fact and amount of the outstanding citation  
3 and notice of assessment from the department. If the citation and  
4 notice of assessment or penalty is not paid in full by the employer  
5 within ten days of the date of the sale, exchange, or disposal, the  
6 successor is liable for the payment of the full amount of the citation  
7 and notice of assessment or penalty, and payment thereof by the  
8 successor must, to the extent thereof, be deemed a payment upon the  
9 purchase price. If the payment is greater in amount than the purchase  
10 price, the amount of the difference becomes a debt due the successor  
11 from the employer.

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

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

16 (1) In addition to the remedies provided in this chapter the  
17 department is authorized to issue to any person, a notice and order to  
18 withhold and deliver property of any kind whatsoever when there is  
19 reason to believe that there is in the possession of such person,  
20 property which is or will become due, owing, or belonging to any  
21 taxpayer against whom a warrant has been filed.

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

27 (3)(a) The department is authorized to issue a notice and order to  
28 withhold and deliver to any financial institution in the form of a  
29 listing of all or a portion of the unsatisfied tax warrants filed under  
30 this chapter and outstanding warrants under RCW 49.48.086 with the  
31 clerk of the superior court of a county of the state, except tax  
32 warrants subject to a payment agreement, which is not in default,  
33 between the department and the taxpayer.

34 (b) As an alternative to the methods of service in subsection (2)  
35 of this section, the department may serve the notice and order to  
36 withhold and deliver authorized under this subsection electronically.

1 The remedy in this subsection (3) is in addition to any other remedies  
2 authorized by law.

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

6 (d) Notice and order to withhold and deliver under this subsection  
7 (3) must include the federal taxpayer identification number of each  
8 taxpayer.

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

13 (f) The department may provide a financial institution relief from  
14 a notice and order to withhold and deliver in the form provided under  
15 this subsection (3) upon the request of the financial institution. The  
16 department must consider the size, customer base, and geographic  
17 location of the financial institution when considering whether to  
18 provide relief. The department must serve any financial institution so  
19 relieved under subsection (1) of this section.

20 (4) Any person who has been served with a notice and order to  
21 withhold and deliver under subsection (1) of this section must answer  
22 the notice within twenty days, exclusive of the day of service. Any  
23 person who has been served with a notice and order to withhold and  
24 deliver under subsection (3) of this section must answer the notice  
25 within thirty days, exclusive of the day of service. The answer must  
26 be in writing, under oath if required by the department, and include  
27 true answers to the matters inquired of in the notice. Any person  
28 served under subsection (3) of this section may answer in aggregate  
29 within thirty days, but must answer separately as to each taxpayer  
30 listed and specify any property by taxpayer which is delivered. The  
31 department must allow any person served electronically under subsection  
32 (3) of this section to answer the notice and order to withhold and  
33 deliver electronically in a format provided or approved by the  
34 department.

35 (5) In the event there is in the possession of any person served  
36 with a notice and order to withhold and deliver, any property which may  
37 be subject to the claim of the department, such property must be  
38 delivered immediately to the department of revenue or its duly

1 authorized representative upon demand. The department must hold the  
2 property in trust for application on the indebtedness involved or for  
3 return, without interest, in accordance with final determination of  
4 liability or nonliability. Instead of delivering the property to the  
5 department or the department's duly authorized representative, the  
6 person may furnish a bond satisfactory to the department conditioned  
7 upon final determination of liability.

8 (6) Should any person, having been served with a notice and order  
9 to withhold and deliver, fail to answer the notice and order to  
10 withhold and deliver within the time prescribed in this section or  
11 otherwise fail to comply with the duties imposed in this section, the  
12 department may bring a proceeding, in the superior court of Thurston  
13 county or of the county in which service of the notice was made, to  
14 enforce the notice and order to withhold and deliver. The court may  
15 render judgment by default against such person for the full amount  
16 claimed by the department in the notice and order to withhold and  
17 deliver or may grant such other relief as the court deems just,  
18 together with costs.

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

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