

HOUSE BILL REPORT

HB 1467

As Reported by House Committee On:
Labor & Workforce Development

Title: An act relating to the collection of unpaid wages.

Brief Description: Addressing the collection of unpaid wages.

Sponsors: Representatives Green, Sells, Reykdal, Ormsby, McCoy, Van De Wege, Appleton and Bergquist; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Labor & Workforce Development: 2/6/13, 2/14/13 [DPS].

Brief Summary of Substitute Bill

- Provides a process for the Department of Labor and Industries (Department) to seize property in the possession or control of an employer against whom an unsatisfied warrant has been filed.
- Permits the Department to serve a Notice of Withhold and Deliver to financial institutions by electronic file transfer.
- Permits the Director of the Department to make an assessment and immediately enforce collection if he or she has reasonable cause to believe that the collection of wages will be jeopardized because an employer is about to cease business, leave the state, or remove or dissipate assets.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

Staff: Alexa Silver (786-7190).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

If an employee files a wage complaint for a violation of a wage payment requirement, the Department of Labor and Industries (Department) must investigate the complaint. 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. The Department must issue either a citation and notice of assessment or a determination of compliance no later than 60 days after receiving the complaint. The Department may order the employer to pay employees all wages owed, including interest of 1 percent per month. If the violation was willful, the Department may also order the employer to pay a civil penalty.

If a final order is issued and the employer defaults in paying the wages owed or the civil penalty, the Director of the Department (Director) may file a warrant with the county clerk. The amount of the warrant becomes a lien on the employer's real or personal property.

If the Director has reason to believe a person or entity possesses property belonging to the employer, the Director may also issue to the person or entity a Notice of Withhold and Deliver (NWD). The person or entity has 20 days to respond from the date the NWD is served. If the person or entity possess any property that may be subject to the Department's claim, it must promptly deliver the property to the Director.

In addition, the Department may recover wages and civil penalties owed in a civil action.

Summary of Substitute Bill:**Warrants for Seizure of Property.**

A judge may issue a warrant to seize property if there is probable cause to believe there is property in the possession or control of an employer against whom an unsatisfied warrant has been filed. The procedure for issuing, executing, and returning the warrant and for returning the property is provided in court rules. The Department may issue an order of execution directing the county sheriff to sell the property for payment of the warrant. The sheriff and court clerk may collect fees for their services. In lieu of collection by the county sheriff, the Department may direct its own agent to collect the wages owed.

The proceeds from any sale of property must be credited against the amount due. If the warrant is not satisfied in full, the amount owed remains as a judgment against the debtor.

The Department may not seize perishable agricultural commodities in their raw and unprocessed state.

Account Records at Financial Institutions.

The Department may match outstanding warrants against deposit accounts held by financial institutions registered in Washington. The Department may serve an NWD to a financial institution by electronic file transfer. A financial institution has 30 days to respond to the electronic service and may respond in aggregate using the same electronic file process. The

Department may not serve an institution more than once a month and must develop a process to relieve an institution from this method of service when it is burdensome. The Department may adopt rules to implement these requirements.

Immediate Assessments and Collections.

The Director may make an immediate assessment and enforce collection if he or she has reasonable cause to believe an employer is about to cease business, leave the state, or remove or dissipate assets out of which wages, penalties, fees, or interest might be satisfied, and if the collection of wages will be jeopardized by delaying collection.

If a jeopardy assessment is not paid within 10 days of service or mailing, the Director may collect by the distraint, seizure, and sale of the property, except for any goods or property that are otherwise exempt from execution under state law.

Substitute Bill Compared to Original Bill:

The substitute bill removes authority for the Department to use the seizure process when a final assessment is issued and prohibits use of the seizure provision for seizure of perishable agricultural commodities in their raw and unprocessed state. It removes the requirement that any surplus received from the sale of property be paid to the debtor or a lien holder.

The substitute bill changes the standard for jeopardy assessment from "reason to believe" to "reasonable cause to believe" and removes authority for jeopardy assessments when the employer is insolvent. It permits the Department to collect by the distraint, seizure, and sale of the property if the jeopardy assessment is not paid within 10 days of service or mailing.

Instead of delivery by certified mail, the substitute bill permits delivery of a NWD by a method for which receipt can be confirmed or tracked or by an authorized representative of the Director.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Typically, when a valid complaint under the Wage Payment Act is received, it is taken care of informally. In a small universe of cases, a citation is issued, the employer appeals and loses, and money is owed to workers. The Department has an obligation to collect that money for workers, but current law provides insufficient collection tools. For NWDs, the Department contacts banks and explains that the Department has legal access to any money in an employer's account. The bill would allow the Department to do this electronically, as the Department of Revenue and the Department of Social and Health

Services do currently. The other collection tools are taken from the workers' compensation law and would be rarely used, but having a tool available may assist in collection efforts.

(With concerns) There are concerns on the section related to jeopardy assessments. The language is a huge grant of authority with inadequate restrictions. It is unclear what will give the Department a reason to believe an employer will be insolvent. The agricultural industry has experienced problems with the United States Department of Labor's use of hot goods orders, which place the farmer in the position of choosing between paying a fine and risking losing the crop. In an analogous case related to prevailing wages, the Department has put the employer in a difficult spot because things have happened prematurely. To ensure due process, a third party should look at these issues to determine whether wages are due.

(Opposed) None.

Persons Testifying: (In support) Joel Sacks and Elizabeth Smith, Department of Labor and Industries.

(With concerns) Scott Dilly, Washington Farm Bureau; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.