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SENATE BILL 5360

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Conway, Keiser, Hasegawa, Kohl-Welles, Frockt, and Kline;  
by request of Department of Labor & Industries

Read first time 01/28/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the collection of unpaid wages; amending RCW  
2 49.48.086; and adding a new section to chapter 49.48 RCW.

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) When there is probable cause to believe that there is property  
15 within this state not otherwise exempt from process or execution in the  
16 possession or control of any employer against whom a warrant issued  
17 under subsection (1) of this section has been filed which remains  
18 unsatisfied, or a final assessment issued pursuant to RCW 49.48.083,  
19 any judge of the superior court or district court in the county in  
20 which that property is located may, upon the request of the sheriff or  
21 agent of the department authorized to collect wages owed, issue a  
22 warrant directed to the officers commanding the search for and seizure  
23 of the property described in the request for warrant. The procedure  
24 for the issuance, execution, and return of the warrant authorized by  
25 this section and for return of any property seized is set forth in the  
26 criminal rules of the superior court and the district court. This  
27 section does not require the application for or issuance of any warrant  
28 not otherwise required by law.

29 (d) The department may issue an order of execution, pursuant to a  
30 filed warrant, under its official seal directed to the sheriff of the  
31 county in which the warrant has been filed, commanding the sheriff to  
32 levy upon and sell the real and/or personal property of the debtor  
33 found within the county, or so much thereof as may be necessary, for  
34 the payment of the amount of the warrant, plus the cost of executing  
35 the warrant, and return the warrant to the department and pay to it the  
36 money collected by virtue thereof within sixty days after the receipt  
37 of the warrant. The sheriff shall immediately proceed upon the same in

1 all respects and with like effect as prescribed by law with respect to  
2 execution or other process issued against rights or property upon  
3 judgments of the superior court.

4 (e) The sheriff is entitled to fees as provided by law for services  
5 in levying execution on a superior court judgment and the clerk is  
6 entitled to a filing fee as provided by law, which are added to the  
7 amount of the warrant.

8 (f) At the discretion of the department, an order of execution of  
9 like terms, force, and effect may be issued and directed to any agent  
10 of the department authorized to collect wages owed per this section,  
11 and in the execution thereof the agent has all the powers conferred by  
12 law upon sheriffs, but is not entitled to any fee or compensation in  
13 excess of the actual expenses paid in the performance of such a duty,  
14 which must be added to the amount of the warrant.

15 (g) The proceeds received from any sale must be credited upon the  
16 amount due under the warrant and when the final amount due is received,  
17 together with interest, penalties, fees, and costs, the judgment docket  
18 must show the claim for unpaid wages to be satisfied and the clerk of  
19 the court shall so note upon the docket. Any surplus received from any  
20 sale of property must be paid to the debtor or to any lien holder  
21 entitled thereto. If the return on the warrant shows that the same has  
22 not been satisfied in full, the amount of the deficiency remains the  
23 same as a judgment against the debtor which may be collected in the  
24 same manner as the original amount of the warrant.

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

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

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

11 (5) The department is authorized to match its outstanding warrants,  
12 except those where a payment agreement is in good standing, against  
13 deposit accounts held by financial institutions registered in  
14 Washington. The department is further authorized to serve notice of  
15 withhold and deliver to the institutions by electronic file transfer  
16 and the institutions are authorized to respond, in aggregate, using the  
17 same electronic file process. The institutions have thirty days to  
18 respond to the electronic service. The department may not serve the  
19 same institution more than once a month and the department must develop  
20 a process to relieve specific institutions from this method of service  
21 when it is burdensome. The department may adopt rules necessary to  
22 implement this subsection.

23 (6) This section does not affect other collection remedies that are  
24 otherwise provided by law.

25 NEW SECTION. Sec. 2. A new section is added to chapter 49.48 RCW  
26 to read as follows:

27 If the director of labor and industries or the director's designee  
28 has reason to believe that an employer is insolvent or about to cease  
29 business, leave the state, or remove or dissipate assets out of which  
30 wages, penalties, fees, or interest might be satisfied, and the  
31 collection of any wages accrued will be jeopardized by delaying  
32 collection, the director or the director's designee may make an  
33 immediate assessment thereof and may proceed to enforce collection  
34 immediately under the terms of RCW 49.48.086.

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