H-3585.1

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**HOUSE BILL 2548**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Condotta, Manweller, and Wilson

AN ACT Relating to department of labor and industries appeals; and amending RCW 18.27.250, 19.28.131, 19.28.381, 19.28.490, and 70.87.170.

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

**Sec.**  RCW 18.27.250 and 2014 c 190 s 1 are each amended to read as follows:

(1) A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department specifying the grounds of the appeal within thirty days of service of the infraction in a manner provided by this chapter. The appeal must be accompanied by a certified check ((~~for two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars~~)) in the amount provided by subsection (2) of this section, which shall be returned to the assessed party if the decision of the department is not sustained following the final decision in the appeal. If the final decision sustains the decision of the department, the department must apply the amount of the check to the payment of the expenses of the appeal, including costs charged by the office of administrative hearings. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction occurred.

(2) The amount of the certified check required by subsection (1) of this section is the lesser of two hundred dollars or ten percent of the penalty amount, but in no event less than one hundred dollars. However, if the party has twelve or fewer employees, and has had no finally adjudicated violations of this chapter in the preceding five years, the maximum amount of the certified check for all appeals resulting from one investigation is two hundred fifty dollars.

**Sec.**  RCW 19.28.131 and 2014 c 190 s 2 are each amended to read as follows:

(1) Until July 1, 2007, the department shall issue a written warning to any specialty contractor, performing the scope of work defined by rule for the pump and irrigation or domestic pump specialties, not having a valid electrical contractor license. The warning will state that the contractor must be qualified for and apply for a specialty electrical contractor license under the requirements in RCW 19.28.041 within thirty calendar days of the warning. Only one warning will be issued to any contractor. If the contractor fails to comply with this section, the department shall issue a penalty or penalties as authorized in this section to the contractor. Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 of the amount of the penalty and of the specific violation using a method by which the mailing can be tracked or the delivery can be confirmed sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check ((~~for two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars~~)) in the amount provided by subsection (2) of this section, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the amount of the check shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

(2) The amount of the certified check required by subsection (1) of this section is the lesser of two hundred dollars or ten percent of the penalty amount, but in no event less than one hundred dollars. However, if the party has twelve or fewer employees, and has had no finally adjudicated violations of this chapter in the preceding five years, the maximum amount of the certified check for all appeals resulting from one investigation is two hundred fifty dollars.

**Sec.**  RCW 19.28.381 and 2014 c 190 s 3 are each amended to read as follows:

(1) The department may deny renewal of a certificate or license issued under this chapter, if the applicant for renewal owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial by registered mail, return receipt requested, to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check ((~~for two hundred dollars or ten percent of the amount of the outstanding penalties, whichever is less, but in no event less than one hundred dollars~~)) in the amount provided by subsection (2) of this section. The check shall be returned to the applicant if the decision of the department is not upheld by the board. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. The electrical board shall review the proposed decision at the next regularly scheduled board meeting. If the board sustains the decision of the department, the amount of the check must be applied to the cost of the hearing.

(2) The amount of the certified check required by subsection (1) of this section is the lesser of two hundred dollars or ten percent of the penalty amount, but in no event less than one hundred dollars. However, if the party has twelve or fewer employees, and has had no finally adjudicated violations of this chapter in the preceding five years, the maximum amount of the certified check for all appeals resulting from one investigation is two hundred fifty dollars.

**Sec.**  RCW 19.28.490 and 2014 c 190 s 4 are each amended to read as follows:

(1) Any person, firm, partnership, corporation, or other entity violating any of the provisions of this chapter may be assessed a penalty of not less than one hundred dollars or more than ten thousand dollars per violation. The department, after consulting with the board and receiving the board's recommendations, shall set by rule a schedule of penalties for violating this chapter. The department shall notify the person, firm, partnership, corporation, or other entity violating any of these provisions of the amount of the penalty and of the specific violation. The notice shall be sent using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the assessed party. Penalties are subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party, and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check ((~~for two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars~~)) in the amount provided by subsection (2) of this section. The check shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the amount of the check shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

(2) The amount of the certified check required by subsection (1) of this section is the lesser of two hundred dollars or ten percent of the penalty amount, but in no event less than one hundred dollars. However, if the party has twelve or fewer employees, and has had no finally adjudicated violations of this chapter in the preceding five years, the maximum amount of the certified check for all appeals resulting from one investigation is two hundred fifty dollars.

**Sec.**  RCW 70.87.170 and 2014 c 190 s 5 are each amended to read as follows:

(1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked.

(2) The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department, except that if a penalty assessment is the issue for the hearing, the check amount ((~~shall be ten percent of the penalty amount or two hundred dollars, whichever is less, but in no event less than one hundred dollars~~)) must be in the amount provided by subsection (3) of this section. The department shall refund the amount of the check if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the amount of the check.

(3) The amount of the certified check required by subsection (2) of this section is the lesser of two hundred dollars or ten percent of the penalty amount, but in no event less than one hundred dollars. However, if the party has twelve or fewer employees, and has had no finally adjudicated violations of this chapter in the preceding five years, the maximum amount of the certified check for all appeals resulting from one investigation is two hundred fifty dollars.

(4) If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

((~~(4)~~)) (5) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW.

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