

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2626

53rd Legislature
1994 Regular Session

Passed by the House March 8, 1994
Yeas 95 Nays 0

Speaker of the
House of Representatives

Passed by the Senate March 4, 1994
Yeas 31 Nays 17

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2626** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 2626

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Mastin and Grant)

Read first time 02/04/94.

1 AN ACT Relating to enforcement of plumbing certificate of
2 competency requirements; amending RCW 18.106.020, 18.106.180,
3 18.106.190, 18.106.200, 18.106.220, 18.106.250, and 18.106.270; adding
4 a new section to chapter 18.106 RCW; repealing RCW 18.106.025 and
5 18.106.260; prescribing penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 18.106 RCW
8 to read as follows:

9 The department of labor and industries shall establish one pilot
10 project in which the department will enter into an agreement with a
11 city regarding compliance inspections by the city to enforce this
12 chapter. Under the terms of the agreement, the city shall be permitted
13 to submit declarations of noncompliance to the department for the
14 department's enforcement under RCW 18.106.180, with reimbursement to
15 the city at an established fee. The pilot project shall be located in
16 eastern Washington.

17 **Sec. 2.** RCW 18.106.020 and 1983 c 124 s 4 are each amended to read
18 as follows:

1 (1) No person may engage in or offer to engage in the trade of
2 plumbing without having a journeyman certificate, specialty
3 certificate, or temporary permit, or without being supervised by a
4 person who has a journeyman certificate, specialty certificate, or
5 temporary permit. No contractor may employ a person to engage in or
6 offer to engage in the trade of plumbing unless the person employed has
7 a journeyman certificate, specialty certificate, or temporary permit or
8 is supervised by a person who has a journeyman certificate, specialty
9 certificate, or temporary permit. For the purposes of this section,
10 "contractor" means any person or body of persons, corporate or
11 otherwise, engaged in any work covered by the provisions of this
12 chapter, chapter 18.27 RCW, or chapter 19.28 RCW, by way of trade or
13 business. However, in no case shall this section apply to a contractor
14 who is contracting for work on his or her own residence.

15 (2) Violation of subsection (1) of this section is an infraction.
16 Each day in which a person engages in the trade of plumbing in
17 violation of subsection (1) of this section or employs a person in
18 violation of subsection (1) of this section is a separate infraction.
19 Each worksite at which a person engages in the trade of plumbing in
20 violation of subsection (1) of this section or at which a person is
21 employed in violation of subsection (1) of this section is a separate
22 infraction.

23 (3) Notices of infractions for violations of subsection (1) of this
24 section may be issued to:

25 (a) The person engaging in or offering to engage in the trade of
26 plumbing in violation of subsection (1) of this section;

27 (b) The contractor in violation of subsection (1) of this section;
28 and

29 (c) The contractor's employee who authorized the work assignment of
30 the person employed in violation of subsection (1) of this section.

31 **Sec. 3.** RCW 18.106.180 and 1983 c 124 s 7 are each amended to read
32 as follows:

33 An authorized representative of the department may issue a notice
34 of infraction as specified in RCW 18.106.020(3) if a person who is
35 doing plumbing work or who is offering to do plumbing work fails to
36 produce evidence of having a certificate or permit issued by the
37 department in accordance with this chapter or of being supervised by a
38 person who has such a certificate or permit. A notice of infraction

1 issued under this section shall be personally served on the person
2 named in the notice by an authorized representative of the department.

3 **Sec. 4.** RCW 18.106.190 and 1983 c 124 s 9 are each amended to read
4 as follows:

5 ~~((1))~~ The form of the notice of infraction issued under this
6 chapter shall ~~([be] prescribed by the supreme court following~~
7 ~~consultation with the department. To the extent practicable, the~~
8 ~~notice of infraction issued under this chapter shall conform to the~~
9 ~~notice of traffic infraction prescribed by the supreme court pursuant~~
10 ~~to RCW 46.63.060.~~

11 ~~(2) The notice of infraction shall~~) include the following:

12 ~~((a))~~ (1) A statement that the notice represents a determination
13 that the infraction has been committed by the person named in the
14 notice and that the determination shall be final unless contested as
15 provided in this chapter;

16 ~~((b))~~ (2) A statement that the infraction is a noncriminal
17 offense for which imprisonment shall not be imposed as a sanction;

18 ~~((c))~~ (3) A statement of the specific infraction for which the
19 notice was issued;

20 ~~((d))~~ (4) A statement ~~((that a one hundred dollar))~~ of the
21 monetary penalty that has been established for the infraction;

22 ~~((e))~~ (5) A statement of the options provided in this chapter for
23 responding to the notice and the procedures necessary to exercise these
24 options;

25 ~~((f))~~ (6) A statement that at any hearing to contest the
26 determination the state has the burden of proving, by a preponderance
27 of the evidence, that the infraction was committed; and that the person
28 may subpoena witnesses, including the authorized representative of the
29 department who issued and served the notice of infraction;

30 ~~((g))~~ (7) A statement, which the person shall sign, that the
31 person promises to respond to the notice of infraction in one of the
32 ways provided in this chapter;

33 ~~((h))~~ (8) A statement that refusal to sign the infraction as
34 directed in subsection ~~((2)(g))~~ (7) of this section is a misdemeanor;
35 and

36 ~~((i))~~ (9) A statement that failure to respond to a notice of
37 infraction as promised is a misdemeanor and may be punished by a fine
38 or imprisonment in jail.

1 **Sec. 5.** RCW 18.106.200 and 1983 c 124 s 8 are each amended to read
2 as follows:

3 A violation designated as an infraction under this chapter shall be
4 heard and determined by ~~((a district court. A notice of infraction
5 shall be filed in the district court district in which the infraction
6 is alleged to have occurred. If a notice of infraction is filed in a
7 court which is not the proper venue, the notice shall be dismissed
8 without prejudice on motion of either party))~~ an administrative law
9 judge of the office of administrative hearings. If a party desires to
10 contest the notice of infraction, the party shall file a notice of
11 appeal with the department within fourteen days of issuance of the
12 infraction. The administrative law judge shall conduct hearings in
13 these cases at locations in the county where the infraction is alleged
14 to have occurred.

15 **Sec. 6.** RCW 18.106.220 and 1983 c 124 s 11 are each amended to
16 read as follows:

17 (1) A person who receives a notice of infraction shall respond to
18 the notice as provided in this section within fourteen days of the date
19 the notice was served.

20 (2) If the person named in the notice of infraction does not wish
21 to contest the ~~((determination))~~ notice of infraction, the person shall
22 ~~((respond by completing the appropriate portion of the notice of
23 infraction and submitting it, either by mail or in person, to the court
24 specified on the notice. A check or money order in the amount of the
25 penalty prescribed for the infraction must be submitted with the
26 response))~~ pay to the department, by check or money order, the amount
27 of the penalty prescribed for the infraction. When a response which
28 does not contest the determination is received((, an appropriate order
29 shall be entered in the court's records, and a record of the response
30 and order shall be furnished to the department)) by the department with
31 the appropriate payment, the department shall make the appropriate
32 entry in its records.

33 (3) If the person named in the notice of infraction wishes to
34 contest the ~~((determination))~~ notice of infraction, the person shall
35 respond by ~~((completing the portion of the notice of infraction
36 requesting a hearing and submitting it, either by mail or in person, to
37 the court specified on the notice. The court shall notify the person
38 in writing of the time, place, and date of the hearing, and that date~~

1 shall not be sooner than fourteen days from the date of the notice,
2 except by agreement of the parties)) filing an answer of protest with
3 the department specifying the grounds of protest.

4 (4) If any person issued a notice of infraction:

5 (a) Fails to respond to the notice of infraction as provided in
6 subsection (2) of this section; or

7 (b) Fails to appear at a hearing requested pursuant to subsection
8 (3) of this section;

9 the ((court)) administrative law judge shall enter an appropriate order
10 assessing the monetary penalty prescribed for the infraction and shall
11 notify the department of the failure to respond to the notice of
12 infraction or to appear at a requested hearing.

13 ((~~(5) An order entered by the court under subsection (4)(b) of this~~
14 ~~section may, for good cause shown and upon such terms as the court~~
15 ~~deems just, be set aside for the same grounds a default judgment may be~~
16 ~~set aside in civil actions in courts of limited jurisdiction.~~))

17 **Sec. 7.** RCW 18.106.250 and 1983 c 124 s 13 are each amended to
18 read as follows:

19 (1) ((~~A hearing held for the purpose of contesting the~~
20 ~~determination that an infraction has been committed shall be without a~~
21 ~~jury.~~

22 ~~(2) The court may consider the notice of infraction and any other~~
23 ~~written report made under oath submitted by the department's authorized~~
24 ~~representative who issued and served the notice in lieu of his or her~~
25 ~~personal appearance at the hearing. The person named in the notice may~~
26 ~~subpoena witnesses, including the authorized representative who issued~~
27 ~~and served the notice, and has the right to present evidence and~~
28 ~~examine witnesses present in court.~~

29 ~~(3))~~ The administrative law judge shall conduct notice of
30 infraction cases under this chapter pursuant to chapter 34.05 RCW.

31 (2) The burden of proof is on the department to establish the
32 commission of the infraction by a preponderance of the evidence. The
33 notice of infraction shall be dismissed if the defendant establishes
34 that, at the time the notice was issued((7)):

35 (a) The defendant ((was registered)) who was issued a notice of
36 infraction authorized by RCW 18.106.020(3)(a) had a certificate or
37 permit issued by the department in accordance with this chapter, was

1 supervised by a person who has such a certificate or permit, or was
2 exempt from ~~((registration.~~

3 ~~(4))~~ this chapter under RCW 18.106.150; or

4 (b) For the defendant who was issued a notice of infraction
5 authorized by RCW 18.106.020(3)(b) or (c), the person employed or
6 supervised by the defendant has a certificate or permit issued by the
7 department in accordance with this chapter, was supervised by a person
8 who had such a certificate or permit, or was exempt from this chapter
9 under RCW 18.106.150.

10 (3) After consideration of the evidence and argument, the ~~((court))~~
11 administrative law judge shall determine whether the infraction was
12 committed. If it has not been established that the infraction was
13 committed, an order dismissing the notice shall be entered in the
14 ~~((court's))~~ record~~((s))~~ of the proceedings. If it has been established
15 that the infraction was committed, ~~((an appropriate order shall be~~
16 entered in the court's records. A record of the court's determination
17 and order shall be furnished to the department)) the administrative law
18 judge shall issue findings of fact and conclusions of law in its
19 decision and order determining whether the infraction was committed.

20 ~~((+5))~~ (4) An appeal from the ~~((court's))~~ administrative law
21 judge's determination or order shall be to the superior court. The
22 decision of the superior court is subject only to discretionary review
23 pursuant to Rule 2.3 of the Rules of Appellate Procedure.

24 **Sec. 8.** RCW 18.106.270 and 1983 c 124 s 16 are each amended to
25 read as follows:

26 (1) A person found to have committed an infraction under RCW
27 18.106.020 shall be assessed a monetary penalty of ~~((one))~~ two
28 fifty dollars for the first infraction, and not more than one thousand
29 dollars for a second or subsequent infraction. The department shall
30 set by rule a schedule of penalties for infractions imposed under this
31 chapter.

32 (2) The ~~((court))~~ administrative law judge may waive, reduce, or
33 suspend the monetary penalty imposed for the infraction for good cause
34 shown.

35 (3) Monetary penalties collected under this chapter shall be
36 ~~((remitted as provided in chapter 3.62 RCW))~~ deposited in the plumbing
37 certificate fund.

1 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each
2 repealed:

3 (1) RCW 18.106.025 and 1983 c 124 s 5; and

4 (2) RCW 18.106.260 and 1983 c 124 s 15.

5 NEW SECTION. **Sec. 10.** This act shall take effect July 1, 1994.

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