
ENGROSSED SUBSTITUTE HOUSE BILL 2626

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 person may employ a person to engage in or offer
6 to engage in the trade of plumbing unless the person employed has a
7 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.

10 (2) Violation of subsection (1) of this section is an infraction.
11 Each day in which a person engages in the trade of plumbing in
12 violation of subsection (1) of this section or employs a person in
13 violation of subsection (1) of this section is a separate infraction.
14 Each worksite at which a person engages in the trade of plumbing in
15 violation of subsection (1) of this section or at which a person is
16 employed in violation of subsection (1) of this section is a separate
17 infraction.

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

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

22 (b) The employer of a person employed in violation of subsection
23 (1) of this section; and

24 (c) The employer's supervisor who authorized the work assignment of
25 the person employed in violation of subsection (1) of this section.

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

28 An authorized representative of the department may issue a notice
29 of infraction as specified in RCW 18.106.020(3) if a person who is
30 doing plumbing work or who is offering to do plumbing work fails to
31 produce evidence of having a certificate or permit issued by the
32 department in accordance with this chapter or of being supervised by a
33 person who has such a certificate or permit. A notice of infraction
34 issued under this section shall be personally served on the person
35 named in the notice by an authorized representative of the department.

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

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

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

8 ~~((a))~~ (1) A statement that the notice represents a determination
9 that the infraction has been committed by the person named in the
10 notice and that the determination shall be final unless contested as
11 provided in this chapter;

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

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

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

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

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

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

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

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

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

37 A violation designated as an infraction under this chapter shall be
38 heard and determined by ~~((a district court. A notice of infraction~~

1 ~~shall be filed in the district court district in which the infraction~~
2 ~~is alleged to have occurred. If a notice of infraction is filed in a~~
3 ~~court which is not the proper venue, the notice shall be dismissed~~
4 ~~without prejudice on motion of either party)) an administrative law~~
5 ~~judge of the office of administrative hearings. If a party desires to~~
6 ~~contest the notice of infraction, the party shall file a notice of~~
7 ~~appeal with the department within fourteen days of issuance of the~~
8 ~~infraction. The administrative law judge shall conduct hearings in~~
9 ~~these cases at locations in the county where the infraction is alleged~~
10 ~~to have occurred.~~

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

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

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

29 (3) If the person named in the notice of infraction wishes to
30 contest the ~~((determination))~~ notice of infraction, the person shall
31 respond by ~~((completing the portion of the notice of infraction~~
32 ~~requesting a hearing and submitting it, either by mail or in person, to~~
33 ~~the court specified on the notice. The court shall notify the person~~
34 ~~in writing of the time, place, and date of the hearing, and that date~~
35 ~~shall not be sooner than fourteen days from the date of the notice,~~
36 ~~except by agreement of the parties))~~ filing an answer of protest with
37 the department specifying the grounds of protest.

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

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

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

5 the ~~((court))~~ administrative law judge shall enter an appropriate order
6 assessing the monetary penalty prescribed for the infraction and shall
7 notify the department of the failure to respond to the notice of
8 infraction or to appear at a requested hearing.

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

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

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

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

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

27 (2) The burden of proof is on the department to establish the
28 commission of the infraction by a preponderance of the evidence. The
29 notice of infraction shall be dismissed if the defendant establishes
30 that, at the time the notice was issued~~((7))~~:

31 (a) The defendant ~~((was registered))~~ who was issued a notice of
32 infraction authorized by RCW 18.106.020(3)(a) had a certificate or
33 permit issued by the department in accordance with this chapter, was
34 supervised by a person who has such a certificate or permit, or was
35 exempt from ~~((registration.~~

36 (4)) this chapter under RCW 18.106.150; or

37 (b) For the defendant who was issued a notice of infraction
38 authorized by RCW 18.106.020(3)(b) or (c), the person employed or

1 supervised by the defendant has a certificate or permit issued by the
2 department in accordance with this chapter, was supervised by a person
3 who had such a certificate or permit, or was exempt from this chapter
4 under RCW 18.106.150.

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

15 ((+5)) (4) An appeal from the ((court's)) administrative law
16 judge's determination or order shall be to the superior court. The
17 decision of the superior court is subject only to discretionary review
18 pursuant to Rule 2.3 of the Rules of Appellate Procedure.

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

21 (1) A person found to have committed an infraction under RCW
22 18.106.020 shall be assessed a monetary penalty of ((one)) two hundred
23 fifty dollars for the first infraction, and not more than one thousand
24 dollars for a second or subsequent infraction. The department shall
25 set by rule a schedule of penalties for infractions imposed under this
26 chapter.

27 (2) The ((court)) administrative law judge may waive, reduce, or
28 suspend the monetary penalty imposed for the infraction for good cause
29 shown.

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

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

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

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

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

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