

Senator Pete Suazo proposes to substitute the following bill:

PAYMENT OF WAGES AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

This act amends the labor code to address issues related to the payment of wages. This act requires notifying employees of rights. This act addresses administrative and criminal penalties. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34-28-9, as last amended by Chapter 375, Laws of Utah 1997

34-28-12, as enacted by Chapter 85, Laws of Utah 1969

76-6-409, as last amended by Chapter 215, Laws of Utah 1994

ENACTS:

34-28-4.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34-28-4.5** is enacted to read:

34-28-4.5. Notification of employees rights.

(1) As used in this section:

(a) "employee rights notification form" means a form:

(i) developed by the commission; and

(ii) meeting the requirements of Subsection (3);

(b) "employee rights notification poster" means a poster:

(i) developed by the commission; and

(ii) meeting the requirements of Subsection (3); and

(c) "working day" means a day other than:



26 (i) Saturday;
27 (ii) Sunday; or
28 (iii) a legal holiday under Section 63-13-2.
29 (2) An employer shall:
30 (a) post an employee rights notification poster in a location meeting the requirements set
31 by rule made by the commission; or
32 (b) provide an employee an employee rights notification form:
33 (i) no later than three working days from the day the employee is hired by the employer;
34 and
35 (ii) at least annually with one of the employee's:
36 (A) wage payments; or
37 (B) if the employee receives wages through electronic transfer, notification of a wage
38 payment.
39 (3) The commission shall:
40 (a) develop an employee rights notification form that:
41 (i) provides a statement of an employee's rights under this chapter; and
42 (ii) can be sent to an employee by the employer with an employee's:
43 (A) wage payment; or
44 (B) if the employee receives wages through electronic transfer, notification of a wage
45 payment;
46 (b) develop an employee rights notification poster that provides a statement of an
47 employee's rights under this chapter;
48 (c) provide to an employer at the request of the employer:
49 (i) a copy of an employee rights notification form; or
50 (ii) a copy of an employee rights notification poster; and
51 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make
52 rules regarding the location of where an employee rights notification poster is to be posted to
53 provide reasonable notice to employees.

54 Section 2. Section **34-28-9** is amended to read:

55 **34-28-9. Enforcement of chapter -- Rulemaking authority.**

56 (1) (a) The division shall:

57 (i) ensure compliance with this chapter;
58 (ii) investigate any alleged violations of this chapter; and
59 (iii) determine the validity of any claim for any violation of this chapter filed with it by an
60 employee.

61 (b) The commission may make rules consistent with this chapter governing wage claims
62 and payment of wages.

63 (c) The minimum wage claim that the division may accept is \$50.

64 (d) The maximum wage claim that the division may accept is \$10,000.

65 (e) The wage claim shall be filed within one year of the date the wages were earned.

66 (2) (a) The division may assess against an employer who fails to pay an employee in
67 accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee which
68 shall be assessed daily until paid for a period not to exceed 20 days.

69 (b) The division shall:

70 (i) retain 50% of the money received from the penalty payments for the costs of
71 administering this chapter;

72 (ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and

73 (iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.

74 (3) (a) An abstract of any final award may be filed in the office of the clerk of the district
75 court of any county in the state. If so filed, it shall be docketed in the judgment docket of that
76 district court.

77 (b) The time of the receipt of the abstract shall be noted by the clerk and entered in the
78 judgment docket.

79 (c) If filed and docketed, the award constitutes a lien from the time of the docketing upon
80 the real property of the employer situated in the county for a period of eight years from the date
81 of the award unless previously satisfied.

82 (d) Execution may be issued on the award within the same time and in the same manner
83 and with the same effect as if the award were a judgment of the district court.

84 (4) (a) The commission may employ counsel, appoint a representative, or request the
85 attorney general, or the county attorney for the county in which the plaintiff or the defendant
86 resides, depending on the district in which the final award is docketed, to represent the commission
87 on all appeals and to enforce judgments.

88 (b) The counsel employed by the commission, the attorney general, or the county
89 representing the commission, shall be awarded:

90 (i) reasonable attorneys' fees, as specified by the commission; and

91 (ii) costs for:

92 (A) appeals when the plaintiff prevails; and

93 (B) judgment enforcement proceedings.

94 (5) (a) If an employer fails to pay a final award issued under this chapter within 30 days
95 of the day the final award is no longer subject to further administrative or judicial appeal, the
96 division may impose a penalty on the employer not to exceed an amount equal to three times the
97 amount of the wage claim.

98 (b) The penalty imposed and received under this Subsection (5) shall be retained by the
99 division and distributed to the employee as provided in Subsection (2)(b).

100 [~~5~~] (6) (a) The commission may enter into reciprocal agreements with the labor
101 department or corresponding agency of any other state or with the person, board, officer, or
102 commission authorized to act on behalf of that department or agency, for the collection in any
103 other state of claims or judgments for wages and other demands based upon claims previously
104 assigned to the commission.

105 (b) The commission may, to the extent provided by any reciprocal agreement entered into
106 under Subsection [~~5~~](6)(a), or by the laws of any other state, maintain actions in the courts of the
107 other states for the collection of any claims for wages, judgments, and other demands and may
108 assign the claims, judgments, and demands to the labor department or agency of any other state
109 for collection to the extent that may be permitted or provided by the laws of that state or by
110 reciprocal agreement.

111 (c) The commission may maintain actions in the courts of this state upon assigned claims
112 for wages, judgments, and demands arising in any other state in the same manner and to the same
113 extent that the actions by the commission are authorized when arising in this state if:

114 (i) the labor department or other corresponding agency of any other state or of any person,
115 board, officer, or commission of that state authorized to act on behalf of the labor department or
116 corresponding agency requests in writing that the commission commence and maintain the action;
117 and

118 (ii) the other state by legislation or reciprocal agreement extends the same comity to this

119 state.

120 Section 3. Section **34-28-12** is amended to read:

121 **34-28-12. Violations.**

122 (1) ~~[Any]~~ (a) In accordance with Title 63, Chapter 46b, Administrative Procedures Act,
 123 the division may for an employer who [shall violate, or fail to comply with any of the provisions
 124 of] violates this chapter [shall be guilty of a misdemeanor.] or that the division reasonably believes
 125 has violated this chapter:

126 (i) conduct an administrative hearing;

127 (ii) issue an order to cease and desist the conduct that is a violation of this chapter;

128 (iii) impose a fine not to exceed \$500 for each violation; or

129 (iv) any combination of Subsections (1)(a)(i) through (iii).

130 (b) For purposes of Subsection (1)(a), a single violation of this chapter may be conduct that
 131 an employer engaged in that involved all of the employer's employees or any portion of the
 132 employer's employees if the division determines that the violation constituted a single event or act.

133 (2) ~~[Any]~~ An employer [who shall refuse] is guilty of theft of service as provided in
 134 Section 76-6-409 if the employer refuses to pay the wages due and payable when demanded as
 135 provided in this chapter [provided], or who [shall] falsely [deny] denies the amount [thereof,] of
 136 wages due or payable or that [the same is] the wages are due, with intent to secure for [himself]
 137 the employer or any other person any discount upon such indebtedness or with intent to annoy,
 138 harass, oppress, hinder, delay or defraud the person to whom [such] the indebtedness is due[, or
 139 who].

140 (3) An employer violates this chapter if the employer hires an additional [employees
 141 without advising each of them] employee and fails to advise the employee of every:

142 (a) wage claim due and unpaid; and [of every]

143 (b) judgment under this chapter that the employer has failed to satisfy[; shall be guilty of
 144 a misdemeanor].

145 Section 4. Section **76-6-409** is amended to read:

146 **76-6-409. Theft of services.**

147 (1) A person commits theft if ~~[he]~~ that person obtains services which ~~[he]~~ that person
 148 knows are available only for compensation by deception, threat, force, or any other means designed
 149 to avoid the due payment for them.

150 (2) A person commits theft if, having control over the disposition of services of another,
151 to which ~~[he]~~ that person knows ~~[he]~~ that person is not entitled, ~~[he]~~ that person diverts the
152 services to ~~[his]~~ that person's own benefit or to the benefit of another who ~~[he]~~ that person knows
153 is not entitled to them.

154 (3) A person commits theft of services under this section if that person violates Subsection
155 34-28-12(2).

156 ~~[(3)]~~ (4) In this section "services" includes~~[-, but is not limited to,];~~

157 (a) labor, professional service, public utility and transportation services, restaurant, hotel,
158 motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools,
159 vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to
160 entertainment, exhibitions, sporting events, or other events for which a charge is made~~[-(4) Under~~
161 ~~this section "services" includes];~~

162 (b) gas, electricity, water, sewer, or cable television services, only if the services are
163 obtained by threat, force, or a form of deception not described in Section 76-6-409.3~~[-(5) Under~~
164 ~~this section "services" includes]; and~~

165 (c) telephone services only if the services are obtained by threat, force, or a form of
166 deception not described in Sections 76-6-409.5 through 76-6-409.9.

167 Section 5. **Effective date.**

168 This act takes effect on July 1, 2001.