

# SENATE BILL REPORT

## SB 5504

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As of February 19, 2003

**Title:** An act relating to limiting lien authority against a residential homeowner.

**Brief Description:** Limiting lien authority against a residential homeowner.

**Sponsors:** Senators Fraser, Prentice, Winsley, Franklin, Keiser, Deccio, Horn and Kohl-Welles; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:** Commerce & Trade: 2/19/03.

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### SENATE COMMITTEE ON COMMERCE & TRADE

**Staff:** John Dziedzic (786-7784)

**Background:** When equipment providers, material suppliers, or subcontractors (potential lien claimants) do not receive payment for the goods and services supplied to a homeowner's single-family residence construction or remodel project, the Mechanics' and Materialmen's Lien law governs the process to be followed to pursue a lien against the homeowner's property.

When a potential lien claimant works through a "prime" or "general" contractor, the potential lien claimant must first notify the homeowner, in writing, that the potential lien claimant has the right to claim a lien. This notice protects the potential lien claimant's rights with respect to goods or services that were supplied to a remodel project up to 60 days prior to the notice; or up to ten days prior to the notice on a project for the construction of a new single-family residence.

A claimant that provides a "notice of right to claim a lien" must then (a) record the lien with the county recording office not later than 90 days after the claimant last provided services, materials or equipment to the homeowner's project; (b) commence an action to enforce the lien within eight months of the date the lien is recorded; and (c) complete the action to enforce the lien within two years after the action was commenced.

**Summary of Substitute Bill:** Lien provisions relating to the remodel of a single-family residence are made identical to those that apply to the new construction of a single-family residence: the "notice of right to claim a lien" applies to goods or services supplied up to ten days before the homeowner receives the notice.

Prime contractors must "act solely in the interest of the homeowner" in handling payments from homeowners for potential lien claimants. A prime contractor must identify which of the suppliers and subcontractors whose bills are due will be paid from a homeowner's payment, and which will not. If a subcontractor or supplier does not get paid in accord with

what the prime contractor told the homeowner, and a lien is eventually filed against the homeowner, the prime contractor is guilty of theft.

If a payment is not received by a supplier or subcontractor within 14 days of the due date, the potential lien claimant must notify the homeowner and prime contractor within 28 days of the due date. If such notice is not provided, the subcontractor or supplier's right to claim a lien on that amount is lost.

Before releasing a second disbursement of loan funds, a lender must verify that all potential lien claimants that were to be paid from funds released in the first disbursement actually received appropriate payments.

Unless a greater amount is approved by a court, a lien claimant may not collect or attempt to collect from a homeowner more than \$300 or 10 percent of the lien (whichever is less) in the form of attorney fees, interest, or other collection expenses.

Local recording officials and county prosecuting attorneys must notify the Department of Labor and Industries when they become aware that a contractor is operating without being properly registered. The bond required of a contractor that operated without being properly registered is increased. The bond required of a contractor is also increased if the contractor has failed to resolve one or more construction-related summons and complaint within eight months of the filing of the summons and complaint.

Provisions relating to the homeowner's ability to pay potential lien claimants by joint check are included.

**Substitute Bill Compared to Original Bill:** The original bill was not considered.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.