

SSB 5204 - S AMD 6
By Senator Brandland

ADOPTED 02/07/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 60.08 RCW
4 to read as follows:

5 (1) Any owner of property subject to a recorded claim of lien under
6 this chapter, or contractor, subcontractor, lender, or lien claimant
7 who believes the claim of lien to be frivolous and made without
8 reasonable cause, or clearly excessive may apply by motion to the
9 superior court for the county where the property is located, for an
10 order directing the lien claimant to appear before the court at a time
11 no earlier than six nor later than fifteen days following the date of
12 service of the application and order on the lien claimant, and show
13 cause, if any he or she has, why the relief requested should not be
14 granted. The motion shall state the grounds upon which relief is
15 asked, and shall be supported by the affidavit of the applicant or his
16 or her attorney setting forth a concise statement of the facts upon
17 which the motion is based.

18 (2) The order shall clearly state that if the lien claimant fails
19 to appear at the time and place noted the lien shall be released, with
20 prejudice, and that the lien claimant shall be ordered to pay the costs
21 requested by the applicant including reasonable attorneys' fees.

22 (3) If no action to foreclose the lien claim has been filed, the
23 clerk of the court shall assign a cause number to the application and
24 obtain from the applicant a filing fee of thirty-five dollars. If an
25 action has been filed to foreclose the lien claim, the application
26 shall be made a part of that action.

27 (4) The applicant must give notice of the hearing to the lien
28 claimant by providing copies of the motion, order, and any other
29 documents filed with the court, to the lien claimant by first class
30 mail, by certified or registered mail, or by personal service.

1 (5) If, following a hearing on the matter, the court determines
2 that the lien is frivolous and made without reasonable cause, or
3 clearly excessive, the court shall issue an order releasing the lien if
4 frivolous and made without reasonable cause, or reducing the lien if
5 clearly excessive, and awarding costs and reasonable attorneys' fees to
6 the applicant to be paid by the lien claimant. If the court determines
7 that the lien is not frivolous and was made with reasonable cause, and
8 is not clearly excessive, the court shall issue an order so stating and
9 awarding costs and reasonable attorneys' fees to the lien claimant to
10 be paid by the applicant.

11 (6) Proceedings under this section shall not affect other rights
12 and remedies available to the parties under this chapter or otherwise.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 60.08 RCW
14 to read as follows:

15 The department of licensing, and the department's agents and
16 subagents, shall not transfer title of a vehicle through the chattel
17 lien process under this chapter and chapter 60.10 RCW unless an
18 affidavit of sale and the following documentation is submitted: (1) A
19 certified copy of the lien filing that is filed with the county
20 auditor; (2) a copy of the letter, sent by the lien claimant via first
21 class mail, and certified or registered mail, including the return
22 receipt, to the address of the current registered owner notifying the
23 current registered owner of the lien filing; and (3) an affidavit of
24 service by mail.

25 **Sec. 3.** RCW 60.10.030 and 1969 c 82 s 4 are each amended to read
26 as follows:

27 (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily
28 foreclosed by notice and sale as provided herein. The lien holder may
29 sell, or otherwise dispose of the collateral in its then condition or
30 following any commercially reasonable preparation or processing. The
31 proceeds of disposition shall be applied in the order following to

32 (a) the reasonable expenses of retaking, holding, preparing for
33 sale, selling and the like and, to the extent provided for in the
34 agreement and not prohibited by law, the reasonable attorneys' fees and
35 legal expenses incurred by the secured party;

1 (b) the satisfaction of indebtedness secured by the lien under
2 which the disposition is made;

3 (c) the satisfaction of indebtedness secured by any subordinate
4 security interest in the collateral if written notification of demand
5 therefor is received before distribution of the proceeds is completed.
6 If requested by the lien holder, the holder of a subordinate security
7 interest must seasonably furnish reasonable proof of his or her
8 interest, and unless ((~~he does so~~)) that is done, the lien holder need
9 not comply with ((~~his~~)) that demand.

10 (2) The lien holder must account to the lien debtor for any
11 surplus, and, unless otherwise agreed, the lien debtor is not liable
12 for any deficiency.

13 (3) Disposition of the collateral may be by public or private
14 proceedings and may be made by way of one or more contracts. Sale or
15 other disposition may be as a unit or in parcels and at any time and
16 place and on any terms but every aspect of the disposition including
17 the method, manner, time, place and terms must be commercially
18 reasonable which shall be construed as provided in RCW 60.10.070.
19 Unless collateral is perishable or threatens to decline speedily in
20 value or is of a type customarily sold on a recognized market,
21 reasonable notification of the time and place of any public sale or
22 reasonable notification of the time after which any private sale or
23 other intended disposition is to be made shall be sent by the lien
24 holder to the lien debtor, by first class mail, and registered or
25 certified mail, and except in the case of consumer goods to any other
26 person who has a security interest in the collateral and who has duly
27 filed a financing statement indexed in the name of the lien debtor in
28 this state or who is known by the lien holder to have a security
29 interest in the collateral. The lien holder may buy at any public sale
30 and if the collateral is of a type customarily sold in a recognized
31 market or is of a type which is the subject of widely distributed
32 standard price quotations he or she may buy at private sale. Before
33 accepting any bid or offer for purchase, the lien holder shall inform
34 the bidder or purchaser of the existence of any prior lien or security
35 interest in the collateral, and the identity of the holder of the prior
36 lien or security interest. If the lien holder does not know this
37 information, he or she shall advise the prospective purchaser of that.

1 **Sec. 4.** RCW 60.10.040 and 1995 c 62 s 6 are each amended to read
2 as follows:

3 When a lien is foreclosed in accordance with the provisions of this
4 chapter, the disposition transfers to a purchaser for value all of the
5 lien debtor's rights therein, discharges the lien under which it is
6 made and any security interest or lien subordinate thereto. The
7 purchaser takes free of all such rights and interests even though the
8 lien holder fails to comply with the requirements of this chapter:

9 (1) In the case of a public sale, if the purchaser has no knowledge
10 of any defects in the sale and if he or she does not buy in collusion
11 with the lien holder, other bidders, or the person conducting the sale;
12 or

13 (2) In any other case, if the purchaser acts in good faith.

14 The purchaser takes subject to any security interest or lien that
15 is superior to the lien under which the sale is made. In the case of
16 property that is subject to a certificate of title, the department of
17 licensing and the department's agents and subagents shall not transfer
18 title through this process unless the new certificate of title reflects
19 the security interest that is superior to the lien under which the sale
20 is made. If a new certificate of title is issued that does not reflect
21 the security interest that is superior to the lien under which the sale
22 is made, the holder of such interest may request and obtain from the
23 department of licensing a replacement certificate of title reflecting
24 such security interest, and showing the purchaser as the registered
25 owner. The department of licensing shall notify the purchaser of the
26 issuance of any replacement title.

27 NEW SECTION. **Sec. 5.** This act takes effect October 1, 2006."

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28 On page 1, line 1 of the title, after "liens;" strike the remainder
29 of the title and insert "amending RCW 60.10.030 and 60.10.040; adding

1 new sections to chapter 60.08 RCW; and providing an effective date."

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