
Judiciary Committee

SSB 5204

Title: An act relating to chattel liens.

Brief Description: Modifying the chattel lien process.

Sponsors: Senators Brandland, Kastama, Sheldon, Rasmussen, Spanel, Hargrove and Shin.

Brief Summary of Substitute Bill

- Establishes procedures for a show cause hearing when a person believes a chattel lien is frivolous and made without reasonable cause or is clearly excessive;
- Prohibits the Department of Licensing (DOL) from transferring title under the chattel lien process unless certain documents are provided and unless the new certificate of title reflects any lien or encumbrance remaining on the property.
- Requires a lien holder, before selling the property to a purchaser, to disclose the existence of any prior lien or security interest in the property, if known.
- Makes other changes to the chattel lien statutes.

Hearing Date:

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Various statutes authorize liens for different purposes on different types of property. A person, firm, or corporation who performs labor or furnishes material in constructing or repairing personal property has a "chattel lien" on the property for the labor or material, regardless of the fact that the property is returned to the owner. For instance, a mechanic may have a chattel lien on a person's car if the person fails to pay for repairs made to the car. In order to effectuate the lien, the lien claimant must, within 90 days from the delivery of the property, file a lien notice in the auditor's office of the county where the property is kept. A third person who purchases the property from the owner in good faith, without actual knowledge of the lien, and before the lien is filed with the county auditor, purchases the property free of the lien.

Chattel liens have priority over any lien or other encumbrance that attach to the property after the commencement of the labor or the furnishing of the materials. They also have priority over liens or other encumbrances that were created prior to the commencement of labor or the furnishing of

materials if the prior lien or encumbrance was not filed or recorded and the chattel lien holder did not know of the prior lien or encumbrance.

The lien holder may enforce the lien against all persons having a junior interest either by judicial procedure or by summary procedure within nine months after filing the lien notice.

Summary foreclosure may be done by selling or otherwise disposing of the property and applying the proceeds first to the costs and reasonable attorneys' fees incurred in the foreclosure; second to satisfy the debt secured by the lien; and third, under certain circumstances, to satisfy any junior debt secured by the property. Disposition may be by public or private proceedings and must be commercially reasonable. With certain exceptions, the lien holder generally must send the lien debtor reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or disposition is to be made. The statute does not specify what constitutes "reasonable notification."

Titles to vehicles may be transferred through the chattel lien process. For instance, a mechanic may sell a person's car to a third party purchaser to satisfy the mechanic's chattel lien. The statutes do not specify procedures for the DOL in transferring title through the chattel lien process.

Summary of Substitute Bill:

Procedures for a show cause hearing are established for chattel liens. Service of the reasonable notification of the sale or disposition of chattel may be by first class mail and registered or certified mail, and the person selling the property must disclose to the potential buyer any prior liens on the property. Provisions are created regarding the Department of Licensing's (DOL) transfer of title to vehicles through the chattel lien process.

A property owner subject to a lien that has been filed, or any contractor, subcontractor, lender, or lien holder to the property, may seek a show cause hearing if he or she believes a lien is frivolous and made without reasonable cause or is clearly excessive. The motion to show cause must be filed in the superior court for the county where the property is located, and it must direct the lien holder to appear in court at a date no earlier than six nor later than 15 days from the date of service of the order to show cause. The motion must state the grounds upon which relief is sought and be supported by the person's affidavit stating concisely the facts upon which the motion is based. If the lien holder has not filed an action to foreclose the lien, the person seeking the show cause hearing must pay a filing fee of \$35 dollars when filing the motion. If a foreclosure action has already been filed for the lien, the person's motion shall become part of that action.

The person must serve the motion, the order granting the hearing, and other documents that were filed with the court on the lien holder by first class mail, certified or registered mail, or by personal service.

If the court finds that the lien was frivolous and made without reasonable cause, or that the lien is clearly excessive, the court must issue an order releasing the lien (or reducing it, if it finds the lien was clearly excessive) and awarding costs and reasonable attorneys' fees to the applicant. If the court finds for the lien holder, the person who sought the show cause hearing must pay the lien holder's costs and reasonable attorneys' fees. If the lien holder fails to appear at the hearing, the

lien will be released, and the lien holder will be ordered to pay costs and reasonable attorneys' fees.

With certain exceptions, a lien holder must serve the notification of the time and place of disposal of the property to the lien debtor by first class mail and registered or certified mail. Before accepting any bid or offer for purchase, the lien holder must inform the potential purchaser of the existence of any prior lien or security interest in the property and the identity of the holder, if known.

The DOL may not transfer title to a vehicle through the chattel lien process unless the following documents are submitted: an affidavit of sale; a certified copy of the lien filing; a copy of the letter sent by the lien holder to the registered owner (by first class mail and certified or registered mail) notifying the owner of the lien filing; and an affidavit of service by mail. In addition, the DOL may not transfer title unless the new certificate of title reflects superior liens or encumbrances. If a new certificate is issued that does not reflect superior liens or encumbrances, the holder of such interest may obtain a new certificate of title from DOL reflecting his or her interest. The DOL must notify the purchaser of the property of the replacement title.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The substitute bill takes effect on October 1, 2005.