

---

**SUBSTITUTE SENATE BILL 5204**

---

**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Brandland, Kastama, Sheldon, Rasmussen, Spanel, Hargrove and Shin)

READ FIRST TIME 02/25/05.

1       AN ACT Relating to chattel liens; amending RCW 60.10.030 and  
2 60.10.040; adding new sections to chapter 60.08 RCW; and providing an  
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION. **Sec. 1.** A new section is added to chapter 60.08 RCW  
6 to read as follows:

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

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

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

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

14 (5) If, following a hearing on the matter, the court determines  
15 that the lien is frivolous and made without reasonable cause, or  
16 clearly excessive, the court shall issue an order releasing the lien if  
17 frivolous and made without reasonable cause, or reducing the lien if  
18 clearly excessive, and awarding costs and reasonable attorneys' fees to  
19 the applicant to be paid by the lien claimant. If the court determines  
20 that the lien is not frivolous and was made with reasonable cause, and  
21 is not clearly excessive, the court shall issue an order so stating and  
22 awarding costs and reasonable attorneys' fees to the lien claimant to  
23 be paid by the applicant.

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

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

28 The department of licensing, and the department's agents and  
29 subagents, shall not transfer title of a vehicle through the chattel  
30 lien process under this chapter and chapter 60.10 RCW unless an  
31 affidavit of sale and the following documentation is submitted: (1) A  
32 certified copy of the lien filing that is filed with the county  
33 auditor; (2) a copy of the letter, sent by the lien claimant via first  
34 class mail, and certified or registered mail, including the return  
35 receipt, to the address of the current registered owner notifying the  
36 current registered owner of the lien filing; and (3) an affidavit of  
37 service by mail.

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

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

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

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

14       (c) the satisfaction of indebtedness secured by any subordinate  
15 security interest in the collateral if written notification of demand  
16 therefor is received before distribution of the proceeds is completed.  
17 If requested by the lien holder, the holder of a subordinate security  
18 interest must seasonably furnish reasonable proof of his or her  
19 interest, and unless (~~he does so~~) that is done, the lien holder need  
20 not comply with (~~his~~) that demand.

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

24       (3) Disposition of the collateral may be by public or private  
25 proceedings and may be made by way of one or more contracts. Sale or  
26 other disposition may be as a unit or in parcels and at any time and  
27 place and on any terms but every aspect of the disposition including  
28 the method, manner, time, place and terms must be commercially  
29 reasonable which shall be construed as provided in RCW 60.10.070.  
30 Unless collateral is perishable or threatens to decline speedily in  
31 value or is of a type customarily sold on a recognized market,  
32 reasonable notification of the time and place of any public sale or  
33 reasonable notification of the time after which any private sale or  
34 other intended disposition is to be made shall be sent by the lien  
35 holder to the lien debtor, by first class mail, and registered or  
36 certified mail, and except in the case of consumer goods to any other  
37 person who has a security interest in the collateral and who has duly  
38 filed a financing statement indexed in the name of the lien debtor in

1 this state or who is known by the lien holder to have a security  
2 interest in the collateral. The lien holder may buy at any public sale  
3 and if the collateral is of a type customarily sold in a recognized  
4 market or is of a type which is the subject of widely distributed  
5 standard price quotations he or she may buy at private sale. Before  
6 accepting any bid or offer for purchase, the lien holder shall inform  
7 the bidder or purchaser of the existence of any prior lien or security  
8 interest in the collateral, and the identity of the holder of the prior  
9 lien or security interest. If the lien holder does not know this  
10 information, he or she shall advise the prospective purchaser of that.

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

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

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

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

24 The purchaser takes subject to any security interest or lien that  
25 is superior to the lien under which the sale is made. In the case of  
26 property that is subject to a certificate of title, the department of  
27 licensing and the department's agents and subagents shall not transfer  
28 title through this process unless the new certificate of title reflects  
29 the security interest that is superior to the lien under which the sale  
30 is made. If a new certificate of title is issued that does not reflect  
31 the security interest that is superior to the lien under which the sale  
32 is made, the holder of such interest may request and obtain from the  
33 department of licensing a replacement certificate of title reflecting  
34 such security interest, and showing the purchaser as the registered  
35 owner. The department of licensing shall notify the purchaser of the

1 issuance of any replacement title.

2 NEW SECTION. **Sec. 5.** This act takes effect October 1, 2005.

--- END ---