
SENATE BILL 5204

State of Washington

59th Legislature

2005 Regular Session

By Senators Brandland, Kastama, Sheldon, Rasmussen, Spanel, Hargrove and Shin

Read first time 01/18/2005. Referred to Committee on Judiciary.

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

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

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

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

20 (5) Proceedings under this section shall not affect other rights
21 and remedies available to the parties under this chapter or otherwise.

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

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

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

35 (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily
36 foreclosed by notice and sale as provided herein. The lien holder may

1 sell, or otherwise dispose of the collateral in its then condition or
2 following any commercially reasonable preparation or processing. The
3 proceeds of disposition shall be applied in the order following to

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

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

10 (c) the satisfaction of indebtedness secured by any subordinate
11 security interest in the collateral if written notification of demand
12 therefor is received before distribution of the proceeds is completed.
13 If requested by the lien holder, the holder of a subordinate security
14 interest must seasonably furnish reasonable proof of his interest, and
15 unless he does so, the lien holder need not comply with his demand.

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

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

1 private sale.

2 NEW SECTION. **Sec. 4.** This act takes effect October 1, 2005.

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