

ESHB 1708 - S AMD 368

By Senator Kohl-Welles

NOT CONSIDERED 05/25/2011

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 60.04 RCW
4 to read as follows:

5 (1) The legislature finds that persons furnishing labor,
6 professional services, materials, or equipment for the improvement of
7 real property routinely rely upon the enforcement of their lien rights
8 to secure payment for their work. This chapter is intended to provide
9 a simple, reliable, and uniform mechanism for preservation of lien
10 rights and pursuit of lien claims. Yet controversy has arisen as to
11 the intent of certain provisions of this chapter.

12 (2) The legislature therefore intends to clarify that the use of
13 the "safe harbor" form in RCW 60.04.091 is sufficient to state a lien
14 claim, and thereby, address and resolve the current controversy. The
15 legislature also intends to adopt an updated form that is sufficient to
16 state a lien claim and will continue to provide a simple, reliable, and
17 uniform mechanism for the future. Finally, the legislature intends to
18 clarify that civil procedures generally available to the courts in
19 regular civil actions are also available to the courts in lien
20 foreclosure actions.

21 **Sec. 2.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to read
22 as follows:

23 (1) This section applies only to lien claims based on an
24 improvement commenced by a potential lien claimant on or after June 1,
25 1992, and recorded before January 1, 2012.

26 (2) Every person claiming a lien under RCW 60.04.021 shall file for
27 recording, in the county where the subject property is located, a
28 notice of claim of lien not later than ninety days after the person has

1 ceased to furnish labor, professional services, materials, or equipment
2 or the last date on which employee benefit contributions were due. The
3 notice of claim of lien:

4 ((+1)) (a) Shall state in substance and effect:

5 ((+a)) (i) The name, phone number, and address of the claimant;

6 ((+b)) (ii) The first and last date on which the labor,
7 professional services, materials, or equipment was furnished or
8 employee benefit contributions were due;

9 ((+c)) (iii) The name of the person indebted to the claimant;

10 ((+d)) (iv) The street address, legal description, or other
11 description reasonably calculated to identify, for a person familiar
12 with the area, the location of the real property to be charged with the
13 lien;

14 ((+e)) (v) The name of the owner or reputed owner of the property,
15 if known, and, if not known, that fact shall be stated; and

16 ((+f)) (vi) The principal amount for which the lien is claimed.

17 ((+2)) (b) Shall be signed by the claimant or some person
18 authorized to act on his or her behalf who shall affirmatively state
19 they have read the notice of claim of lien and believe the notice of
20 claim of lien to be true and correct under penalty of perjury, and
21 shall be acknowledged pursuant to chapter 64.08 RCW. If the lien has
22 been assigned, the name of the assignee shall be stated. Where an
23 action to foreclose the lien has been commenced such notice of claim of
24 lien may be amended as pleadings may be by order of the court insofar
25 as the interests of third parties are not adversely affected by such
26 amendment.

27 (3) Notwithstanding subsection (2)(a) and (b) of this section, a
28 claim of lien substantially in the following form shall be sufficient:

29 CLAIM OF LIEN

30, claimant, vs, name of person indebted
31 to claimant:

32 Notice is hereby given that the person named below claims a
33 lien pursuant to chapter ((64.04)) 60.04 RCW. In support of
34 this lien the following information is submitted:

- 35 1. NAME OF LIEN CLAIMANT:
36 TELEPHONE NUMBER:
37 ADDRESS:

1 the claimant, or administrator, representative, or agent of the
2 trustees of an employee benefit plan) above named; I have read or heard
3 the foregoing claim, read and know the contents thereof, and believe
4 the same to be true and correct and that the claim of lien is not
5 frivolous and is made with reasonable cause, and is not clearly
6 excessive under penalty of perjury.

7
8 Subscribed and sworn to before me this day of
9

10 (4) The period provided for recording the claim of lien is a period
11 of limitation and no action to foreclose a lien shall be maintained
12 unless the claim of lien is filed for recording within the ninety-day
13 period stated. The lien claimant shall give a copy of the claim of
14 lien to the owner or reputed owner by mailing it by certified or
15 registered mail or by personal service within fourteen days of the time
16 the claim of lien is filed for recording. Failure to do so results in
17 a forfeiture of any right the claimant may have to attorneys' fees and
18 costs against the owner under RCW 60.04.181.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 60.04 RCW
20 to read as follows:

21 (1) This section applies only to lien claims recorded on and after
22 January 1, 2012.

23 (2) Every person claiming a lien under RCW 60.04.021 shall file for
24 recording, in the county where the subject property is located, a
25 notice of claim of lien not later than ninety days after the person has
26 ceased to furnish labor, professional services, materials, or equipment
27 or the last date on which employee benefit contributions were due.

28 (3) The notice of claim of lien:

29 (a) Shall state in substance and effect:

30 (i) The name, telephone number, and address of the claimant;

31 (ii) The first and last date on which the labor, professional
32 services, materials, or equipment was furnished or employee benefit
33 contributions were due;

34 (iii) The name of the person indebted to the claimant;

35 (iv) The street address, legal description, or other description

1 reasonably calculated to identify, for a person familiar with the area,
2 the location of the real property to be charged with the lien;

3 (v) The name of the owner or reputed owner of the property, if
4 known, and, if not known, that fact shall be stated;

5 (vi) The principal amount for which the lien is claimed;

6 (vii) If the lien has been assigned, the name of the assignee; and

7 (viii) If the claim of lien is signed by a person other than the
8 claimant, the person's authority to act on the claimant's behalf.

9 (b) Shall be signed before a notary public by the claimant or a
10 person authorized to act on the claimant's behalf who shall
11 affirmatively state that he or she has:

12 (i) Read the claim of lien;

13 (ii) Believes the claim of lien to be true and correct under
14 penalty of perjury; and

15 (iii) Believes the claim of lien is not frivolous, is made with
16 reasonable cause, and is not clearly excessive.

17 (c) Shall be acknowledged and certified as set forth in subsection
18 (4) of this section.

19 (4) Notwithstanding subsection (3) of this section, a claim of
20 lien, acknowledgment, and certificate substantially in the following
21 form shall be sufficient:

22 CLAIM OF LIEN

23, claimant, vs, name of person indebted
24 to claimant:

25 Notice is hereby given that the claimant named below asserts a
26 lien pursuant to chapter 60.04 RCW. In support of this lien
27 the following information is submitted:

- 28 1. NAME OF LIEN CLAIMANT:
- 29 TELEPHONE NUMBER:
- 30 ADDRESS:

31 2. THE FIRST DATE ON WHICH LABOR, PROFESSIONAL SERVICES,
32 MATERIALS, OR EQUIPMENT WAS FURNISHED BY THE CLAIMANT OR
33 EMPLOYEE BENEFIT CONTRIBUTIONS WERE DUE TO THE CLAIMANT:
34

35 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
36

1 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
2 CLAIMED (Street address, legal description or other information
3 that will reasonably describe the property):

4
5
6

7 5. NAME OF THE OWNER OR REPUTED OWNER (If not known
8 state "unknown"):

9 6. THE LAST DATE ON WHICH LABOR, PROFESSIONAL SERVICES,
10 MATERIALS, OR EQUIPMENT WAS FURNISHED BY THE CLAIMANT OR
11 EMPLOYEE BENEFIT CONTRIBUTIONS WERE DUE TO THE CLAIMANT:

12

13 7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

14

15 8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO
16 STATE HERE:

17

18 9. IF THE PERSON SIGNING THIS CLAIM OF LIEN IS NOT THE
19 CLAIMANT, BUT IS AUTHORIZED TO ACT ON THE CLAIMANT'S BEHALF,
20 STATE THE PERSON'S NAME AND REPRESENTATIVE CAPACITY:

21 NAME:

22 REPRESENTATIVE CAPACITY (e.g., officer or employee of claimant;
23 attorney or agent; representative of lien filing service;
24 administrator, representative, or agent of trustees of employee
25 benefit plan):

26 ACKNOWLEDGMENT

27 FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

28 STATE OF WASHINGTON, COUNTY OF

29, ss.

30, being sworn, says: I, ...(name of person)..., am the
31 claimant. I have read the foregoing claim of lien, believe the claim
32 of lien to be true and correct under penalty of perjury, and believe
33 the claim of lien is not frivolous, is made with reasonable cause, and

1 is not clearly excessive. The foregoing claim of lien is my free and
2 voluntary act for the uses and purposes stated therein.

3 Dated:
4
5 (Signature)

6 FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

7 STATE OF WASHINGTON, COUNTY OF
8, ss.

9, being sworn, says: I, ...(name of person)..., am
10 authorized to act on behalf of the claimant. I have read the foregoing
11 claim of lien, believe the claim of lien to be true and correct under
12 penalty of perjury, and believe the claim of lien is not frivolous, is
13 made with reasonable cause, and is not clearly excessive. The
14 foregoing claim of lien is the free and voluntary act of the claimant
15 for the uses and purposes stated therein.

16 Dated:
17
18 (Signature)

19 CERTIFICATE

20 FOR A CERTIFICATE OF ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

21 I certify that I know or have satisfactory evidence that ...(name
22 of person)... is the person who appeared before me, and said person
23 acknowledged that he/she signed this instrument and acknowledged it to
24 be his/her free and voluntary act for the uses and purposes mentioned
25 in the instrument.

26 Dated:
27
28 (Signature)

29 (Seal or stamp)

30 Title

1 My appointment

2 Expires

3 FOR A CERTIFICATE OF ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

4 I certify that I know or have satisfactory evidence that ...(name
5 of person)... is the person who appeared before me, and said person
6 acknowledged that he/she signed this instrument, on oath stated that
7 he/she was authorized to execute the instrument and acknowledged it as
8 the ... (type of authority, e.g., officer or employee, etc.) ... of ...
9 (name of party on behalf of whom instrument was executed) ... to be the
10 free and voluntary act of such party for the uses and purposes
11 mentioned in the instrument.

12 Dated:

13

14 (Signature)

15 (Seal or stamp)

16 Title

17 My appointment

18 Expires

19 (5) Where an action to foreclose the lien has been commenced such
20 notice of claim of lien may be amended as pleadings may be by order of
21 the court insofar as the interests of third parties are not adversely
22 affected by such amendment.

23 (6) The period provided for recording the claim of lien is a period
24 of limitation and no action to foreclose a lien shall be maintained
25 unless the claim of lien is filed for recording within the ninety-day
26 period stated. The lien claimant shall give a copy of the claim of
27 lien to the owner or reputed owner by mailing it by certified or
28 registered mail or by personal service within fourteen days of the time
29 the claim of lien is filed for recording. Failure to do so results in

1 a forfeiture of any right the claimant may have to attorneys' fees and
2 costs against the owner under RCW 60.04.181.

3 **Sec. 4.** RCW 60.04.171 and 1992 c 126 s 11 are each amended to read
4 as follows:

5 The lien provided by this chapter, for which claims of lien have
6 been recorded, may be foreclosed and enforced by a civil action in the
7 court having jurisdiction in the manner prescribed for the judicial
8 foreclosure of a mortgage, and the court rules ordinarily applicable to
9 civil actions shall apply to that action. The court shall have the
10 power to order the sale of the property. In any action brought to
11 foreclose a lien, the owner shall be joined as a party. The interest
12 in the real property of any person who, prior to the commencement of
13 the action, has a recorded interest in the property, or any part
14 thereof, shall not be foreclosed or affected unless they are joined as
15 a party.

16 A person shall not begin an action to foreclose a lien upon any
17 property while a prior action begun to foreclose another lien on the
18 same property is pending, but if not made a party plaintiff or
19 defendant to the prior action, he or she may apply to the court to be
20 joined as a party thereto, and his or her lien may be foreclosed in the
21 same action. The filing of such application shall toll the running of
22 the period of limitation established by RCW 60.04.141 until disposition
23 of the application or other time set by the court. The court shall
24 grant the application for joinder unless to do so would create an undue
25 delay or cause hardship which cannot be cured by the imposition of
26 costs or other conditions as the court deems just. If a lien
27 foreclosure action is filed during the pendency of another such action,
28 the court may, on its own motion or the motion of any party,
29 consolidate actions upon such terms and conditions as the court deems
30 just, unless to do so would create an undue delay or cause hardship
31 which cannot be cured by the imposition of costs or other conditions.
32 If consolidation of actions is not permissible under this section, the
33 lien foreclosure action filed during the pendency of another such
34 action shall not be dismissed if the filing was the result of mistake,
35 inadvertence, surprise, excusable neglect, or irregularity. An action
36 to foreclose a lien shall not be dismissed at the instance of a

1 plaintiff therein to the prejudice of another party to the suit who
2 claims a lien."

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3 On page 1, line 1 of the title, after "liens;" strike the remainder
4 of the title and insert "amending RCW 60.04.091 and 60.04.171; and
5 adding new sections to chapter 60.04 RCW."

EFFECT: (1) Legislative findings and intent. Adds language specifying that, by clarifying that the form is sufficient to state a lien claim, the Legislature intends to address and resolve the current controversy. Also adds language specifying that the Legislature intends to adopt an updated form for the future. Does not include language describing retroactive corrections to technical errors and defects. Also does not include language describing liberal construction of designated statutes.

(2) Lien claims recorded before January 1, 2012. Amends the current section describing lien claims and provides a form. The amended section:

(a) Applies to lien claims recorded before January 1, 2012;
(b) Does not change the description of lien claims; and
(c) Clarifies that, notwithstanding the description, a lien claim in the specified form is sufficient.

(3) Lien claims recorded on or after January 1, 2012. Adds a new section describing lien claims and provides a form. The new section:

(a) Applies to lien claims recorded on or after January 1, 2012;
(b) Makes the description and the form consistent;
(c) Specifies that, if the lien claim is signed by a person other than the claimant, the claim of lien must state the person's authority to act on the claimant's behalf;

(d) Specifies that, notwithstanding the description, a lien claim in the specified form is sufficient; and

(e) Includes forms for acknowledgment and certification in individual and representative capacities.

(4) Liberal construction. Does not amend the section requiring that certain provisions of the lien law be liberally construed.

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