

# HOUSE BILL REPORT

## HB 2362

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### As Passed Legislature

**Title:** An act relating to wine producer liens.

**Brief Description:** Regarding wine producer liens.

**Sponsors:** Representatives Haler, Blake and Chandler.

#### **Brief History:**

##### **Committee Activity:**

Agriculture & Natural Resources: 1/18/12, 1/24/12 [DP].

##### **Floor Activity:**

Passed House: 2/1/12, 96-0.

Passed Senate: 2/28/12, 46-0.

Passed Legislature.

#### **Brief Summary of Bill**

- Creates a new statutory lien that gives the grower of *Vinifera* grapes a first priority lien against the value of the delivered grapes, against the inventory of the receiving wine producer, and to the wine producer's accounts receivable.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 10 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Finn, Kretz, Lytton, Orcutt and Pettigrew.

**Staff:** Jason Callahan (786-7117).

#### **Background:**

In a bankruptcy proceeding, secured claims of creditors generally have priority over unsecured claims. That is, creditors with secured claims properly filed with the bankruptcy court are paid first, reducing the amount of the debtor's assets available for satisfying the claims of creditors with unsecured interests. A secured interest may be derived from: (1) a

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judicial lien obtained by judgment or other equitable process; (2) a lien created by statute; or (3) a lien created by a contractual agreement with the debtor.

Agricultural producers and commercial fishermen can claim a lien on agricultural products delivered to a processor. These liens are first priority statutory liens called "processor liens" and are for the contract price or the fair market value of the products delivered.

A processor lien attaches to the agricultural products or fish, the processor's inventory, and the accounts receivable. The lien attaches on the date of delivery and continues without filing until 20 days after payment is due and remains unpaid. The payment due date is deemed to be the date specified in the contract or 30 days after delivery.

A producer of grain, hay, or straw has a first priority statutory lien, called a "preparer lien," on these types of agricultural products from the date of delivery to a preparer until 20 days after payment is due and remains unpaid. The preparer lien is for the contract price or fair market value of the product. The preparer lien attaches to both the agricultural products and the preparer's accounts receivable.

A producer or commercial fisherman claiming a processor or preparer lien may file a statement with the Department of Licensing evidencing that the lien is due and remains unpaid. In addition to other required information, the statement must include a true statement of the amount due after deductions are made for credits and offsets. If the statement is filed within 20 days of the payment due date, the lien has priority over all other liens or security interests except liens for taxes or labor perfected before the processor or preparer lien is filed. If not filed within the 20-day period, the processor or preparer lien is subordinate to a previously attached lien and to a perfected security interest.

A processor lien terminates six months after the attachment of the lien or the filing of the statement. A preparer lien terminates 50 days after the date of attachment or filing. These dates do not apply if a suit has been filed to foreclose the lien according to statutory requirements.

*Vinifera* grapes form the basis of most wines produced around the world. Native to Europe, the *Vinifera* variety is now grown on all continents other than Antarctica and in all major wine growing regions.

### **Summary of Bill:**

A new statutory lien, known as the wine producer lien, is created. This lien gives the grower of *Vinifera* grapes a first priority lien against the value of the delivered grapes, the inventory of the receiving wine producer, and to the wine producer's accounts receivable. The wine producer's lien is established on the day that the grapes are delivered and continues, without the grape provider having to file a notice of lien, for 60 days or until the wine producer makes all due payments. The value of the lien equals either the agreed-to price in a contract, or in absence of a contract, the fair market value of the grapes delivered.

The grape producer may choose to file notice of the lien with the Department of Licensing (DOL). If notice is filed with the DOL within 60 days of grape delivery, then the lien

continues in priority over all other liens or security interests other than liens for taxes and labor. If the grape producer chooses not to file notice with the DOL, then after 60 days the wine producers lien becomes subordinate to any liens attached prior to the initiation of the 60-day wine producers lien and any other perfected security interest.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The current agricultural lien options are a problem for grape growers because their commodities are purchased in small amounts over a long harvest period. The wine market requires a variety of grape species ripened on the vine over a long period of time. Having more time to manage a lien alleviates the problems inherent in short lien timeliness and long delivery windows. Many grape growers are reporting slow payment or missing payments from wine producers.

The wine grape industry in the state is a strong driver of regional and national economic growth and a bright spot in Washington's agricultural economy.

(With concerns) Liens are a complicated process and the Legislature needs to ensure that the lending environment is not negatively affected by a change that benefits one economic actor over another. It's not clear what it will mean in the market if grape producers are favored over wine producers.

(Opposed) None.

**Persons Testifying:** (In support) Representative Haler, prime sponsor; and Mike Schwisow, Washington Association of Wine Grape Growers.

(With concerns) Denny Eliason, Washington Bankers Association.

**Persons Signed In To Testify But Not Testifying:** None.