

SENATE BILL REPORT

SB 6053

As of February 6, 2020

Title: An act relating to establishing wage liens.

Brief Description: Establishing wage liens.

Sponsors: Senators Conway, Keiser, Stanford, Kuderer and Saldaña.

Brief History:

Committee Activity: Labor & Commerce: 1/16/20, 1/28/20 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/05/20.

Brief Summary of First Substitute Bill

- Creates a statutory wage lien for claims on unpaid wages.
- Creates procedures for establishing, foreclosing, extinguishing, and prioritizing wage liens.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6053 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Walsh.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Various laws, such as the Minimum Wage Act and Wage Payment Act, establish standards for paying wages. It is unlawful for an employer to deprive employees of their wages. An aggrieved employee may file a wage complaint with the Department of Labor and Industries (L&I). L&I must investigate wage complaints and has authority to order citations and notices of assessment against employers.

An employee also has the option of bringing a civil action in court to enforce a wage claim against the employer. Depending on the circumstances, an employer and the employer's vice principal, officer, or agent may be liable for additional damages if the wage violation was willful and intentional.

A lien gives a lien claimant rights to another's property as a means to enforce a debt owed to the lien claimant. There are a variety of liens created by statute. One of the more common liens is the materialmen's lien or construction lien that may be used by persons furnishing labor, professional services, materials, or equipment for real property improvement. If the person is not paid for services or materials, the person may have a lien on the real property. Notice and recording requirements must be met. To foreclose on the lien, the person claiming the lien must file a civil action in court. Other lien statutes include, for example, crop liens, liens on timber and lumber, and liens on orchard land.

Summary of Bill (First Substitute): Wage Liens. A lien for wage claims is created. A wage claim is a claim for any unpaid wages, and any other compensation, interest, statutory damages, liquidated damages, or statutory penalties owed for a violation of state or federal wage laws. Any wage lien or right to a wage lien and the right of action to recover the lien is assignable.

Property Affected by Wage Liens. Property subject to a wage lien includes: (1) real and personal property in the state that is owned or acquired by the claimant's employer; (2) real and personal property in the state owned or acquired by the employer's vice principal, officer, or agent, if that person is liable because the wage violation was willful and intentional; and (3) real property located in the state that the wage claimant has maintained—limited to just wage claims for maintenance of the real property.

A wage lien that is not effective against any person is also ineffective against the heirs, successors, or assigns of such person. A wage lien does not apply to any property that is or would be subject to a lien by that person under the construction lien statutes. Washington's Uniform Commercial Code (UCC) on secured transactions does not apply to wage liens on personal property. In addition, certain limitations apply regarding wage liens against goods and accounts receivables subject to the UCC.

Wage liens do not affect the ownership of or title in personal or real property of the state or other public ownership.

Recording Requirements. Procedures are established for recording wage liens, including requirements to file a notice of wage lien with the appropriate entity. For wage liens on real property that has been commenced in any court, a notice must be filed within eight months in the county auditor's office where the property is located. The notice must include specified

information and the auditor must index the notice in a manner similar to the practice for filing a lis pendens notice.

The filing of the notice is constructive notice to a purchaser or encumbrancer of the property, and every subsequent purchaser or encumbrancer, and is bound by all proceedings taken after the filing of the notice. The court in which the action was commenced may, with notice and on a showing of good cause, order the notice canceled by the county auditor. Similar notices must also be filed with the county auditor's office for wage claims filed by an administrative agency of a local government or by L&I for claims filed with the agency.

For personal property, including vehicles or vessels, the notice must be filed with the Department of Licensing (DOL). In addition to filing a notice of wage lien, the claimant must provide notice to the employer. A wage lien must be filed within a period of two years from when the wages were first due. Statutory forms for notice are provided.

Foreclosure of a Wage Lien. Generally, an action to foreclose on a wage lien must be filed within eight months of the date the wage lien was recorded. A wage lien may be foreclosed either judicially, by bringing an action in the appropriate court, or administratively by L&I when the claimant has pursued a wage claim administratively. Judicial foreclosures must be filed in: (1) Superior court or federal district court for real property; (2) in district court for actions against personal property that do not exceed the court's jurisdictional limits; and (3) superior court for personal property when it exceeds the district court limits.

If a wage claimant receives a judgment on a wage claim from a federal, state, or municipal court, that is not authorized to adjudicate the foreclosure, a separate action to foreclose the lien must be filed within 90 days of the date of that court's judgment.

A claimant may foreclose on a wage lien if a final and binding citation and notice of assessment has been issued by L&I and the claimant has timely notified that the claimant will pursue foreclosure without L&I's assistance. The foreclosure affecting real property must be commenced in the county where the real property is located within 90 days of the date the department's citation and notice of assessment becomes final and binding.

A foreclosure action may be brought by the employee, L&I, an administrative agency of a local government, the United States Department of Labor, the Office of the Attorney General, or a representative of the employee such as a union representative. A lien claimant who prevails in a foreclosure action is entitled to reasonable attorneys' fees and costs.

In a judgment resulting from an action to foreclose on the wage lien, the court may order the sale at a sheriff's auction or transfer the title or possession of any property to the claimant. A writ of sale may be issued for any property for ten years after a judgment is issued. An action to foreclose a wage lien on a vehicle or vessel must comply with any other requirements of DOL regarding title transferring and taking ownership.

Extinguishing a Wage Lien. A wage lien is extinguished if an action for the underlying wage claim is not brought within eight months of recording the wage lien or if the required notice to the county auditor's office was not filed within eight months. A wage lien is also extinguished if the wage claim is dismissed with prejudice or upon payment and acceptance

of the wage claim. Requirements to file a release of an extinguished wage lien are provided, as are statutory forms to release the wage lien.

Priority. A wage lien recorded has priority to any security interest, lien, mortgage, deed of trust, or other encumbrance that attached to the property after or was unrecorded at the time such wage lien was recorded.

Frivolous Claims of Wage Liens. The owner of real or personal property subject to a recorded claim of a wage lien or a lender or another lien claimant, who believes the claim to be frivolous and made without reasonable cause, or is clearly excessive, may file motion of an order directing the claimant to appear before the court. The motion must state the grounds upon which relief is asked and must be supported by an affidavit. After a hearing is held the court must issue an order releasing the lien, reducing the lien, or verifying the validity of the lien. Costs and reasonable attorneys' fees are awarded to the prevailing party.

Release of Lien by Filing a Surety Bond. Any owner of real property subject to a recorded claim of a wage lien, or contractor, subcontractor, lender, or another lien claimant who disputes the correctness or validity of the claim of lien may record a surety bond, in a specified amount, to obtain the release of a lien on real property.

Miscellaneous. A contract between an employer and employee may not waive the right to a wage lien. A properly filed notice of wage lien constitutes notice to the spouse or domestic partner of the owner of the property and subjects all community property interest of both spouses or domestic partners to the wage lien. The wage lien provisions must be liberally construed to provide security for all persons intended to be protected by the provisions.

A wage lien account is created, in the custody of the state treasurer, for DOL to deposit filing fees for wage liens.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute): Clarifies the priority of wage liens and removes the super priority for liens against real property. Clarifies the process and timing for giving notice of a wage lien to the county auditor. Clarifies the process for judicially foreclosing on a wage lien and the process for handling claims filed with L&I or a local government agency. Provides a wage lien is extinguished if an action for the underlying wage claim is not brought within eight months—instead of one year. Provides the owner of real property may file a surety bond to release the real property from a wage claim.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2021.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: The

current system is really unfair to workers who lose their wages when an employer goes bankrupt, as wages are very low on the list of priority claims. The bill allows the employers to put a hold on assets to protect workers when their employer disappears, goes bankrupt, or never pays the wages owing. This gives them a fighting chance to collect their wages. It will be especially helpful for marginalized workers in jobs such as food service, landscapers, and janitorial services. Wage theft especially affects women people of color and immigrants and widens the already serious economic opportunities for these groups. Liens are not new and are used in other industries such as in the construction industry for 100 years. Wisconsin and Maryland have passed wage lien laws and have helped thousands of workers recover wages. L&I's collections division on had about a 45 percent success rate for the collection of wages. The success rate in Wisconsin is 80 percent with a wage lien law.

CON: We believe justice should be available to everyone at an affordable price. The bill states that third parties are not to be affected, however financial institutions who are unrelated to this dispute is looped in through the loans they have made on these properties. The bill will alter the longstanding principle of the UCC's notion of superior lien status. The bill puts lenders in an inferior position, making less capital available and increasing the cost of loans for businesses. We are concerned about how liens will be resolved for liens that don't have merit or have been resolved. The bill should follow the current processes for materialmen's liens, as the title companies have specific procedures how to resolve those claims. Both Wisconsin and Maryland are judicial foreclosure states and operate much differently than our nonjudicial foreclosure proceedings. Here a trustee resolves the claims, but it would be very difficult for them to track down the wage lien holders, especially as there is no time limit to try and locate them.

Persons Testifying (Labor & Commerce): PRO: Senator Steve Conway, Prime Sponsor; Andrea Schmitt, Columbia Legal Services; Sybill Hyppolite, Washington State Labor Council; Danielle Alvarado, Fair Work Center, Working Washington.

CON: Brad Tower, Community Bankers of Washington; Trent House, Washington Bankers Association; Bruce Beckett, Washington Retail Association; Sean Holland, Washington Land Title Association; Bob Battles, Association of Washington Business; Holly Chisa, United Trustees Association.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill is good policy and we have been working on it for eight years. Some wage claims have no recourse because the employer has gone out of business or reopened. Wage recovery is a priority and the cost of waiting for claims can be prohibitive. Wage theft is an equity issue.

CON: Based on L&I evidence, wage complaints are uncommon. In construction, the amount of wages paid greatly outnumbers the amount of wage claims. L&I has a wage and hour program to address these concerns. We are concerned that this bill expands into personal property.

Persons Testifying (Ways & Means): PRO: Senator Steve Conway, Prime Sponsor; Sybill Hyppolite, Washington State Labor Council; Andrea Schmitt, Columbia Legal Services.

CON: Tom Kwieciak, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.