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**SENATE BILL 5234**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Shewmake

Read first time 01/10/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to a lien claimant's responsibilities when filing  
2 mechanics' and materialmen's liens; amending RCW 60.04.091 and  
3 60.04.081; and adding a new section to chapter 60.04 RCW.

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

5 **Sec. 1.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to  
6 read as follows:

7 Every person claiming a lien under RCW 60.04.021 shall file for  
8 recording, in the county where the subject property is located, a  
9 notice of claim of lien not later than (~~ninety~~) 90 days after the  
10 person has ceased to furnish labor, professional services, materials,  
11 or equipment or the last date on which employee benefit contributions  
12 were due. The notice of claim of lien:

13 (1) Shall state in substance and effect:

14 (a) The name, phone number, and address of the claimant;

15 (b) The first and last date on which the labor, professional  
16 services, materials, or equipment was furnished or employee benefit  
17 contributions were due;

18 (c) The name of the person indebted to the claimant;

19 (d) The street address, legal description, or other description  
20 reasonably calculated to identify, for a person familiar with the  
21 area, the location of the real property to be charged with the lien;

1 (e) The name of the owner or reputed owner of the property, if  
2 known, and, if not known, that fact shall be stated; and

3 (f) The principal amount for which the lien is claimed((~~+~~));

4 (2) Shall include a concise statement of facts stating why the  
5 notice of claim of lien is being filed and include substantiating  
6 documentation;

7 (3) Shall be signed by the claimant or some person authorized to  
8 act on his or her behalf who shall affirmatively state they have read  
9 the notice of claim of lien and believe the notice of claim of lien  
10 to be true and correct under penalty of perjury, and shall be  
11 acknowledged pursuant to chapter 64.08 RCW. If the lien has been  
12 assigned, the name of the assignee shall be stated. Where an action  
13 to foreclose the lien has been commenced such notice of claim of lien  
14 may be amended as pleadings may be by order of the court insofar as  
15 the interests of third parties are not adversely affected by such  
16 amendment. A claim of lien substantially in the following form shall  
17 be sufficient:

18 CLAIM OF LIEN

19 . . . . ., claimant, vs . . . . ., name of person  
20 indebted to claimant:

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

- 24 1. NAME OF LIEN CLAIMANT: . . . . .  
25 TELEPHONE NUMBER: . . . . .  
26 ADDRESS: . . . . .

27 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,  
28 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT  
29 OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME  
30 DUE: . . . . .

31 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:  
32 . . . . .

33 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS  
34 CLAIMED (Street address, legal description or other  
35 information that will reasonably describe the property): . .  
36 . . . . .  
37 . . . . .

1 . . . . .

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

4 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;  
5 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN  
6 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS  
7 FURNISHED: . . . . .  
8 . . . . .

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

10 8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE  
11 HERE: . . . . .  
12 . . . . .

13 . . . . . , Claimant  
14 . . . . .  
15 . . . . .  
16 (Phone number, address, city, and  
17 state of claimant)

18 STATE OF WASHINGTON, COUNTY OF  
19 . . . . ., ss.

20 . . . . ., being sworn, says: I am the claimant (or attorney of  
21 the claimant, or administrator, representative, or agent of the  
22 trustees of an employee benefit plan) above named; I have read or  
23 heard the foregoing claim, read and know the contents thereof, and  
24 believe the same to be true and correct and that the claim of lien is  
25 not frivolous and is made with reasonable cause, and is not clearly  
26 excessive under penalty of perjury.

27 . . . . .  
28 Subscribed and sworn to before me this . . . . day of . . . . .  
29 . . . . .

30 The period provided for recording the claim of lien is a period  
31 of limitation and no action to foreclose a lien shall be maintained  
32 unless the claim of lien is filed for recording within the (~~ninety-~~  
33 ~~day~~) 90-day period stated. The lien claimant shall give a copy of  
34 the claim of lien to the owner or reputed owner by mailing it by  
35 certified or registered mail or by personal service within

1 ((fourteen)) 14 days of the time the claim of lien is filed for  
2 recording. Failure to do so results in a forfeiture of any right the  
3 claimant may have to attorneys' fees and costs against the owner  
4 under RCW 60.04.181.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 60.04  
6 RCW to read as follows:

7 (1)(a) If an owner requests clarification or additional  
8 information from the lien claimant regarding the statement of facts  
9 or documentation provided under RCW 60.04.091(2), the lien claimant  
10 shall respond to the owner within 14 days of the owner's request.

11 (b) The lien claimant may respond through the lien claimant's  
12 agent or attorney.

13 (2) The lien claimant's failure to respond within 14 days of the  
14 owner's request for clarification or additional information may be  
15 considered by a court when determining whether the lien is frivolous  
16 and made without reasonable cause under RCW 60.04.081.

17 **Sec. 3.** RCW 60.04.081 and 2006 c 192 s 3 are each amended to  
18 read as follows:

19 (1) Any owner of real property subject to a recorded claim of  
20 lien under this chapter, or contractor, subcontractor, lender, or  
21 lien claimant who believes the claim of lien to be frivolous and made  
22 without reasonable cause, or clearly excessive may apply by motion to  
23 the superior court for the county where the property, or some part  
24 thereof is located, for an order directing the lien claimant to  
25 appear before the court at a time no earlier than six nor later than  
26 ((fifteen)) 15 days following the date of service of the application  
27 and order on the lien claimant, and show cause, if any he or she has,  
28 why the relief requested should not be granted. The motion shall  
29 state the grounds upon which relief is asked, and shall be supported  
30 by the affidavit of the applicant or his or her attorney setting  
31 forth a concise statement of the facts upon which the motion is  
32 based.

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

1 (3) If no action to foreclose the lien claim has been filed, the  
2 clerk of the court shall assign a cause number to the application and  
3 obtain from the applicant a filing fee pursuant to RCW 36.18.016. If  
4 an action has been filed to foreclose the lien claim, the application  
5 shall be made a part of that action.

6 (4) (a) If, following a hearing on the matter, the court  
7 determines that the lien is frivolous and made without reasonable  
8 cause, or clearly excessive, the court shall issue an order releasing  
9 the lien if frivolous and made without reasonable cause, or reducing  
10 the lien if clearly excessive, and awarding costs and reasonable  
11 attorneys' fees to the applicant to be paid by the lien claimant. If  
12 the court determines that the lien is not frivolous and was made with  
13 reasonable cause, and is not clearly excessive, the court shall issue  
14 an order so stating and awarding costs and reasonable attorneys' fees  
15 to the lien claimant to be paid by the applicant.

16 (b) When determining whether a lien is frivolous and made without  
17 reasonable cause, the court may consider the lien claimant's failure  
18 to respond to an owner's request for clarification or additional  
19 information, as required under section 2 of this act.

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

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