

HOUSE BILL REPORT

SB 5630

As Passed House:

April 4, 1995

Title: An act relating to nonconsensual common law liens.

Brief Description: Limiting nonconsensual common law liens.

Sponsors: Senators Cantu and Haugen; by request of Attorney General.

Brief History:

Committee Activity:

Law & Justice: 3/17/95, 3/22/95 [DP].

Floor Activity:

Passed House: 4/4/95, 91-5.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 16 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

Minority Report: Without recommendation. Signed by 1 member: Representative Chappell.

Staff: Edie Adams (786-7180).

Background: A lien is a claim or encumbrance against property to secure the payment of a debt or obligation. There are three types of liens: (1) statutory; (2) court imposed; and (3) common law. Common law liens are only effective against personal property in the possession of the creditor.

Under current law, a nonconsensual common law lien is a lien that is recognized by the common law, is not imposed by a court, and is not agreed to by the parties. Nonconsensual common law liens against real property are not recognized or enforceable, and such liens against personal property are not recognized or enforceable unless the claimant has actual lawfully acquired possession or control of the property. No person has a duty to either accept or reject for filing any claim of nonconsensual common law lien.

Nonconsensual common law liens are sometimes filed against the real or personal property of elected officials and public employees by persons who do not agree with the manner in which the officials or employees are performing their duties. These liens may create a cloud on the owner's title and may inhibit the sale or other use of the property.

Summary of Bill: The nonconsensual common law lien statute is amended to clarify the invalidity of these liens and provide a means for removal of nonenforceable liens against a person's property.

A person whose property is subject to a common law lien may petition the superior court for an order directing the lienholder to appear before the court to determine the validity of the lien. If the lienholder does not appear, or if the court determines that the lien is invalid, the court shall strike the lien and award costs and attorneys' fees to the property owner.

Definitions of "state and local official or employee" and "federal official or employee" are added. Any claim of lien against a federal, state, or local official or employee based on the nonperformance of that official's or employee's duties is invalid, and need not be accepted for filing, unless accompanied by a court order. The attorney representing a federal, state, or local official or employee may file a notice of invalid lien if a lien based on that official's or employee's nonperformance of a duty has been accepted for filing.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is necessary to provide an easier, faster means of removing invalid liens against a person's property. These liens substantially disrupt a person's life, and they are not the proper way to contest a person's actions.

Testimony Against: Public officials have to be answerable to the public that elects them. This bill will take away the only means a person has to seek redress and control of their public officials. All public officials have a contract with the people of this state and if the official violates this contract, the people must have a means to hold the official accountable.

Testified: Narda Pierce, Attorney General's Office (pro); K.D. Rosenberg, citizen (pro); Gene Goosman, Equal Justice for All Coalition for Judicial Reform (con); Richard Ambler, citizen (con); Charles Moore, citizen (con); Charley Miller, sovereign citizen of Washington State, United States of America (con); and Bill

Wilson, citizen (con).