
HOUSE BILL 1561

State of Washington

54th Legislature

1995 Regular Session

By Representatives L. Thomas, Appelwick, Rust and Costa; by request of Attorney General

Read first time 01/31/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to nonconsensual common law liens; amending RCW
2 60.70.010 and 60.70.030; and adding new sections to chapter 60.70 RCW.

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

4 **Sec. 1.** RCW 60.70.010 and 1986 c 181 s 1 are each amended to read
5 as follows:

6 (1) It is the intent of this chapter to limit the circumstances in
7 which nonconsensual common law liens shall be recognized in this state.

8 (2) For the purposes of this chapter:

9 (a) "Lien" means an encumbrance on property as security for the
10 payment of a debt; ~~((and))~~

11 (b) "Nonconsensual common law lien" is a lien that:

12 (i) ~~Is ((recognized now or hereafter under the common law of this~~
13 ~~state)) not provided for by a specific statute;~~

14 (ii) Does not depend upon the consent of the owner of the property
15 affected for its existence; and

16 (iii) Is not a court-imposed equitable or constructive lien;

17 (c) "State or local official or employee" means an appointed or
18 elected official or any employee of a state agency, board, commission,
19 department in any branch of state government, or institution of higher

1 education; or of a school district, political subdivision, or unit of
2 local government of this state; and

3 (d) "Federal official or employee" means an employee of the
4 government and federal agency as defined for purposes of the federal
5 tort claims act, 28 U.S.C. Sec. 2671.

6 (3) Nothing in this chapter is intended to affect:

7 (a) Any lien provided for by statute;

8 (b) Any consensual liens now or hereafter recognized under the
9 common law of this state; or

10 (c) The ability of courts to impose equitable or constructive
11 liens.

12 NEW SECTION. Sec. 2. A new section is added to chapter 60.70 RCW
13 to read as follows:

14 (1) Any person whose real or personal property is subject to a
15 recorded claim of common law lien who believes the claim of lien is
16 invalid, may petition the superior court of the county in which the
17 claim of lien has been recorded for an order, which may be granted ex
18 parte, directing the lien claimant to appear before the court at a time
19 no earlier than six nor later than twenty-one days following the date
20 of service of the petition and order on the lien claimant, and show
21 cause, if any, why the claim of lien should not be stricken and other
22 relief provided for by this section should not be granted. The
23 petition shall state the grounds upon which relief is requested, and
24 shall be supported by the affidavit of the petitioner or his or her
25 attorney setting forth a concise statement of the facts upon which the
26 motion is based. The order shall be served upon the lien claimant by
27 personal service, or, where the court determines that service by mail
28 is likely to give actual notice, the court may order that service be
29 made by any person over eighteen years of age, who is competent to be
30 a witness, other than a party, by mailing copies of the petition and
31 order to the lien claimant at his or her last known address or any
32 other address determined by the court to be appropriate. Two copies
33 shall be mailed, postage prepaid, one by ordinary first class mail and
34 the other by a form of mail requiring a signed receipt showing when and
35 to whom it was delivered. The envelopes must bear the return address
36 of the sender.

37 (2) The order shall clearly state that if the lien claimant fails
38 to appear at the time and place noted, the claim of lien shall be

1 stricken and released and that the lien claimant shall be ordered to
2 pay the costs incurred by the petitioner, including reasonable
3 attorneys' fees.

4 (3) The clerk of the court shall assign a cause number to the
5 petition and obtain from the petitioner a filing fee of thirty-five
6 dollars.

7 (4) If, following a hearing on the matter, the court determines
8 that the claim of lien is invalid, the court shall issue an order
9 striking and releasing the claim of lien and awarding costs and
10 reasonable attorneys' fees to the petitioner to be paid by the lien
11 claimant. If the court determines that the claim of lien is valid, the
12 court shall issue an order so stating and may award costs and
13 reasonable attorneys' fees to the lien claimant to be paid by the
14 petitioner.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 60.70 RCW
16 to read as follows:

17 Any claim of lien against a federal, state, or local official or
18 employee based on the performance or nonperformance of that official's
19 or employee's duties shall be invalid unless accompanied by a specific
20 order from a court of competent jurisdiction authorizing the filing of
21 such lien or unless a specific statute authorizes the filing of such
22 lien.

23 **Sec. 4.** RCW 60.70.030 and 1986 c 181 s 3 are each amended to read
24 as follows:

25 (1) No person has a duty to accept for filing or recording any
26 claim of lien unless the lien is authorized by statute or imposed by a
27 court having jurisdiction over property affected by the lien, nor does
28 any person have a duty to reject for filing or recording any claim of
29 lien, except as provided in subsection (2) of this section.

30 (2) No person shall be obligated to accept for filing any claim of
31 lien against a federal, state, or local official or employee based on
32 the performance or nonperformance of that official's or employee's
33 duties unless accompanied by a specific order from a court of competent
34 jurisdiction authorizing the filing of such lien.

35 (3) If a claim of lien as described in subsection (2) of this
36 section has been accepted for filing, the recording officer shall
37 accept for filing a notice of invalid lien signed and submitted by the

1 assistant United States attorney representing the federal agency of
2 which the individual is an official or employee; the assistant attorney
3 general representing the state agency, board, commission, department,
4 or institution of higher education of which the individual is an
5 official or employee; or the attorney representing the school district,
6 political subdivision, or unit of local government of this state of
7 which the individual is an official or employee. A copy of the notice
8 of invalid lien shall be mailed by the attorney to the person who filed
9 the claim of lien at his or her last known address. No recording
10 officer or county shall be liable for the acceptance for filing of a
11 claim of lien as described in subsection (2) of this section, nor for
12 the acceptance for filing of a notice of invalid lien pursuant to this
13 subsection.

--- END ---