

HOUSE BILL REPORT

HB 1547

As Reported by House Committee On:

Commerce & Labor

Title: An act relating to limiting lien authority against a residential homeowner.

Brief Description: Limiting lien authority against a residential homeowner.

Sponsors: Representatives Conway and Wood; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Commerce & Labor: 2/19/03, 3/5/03 [DPA].

Brief Summary of Amended Bill

- Changes the date after which notice of the right to claim a lien on certain residential construction projects protects that right.
- Limits the amounts from which subcontractors and suppliers on certain residential construction projects may satisfy liens.
- Limits the amounts that subcontractors and suppliers on certain residential construction projects may recover.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Jill Reinmuth (786-7134).

Background:

Lien Rights

Persons who furnish labor or materials for residential construction projects have lien rights that are subject to certain requirements.

State law requires subcontractors and suppliers who do not contract directly with an owner to give the owner notice of the right to claim a lien. The notice protects the right to claim the lien for services, materials, or equipment supplied after a specific date. For the new construction of a single-family residence, the date is 10 days before the notice was mailed or delivered to the owner.

State law limits the amount from which subcontractors and suppliers may satisfy certain liens. For the repair, alteration, or remodel of a single-family residence or appurtenant garage, it is limited to the amount not yet paid to the prime contractor at the time the notice is received.

State law does not otherwise limit the amount that subcontractors and suppliers may recover.

Moneys Held in Trust

There is no requirement that funds paid for a construction project to the person in charge of the project be used to pay for the materials or labor used in the project.

Summary of Amended Bill:

Requirements applicable to the lien rights of persons who furnish labor or materials for residential construction projects are modified. Provisions requiring that certain moneys be held in trust by contractors are added.

The date after which a notice of the right to claim a lien protects that right is changed. Subcontractors and suppliers who give notice protect the right to claim a lien for services, materials, or equipment supplied after the notice was mailed or delivered. This change to the lien notice requirement is also made applicable to: (1) the repair, alteration, or remodel of a single-family residence; and (2) the construction, repair, alteration, or remodel of an appurtenant garage.

The limit on the amount from which a lien may be satisfied is changed. Subcontractors and suppliers may satisfy liens only from the actual amount designated in the contract for the services, materials, or equipment supplied upon which the lien is based and not yet paid to the prime contractor by the owner at the time the owner receives the notice of the right to claim the lien. The limit is also made applicable to the new construction of a

single-family residence.

The amount that may be recovered is limited. Subcontractors and suppliers may recover only the lesser of: (1) the full amount of the claim; or (2) 10 percent of the actual amounts designed in the contract for the services, materials, or equipment. The limit applies to the construction, repair, alteration, or remodel of a single-family residence or appurtenant garage.

The form of the notice of right to claim a lien is modified accordingly.

Definitions of "commercial property" and "residential homeowner" are added.

Moneys Held in Trust

Money released to or obtained by an owner, developer, prime contractor, subcontractor, or other person in charge of certain construction projects are held in trust for the benefit of persons making the payment and persons who provided the labor or furnished materials, equipment, or professional services in connection with the project. Separate accounting of the funds is not required, and commingling of the trust funds with other money is not a violation.

The use of trust money for any purpose other than to pay the persons for whom it is held in trust is prima facie evidence in a civil law suit of a trust violation and an intent to defraud. The mishandling of these funds is a violation of the Consumer Protection Act. It is against public policy for any party to require another party to waive these requirements.

These provisions apply only to contractors entered into on or after September 1, 2003, relating to the new construction, repair, alteration, or remodel of a single-family residence or appurtenant garage for a residential homeowner.

Amended Bill Compared to Original Bill:

The amended bill includes the provisions relating to moneys held in trust by contractors and others.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: In 2001 SSB 5101 addressed a lot of concerns, but one part of that bill did not pass. Between 25 percent and 30 percent of the complaints are about liens. This bill makes a simple and fair change to current law. This is a reasonable, measured step. Subcontractors and suppliers cannot lien for labor and materials provided in the 10 days before they give notice of their right to lien.

The subcontractor's or supplier's cost to put a lien on property is very little. The consumer's cost to remove that line is very high. The consumer has to hire an attorney and may face foreclosure. If the builder has filed bankruptcy, the consumer will be forced to pay twice. The current lien laws leave the consumer in a devastating position. They are put in this predicament by sophisticated persons, especially suppliers.

This bill adds another dimension to existing law. It will not slow down building. The trust fund obligation would burden all builders rather than the small number that are the problem.

Testimony Against: Some builders do not live up to their responsibilities to suppliers. Then suppliers must use liens to ensure that they get paid. This bill does not solve the problem. Instead, it creates a new class of victims.

This bill will cause construction delays and increased costs. It will make building more complex. The subcontractors and suppliers would all have to change the way they do business. They would all have to make sure notice of their intent to lien is in the mail on the same day or before they provide labor or supplies. Yet only a small portion of the prime contractors cause this problem.

In every fraud, consumers pay twice. The key is to better educate builders and homeowners about how to protect themselves. One alternative is to impose a trust fund obligation on the prime contractor and how they handle the consumer's money. Money received by contractors from the bank or the consumer would be held in trust and would be subject to fiduciary duties. Another alternative is for consumers to request lien releases from the prime contractor just as they obtain certificates of title when they buy a car.

This is a problem with consumers who aren't diligent and contractors who are ruthlessly dishonest. Some of the consumers had notice that subcontractors and suppliers had not been paid, but they paid the prime contractor anyway. Other consumers paid cash.

Testified: (In support) Patrick Woods, Department of Labor and Industries; Elizabeth Morse; Mel Sorenson, Contractors Bonding and Insurance Company; and Bob Camp, Building Industry Association of Washington.

(Opposed) Bob Gee, Western Building Materials Association; Lois Baldwin, Lumberman's Building Centers; Kerry Lawrence; Gary Smith, Independent Business Association; and Dana Lantz and Sheila Bayley, National Association of Credit

Management and Construction Industry Task Force.