

# HOUSE BILL REPORT

## HB 1486

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### As Reported by House Committee On: Appropriations

**Title:** An act relating to establishing wage liens.

**Brief Description:** Creating the Washington wage recovery act.

**Sponsors:** Representatives Gregerson, Ryu, Peterson, Orwall, Sells, Stonier, Dolan, Frame, Chapman, Goodman, Macri, Cody, Appleton, Tarleton, Ormsby, Bergquist, Hudgins, Doglio and Stanford.

#### **Brief History:**

##### **Committee Activity:**

Labor and Workplace Standards: 1/23/17, 1/31/17 [DPS];

Appropriations: 2/16/17, 2/24/17 [DPS(LAWS)], 1/17/18, 1/18/18 [DP2S].

#### **Brief Summary of Second Substitute Bill**

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

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 17 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

**Staff:** Jordan Clarke (786-7123).

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*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 the payment of wages. It is unlawful for an employer to deprive an employee of his or her wages. An aggrieved employee may file a wage complaint with the Department of Labor and Industries (Department). The Department 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 his or her 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 the improvement of real property. 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.

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## **Summary of Second Substitute Bill:**

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.

### Property Affected by Wage Liens.

Property subject to a wage lien includes:

- real and personal property in the state that is owned or acquired by the claimant's employer;
- real and personal property in the state owned or acquired by the employer's vice principal, officer, or agent (if he or she is liable because the wage violation was willful and intentional); and
- real property in the state that the wage claimant has maintained (for wage claims for maintenance of the real property).

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 on secured transactions (UCC) 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 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 and vehicles or vessels, the notice must be filed in the county auditor's office where the property is located. For personal property other than 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 may be filed at any time before the expiration of the statute of limitations on the wage claim. Statutory forms for notice are provided, though the DOL may create its own wage lien forms, by rule, to implement the notice and filing provisions that apply to the DOL.

### Foreclosure of a Wage Lien.

Generally, an action to foreclose on a wage lien must be filed within one year of the date the wage lien was recorded. A wage lien may be foreclosed by bringing an action: (1) in district court in the county in which the personal property is located if the value of the claim does not exceed the district court's jurisdiction; or (2) in the superior court in the county in which the real property is located or if the value of the claim exceeds the jurisdictional limit of district court. In an action to foreclose a wage lien on a vessel or vehicle, the claimant must comply with requirements of the DOL regarding transferring title.

A foreclosure action may be brought by the employee, the Department, 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.

If an employee pursues a wage claim in an administrative proceeding with the Department, a final and binding citation from the Department establishes the amount owed for purposes of foreclosing the lien only if the Department brings the foreclosure action on behalf of the employee.

### Extinguishing a Wage Lien.

A wage lien is extinguished if an action for the underlying wage claim is not brought within one year of filing the wage lien. A wage lien is also extinguished if the wage claim is dismissed with prejudice or upon payment and acceptance of the wage claim. Requirements, such as notice provisions, to file a release of an extinguished wage lien are provided. Statutory forms to release the wage lien are provided.

### Priority.

With certain exceptions, wage liens have priority over all other debts, judgments, decrees, liens, or security interests against the property subject to the wage lien, whether or not the other debts originated or were perfected before or after the wage lien. For security interests held by a financial institution, a wage lien has priority only up to 4 percent of the financial institution's security interest in the property that is encumbered by the wage lien.

A wage lien does not have priority over tax liens originating before the wage lien and liens or income withholding for child support obligations.

Other specified statutory liens dealing with money owed to employees, such as construction liens, crop liens, and timber liens, rank in priority according to the time the liens were filed.

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.

**Second Substitute Bill Compared to Original Bill:**

The DOL may create its own wage lien forms, by rule, to implement the notice and filing provisions that apply to the DOL under the bill. The effective date is delayed to January 1, 2019.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available. New fiscal note requested on January 23, 2018.

**Effective Date of Second Substitute Bill:** The bill takes effect on January 1, 2019.

**Staff Summary of Public Testimony:**

(In support) Right now, the system is missing a critical link for low-wage workers to allow them to collect after they win their wage lien claims against their employers. There have been a number of examples of workers who bring successful wage claims only to find that there is no money to collect, because the businesses have disappeared, hidden assets, shut down, or reappeared under new names. Workers shouldn't have to spend time fighting for their wages only to find that the employer has disposed of all its assets while the claim has proceeded. Washington has a system for construction workers to put holds on assets up front, but this system does not apply to other industries. The bill would give workers in every industry the same power to preserve employers' assets. The bill requires minimal funding and would put wages in low-income workers' pockets, which is good for tax revenue, local economies, and reduces reliance on the state for basic needs.

(Opposed) There are many factors that go into business lending, and one of those factors is risk. There are long established provisions within the UCC that seek to provide certainty in commercial transactions in order to lower risk. One of the longest standing principles is a superior lien on mortgages and real property and loans on personal property, which helps ensure that business loans are affordable and available to all businesses. This bill would change the process around lien rights to place wage liens in a superior position to those of financial institutions. For loans currently enforced, the bill would mean that financial

institutions are placed after the fact in an inferior loan position due to disputes beyond the institution's control. For future business loans, the bill would add significant risk in the lending equation and affect the affordability and availability of business capital.

**Persons Testifying:** (In support) Andrea Schmitt, Columbia Legal Services.

(Opposed) Trent House, Washington Bankers Association.

**Persons Signed In To Testify But Not Testifying:** None.