

HOUSE BILL REPORT

HB 1514

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to establishing wage liens.

Brief Description: Establishing wage liens.

Sponsors: Representatives Gregerson, Hansen, Stonier, Davis and Tharinger.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/7/19, 2/18/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DP2S(w/o sub LAWS)].

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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Trudes Tango (786-7384).

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 employees of their wages. An aggrieved employee may file a wage complaint with the Department of Labor and

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.

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 a 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.

Summary of 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: (1) real and personal property in the state that is owned or acquired by the claimant's employer; (2) real and personal property in the state owned or acquired by the employer's vice principal, officer, or agent (if that person is liable because the wage violation was willful and intentional); and (3) 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 (UCC) on secured transactions 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 of 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. 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.

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 either judicially, by bringing an action in the appropriate court, or administratively by the Department when the claimant has pursued a wage claim administratively. In addition, a claimant may foreclose on a wage lien if a final and binding citation and notice of assessment has been issued by the Department and the claimant has timely notified the Department that the claimant will pursue foreclosure without the Department's assistance.

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.

Extinguishing a Wage Lien.

A wage lien is extinguished if an action for the underlying wage claim is not brought within one year of recording 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 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.

A wage lien account is created, in the custody of the State Treasurer, for the Department of Licensing to deposit filing fees for wage liens.

Substitute Bill Compared to Original Bill:

The substitute bill allows a lien claimant to foreclose on a wage lien if a final and binding citation and notice of assessment has been issued by the Department and the claimant has timely notified the Department that the claimant will pursue foreclosure without the Department's assistance. The substitute bill also creates a wage lien account, in the custody of the State Treasurer, for the Department of Licensing to deposit filing fees for wage liens, and requires that moneys from the wage lien account may only be used to administer wage lien filings.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony:

(In support) Construction liens have been used for many years. This bill creates wage liens to align with construction liens. Employees need more tools to help in the process of recovering wages owed to them. Wage liens would provide all workers with the ability to put a hold on assets so there is something to actually collect on once the wage claim is won. Construction liens do not apply to most industries. The Department's rate of success in collecting wages once a wage claim has gone through the entire process is below 50 percent. In Wisconsin where there are wage liens, collection of unpaid wages is close to 80 percent. The current system for recovering wages does not set workers up for success, especially for vulnerable populations. Collecting against the business takes years, and often the business will close or restructure.

(Opposed) The UCC is designed to provide certainty for businesses regarding lien statuses. The most important factor financial institutions take into account when lending is risk. This bill adds significant risk to lending. It puts wage liens in front of security interests held by financial institutions. The cap on 4 percent of a financial institution's security interest still allows for multiple claims against the security interest. This bill allows a person to lock up an employer's property for a long time. Small business owners will be negatively impacted. There are often good faith disputes about what wages are owed. Filing claims with the Department is how to handle wage claims, rather than hiring attorneys and going through the lien process.

Persons Testifying: (In support) Representative Gregerson, prime sponsor; Eligio Benito Mendez and Colleen Fontana, Casa Latina; and Andrea Schmitt, Colombia Legal Services.

(Opposed) Trent House, Washington Bankers Association; Tom Kwieciak, Building Industry Association of Washington; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Steele, Sutherland and Ybarra.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

The Appropriations Committee recommended the following changes:

- requiring that the owner of a property must be joined as a party in a judicial foreclosure action, and allowing other parties with an interest in the same property to apply to the court to join the action;
- making changes to conform the filing of wage liens with existing filing requirements for county auditors; and
- adding a null and void clause.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 5, 2019.

Effective Date of Second Substitute Bill: The bill takes effect on January 1, 2020. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is a modest cost to the state, especially considering the estimated revenue to the Department of Licensing. Those costs are worth giving workers a chance to collect the wages they are owed. This bill fills a gap in the current system for addressing wage theft. Workers will often bring successful wage complaints and be unable to collect due to businesses hiding assets or reopening under a different name. The system for construction workers, who can put holds on assets up front, is working well. However, that system does not apply to most industries. Wisconsin has a wage lien system which gives wage liens priority for collection. Giving wage liens priority is important because workers are the most vulnerable to falling into poverty if they cannot collect their wages.

(Opposed) The bill would change long-standing processes around lien rights by giving wage liens greater priority than liens of financial institutions. Lending would likely become less available and more expensive for businesses as an unintended consequence. There are already processes in place for individuals to appeal to the state to collect debts which they are

owed, including unpaid wages. This bill could give individuals the ability to claim property from lenders who were not party to the transactions between employers and employees. There are also concerns about the provisions allowing for the filing of wage liens for up to six years after services are provided if there is a written contract, since that could provide a risk to land title insurers who did not previously know about the potential lien.

The legal theory underpinning liens assumes that workers can lay a claim to property which they have improved through their labor, not unrelated pieces of property owned by their employer. In the construction industry, wage disputes are common and often involve a relatively small amount of money. It would be unfortunate to tie up an individual's home as a result of a dispute over a small amount of wages owed. The state already funds the Wage and Hour program at the Department of Labor and Industries to address unpaid wage complaints in a simple way.

Trustees have concerns about the processes provided for extinguishing wage liens. Wage liens would only be extinguished after one year, if the lien is paid, or if the lien is dismissed in court. The bill provides that wage liens have priority over liens of financial institutions only up to 4 percent of the financial institution's security interest. If wage liens are high enough, there may not be enough to meet the 4 percent. Trustees are concerned that if the wage lien is not fully paid, they will be stuck with the debt and the lien will not be extinguished unless they go to court.

The bill provides an exemption for property taxes collected by the Department of Revenue but does not provide exemptions for property taxes or other assessments collected by local governments.

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

(Opposed) Trent House, Washington Bankers Association; Brad Tower, Community Bankers of Washington; Tom Kwieciak, Building Industry Association of Washington; Holly Chisa, United Trustees Association; and Stuart Halsan, Washington Land Title Association.

Persons Signed In To Testify But Not Testifying: None.