

FINAL BILL REPORT

ESSB 6270

C 73 L 04

Synopsis as Enacted

Brief Description: Revising provisions relating to attorneys' liens.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Esser, Haugen, Sheahan and Kline).

Senate Committee on Judiciary

House Committee on Judiciary

Background: In Washington, prevailing plaintiffs in civil rights employment cases must pay federal income tax on the entire amount of the settlement or judgment, including any amounts awarded for attorney's fees. The attorney also pays federal income taxes on the same fees when the attorney receives them. The Court of Appeals of Washington found that adverse tax consequences caused by including attorney's fees as taxable income to the plaintiff, in an employment discrimination case, were part of the actual damages to be awarded in the case. *Blaney v. Ass'n of Workers*, 114 Wn.App. 80, 55 P.3d 1208 (2002).

The United States Court of Appeals for the Ninth Circuit found that the question of whether attorney's fees paid under a contingent fee agreement are includable in the plaintiff's gross income is answered by a two part test: (1) how state law defines the attorney's rights in the action and (2) how federal tax law operates. The rationale of the test is that a party cannot escape tax liability through the assignment of not yet received income to another person. Washington attorneys have liens for compensation on judgments to the extent of the value of their services. The priority of an attorney's lien is determined at the time it is claimed. Liens, against the same judgment, that are filed prior to the time the attorney files have priority over the attorney's lien.

Summary: An attorney has a lien upon the action and its proceeds to the extent of the value of the services performed by the attorney in that action. "Proceeds" are limited to monetary sums received in the action, so the lien is not enforceable against real or personal property. The attorney's lien is superior to all other liens upon the judgment, subject to the rights of secured parties under the Uniform Commercial Code. The Legislature expresses its purpose of making attorney's fees taxable solely to the attorney and its intention that the court will apply the statute retroactively. Child support liens are exempt from the statute.

Votes on Final Passage:

Senate 47 1

House 87 9

Effective: June 10, 2004