

# SENATE BILL REPORT

## ESSB 6270

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As Passed Senate, February 13, 2004

**Title:** An act relating to attorneys' liens.

**Brief Description:** Revising provisions relating to attorneys' liens.

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

**Brief History:**

**Committee Activity:** Judiciary: 1/21/04, 1/22/04 [DPS, DNP].

Passed Senate: 2/13/04, 47-1.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 6270 be substituted therefor, and the substitute bill do pass.

Signed by Senators Esser, Vice Chair; Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

**Minority Report:** Do not pass.

Signed by Senator Brandland.

**Staff:** Aldo Melchiori (786-7439)

**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. The court found that Oregon statutes conferred a property right in the court action that could not be extinguished except by payment of the attorney and that the attorney's lien was superior to all other liens. Because of these unique features in Oregon law, the court found that attorney fees were not includable in the plaintiff's gross income. *Banaitis v. Commissioner of Internal Revenue*, 340 F.3d 1074 (2003).

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 of Bill:** 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill tracks Oregon law which has been found sufficient to prevent the double taxation of the attorney's fee portion of judgments. Current law drives up the cost of settlement without any benefit to either of the parties.

**Testimony Against:** None.

**Testified:** PRO: Vincent Lombardi, attorney; David Strubaugh, attorney.