

HOUSE BILL REPORT

ESSB 5355

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to establishing wage liens.

Brief Description: Establishing wage liens.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senator Conway).

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/23/21, 3/26/21 [DP].

Brief Summary of Engrossed 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: Do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

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

Staff: Trudes Tango (786-7384).

Background:

Various laws, such as the Minimum Wage Act and Wage Payment Act, establish standards

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for the payment of wages and make it unlawful for an employer to deprive employees of their wages. An employee may file a wage complaint with the Department of Labor and Industries (Department) for certain wage claims. The Department must investigate wage complaints and may order citations and notices of assessment against employers. An employee may also bring a civil action in court to enforce certain wage claims against an employer. Depending on the circumstances, the employer's vice principal, officer, or agent may be personally 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 common lien is the materialmen's lien (often referred to as mechanics' or construction lien), which may be used by persons providing 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 put 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 Engrossed Substitute Bill:

A lien for wage claims is established. A wage claim is a claim for any unpaid wages owed to the claimant as an employee of an employer, including any compensation, interest, statutory damages, liquidated damages, or attorneys' fees and costs, or statutory penalties, that may be owed based on a violation of any local, state, or federal wage law. It does not include vacation, severance pay, contributions to an employee benefit plan, or paid leave that is not statutorily mandated. A lien claimant may assign the right to a wage lien to another person or entity.

A "highly compensated employee" may not establish a wage lien. Highly compensated employee means an employee who was a 5 percent owner of the business at which the employee is employed during the current or preceding year, or who received compensation from the employer in excess of the indexed compensation established by the United States Department of the Treasury (\$130,000 in 2020).

Property Subject to Wage Liens.

A wage lien may be placed on the following property owned or subsequently acquired by the employer: (1) real property in the state; (2) goods and tangible chattel paper in the state; and (3) accounts and payment intangibles. In addition, a person may have a lien on any real property in the state that the wage claimant has maintained for wage claims for maintaining that property. "Maintain" includes to maintain, clean, manage, improve, protect, repair, monitor, or restore real property at the instance of the owner or tenant or of any person acting by the owner's or tenant's authority.

A person does not have a wage lien under these provisions for any wage claim that is or would be subject to a mechanics' lien by that same person. Certain limitations apply regarding wage liens against property subject to the Uniform Commercial Code. The state's or other public entity's ownership or title in property is not affected.

Recording Requirements.

Procedures are established for recording wage liens on real and personal property, including requirements to file notices of wage liens with the appropriate entities, and providing notice to the employer and property owner. To establish a wage lien on real property, a notice and acknowledgment must be filed in the county where the property is located. For personal property, certain specified filings must be filed with the Department of Licensing. A wage lien must be filed within two years from when the wages were first owed.

Foreclosure of Wage Liens.

Generally, an action to foreclose on a wage lien must be commenced no more than eight months after the date the wage lien was recorded. A wage lien may be foreclosed judicially, by bringing an action in the appropriate court, or administratively by the Department, when the claimant has pursued a wage claim administratively.

If a wage claimant receives a judgment on a wage claim from a federal, state, or municipal court not authorized to adjudicate the foreclosure, a separate action to foreclose the lien must be filed within 90 days of the date of that court's judgment. Such a judgment does not revive an extinguished lien. If a wage claimant receives a judgment on a wage claim from a federal, state, or municipal court, the judgment and any applicable post-judgment interest establishes the amount owed for the purposes of foreclosure.

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 they will pursue foreclosure without the Department's assistance. The foreclosure affecting real property must be commenced in the county where the real property is located within 90 days of the date the Department's citation and notice of assessment becomes final and binding.

A foreclosure action may be brought by the claimant, the Department, an administrative agency of a local government, the Department of Labor, the Attorney General's Office, or a representative of the employee such as a collective bargaining representative.

Extinguishing Wage Liens.

A wage lien is extinguished if an action for the underlying wage claim is not brought within eight months of recording the wage lien, or if the required notice to the county auditor's office is not filed within eight months. A wage lien is also extinguished if the wage claim is dismissed with prejudice, payment of the wage claim has been accepted, or upon proper recording or notice of a surety bond in lieu of lien. The lien claimant must release the lien

in writing within 15 days of the wage lien being extinguished. Penalties apply for failing to release a wage lien.

Priority of Wage Liens.

Provisions governing priority of wage liens are created. In general, priority among wage liens is determined by date of recording. Wage liens on real property have priority as to any security interest, lien, mortgage, or deed of trust that attached to the property after the wage lien was recorded. Provisions are created to address bona fide purchasers and security interests in personal property subject to a wage lien.

Other.

An owner of property subject to a wage lien or a lender or other lien claimant, may post a bond to guarantee payment of any judgment or binding administrative assessment on the lien. Procedures are established regarding recording a bond, notifying the lien claimant, and releasing the lien upon notification of a bond.

A person may bring an action in court when a wage lien is frivolous, made without reasonable cause, or clearly excessive, and may recover attorneys' fees and costs.

Right to a wage lien may not be waived in an employment contract.

Community property interests are subject to wage liens.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony:

(In support) It is difficult for workers who experience wage theft to actually collect the money they are owed. They get exhausted and just move on. This is not about the Department's process; it is about the ability to collect what is owed once there is a judgment. Liens are a tool that have been around for a long time in the construction industry and there has not been a wave of frivolous liens filed in that industry. Making enforcement of wage claims more efficient is better for workers, for agencies, and for those businesses who do follow the law. It was a major concession for advocates when the Senate removed the provision allowing liens against the property of the employer's officers. A lien is a notice, not a seizure.

(Opposed) There are legitimate disputes about wages. Allowing pre-judgment liens would encumber an employer's property and prevent financial transactions. Pre-judgment liens

allow too much opportunity for workers to extort employers. The definitions in the bill are too broad. It is still unclear whether a lien can be put on a person's personal property. The Department already has a process for collection including filing a lien on property. Transient employees will make it hard for an employer to vacate a lien. This will hurt many small businesses and spouses who will not know that liens are placed on their property. There are not enough safeguards in the bill.

Persons Testifying: (In support) Sybill Hyppolite, Washington State Labor Council; Danielle Alvarado, and Colleen Fontana, Fair Work Center; Andrea Schmitt, Columbia Legal Services; and Beau Haynes, Washington Wage Claim Project.

(Opposed) Rose Gundersen, Washington Retail Association; Carolyn Logue, Washington Food Industry Association; Samantha Louderback, Washington Hospitality Association; Jim King, Independent Business Association; and Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.