

~~SUBSTITUTE SENATE BILL 6053~~  
DRAFT WAGE RECOVERY ACT FOR 2021-22 BIENNIUM

**State of Washington          66th Legislature          2020 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Conway, Keiser, Stanford, Kuderer, and Saldaña)

READ FIRST TIME 01/29/20.

AN ACT Relating to establishing wage liens; amending RCW 36.18.016 and 49.48.086; adding new sections to chapter 43.24 RCW; adding a new chapter to Title 60 RCW; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION.    **Sec. 1.** This act may be known and cited as the Washington wage recovery act.

NEW SECTION.    **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of labor and industries.
- (2) "Director" means the director of labor and industries.
- (3) "Employ" includes permit to work.
- (4) "Employee" includes any individual currently or formerly employed by an employer.
- (5) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Highly Compensated Employee" means any employee who was a 5-percent owner of the business at which he or she is employed

**Commented [SS1]:** I am not sure that this is correct, given that the act adds new sections to existing chapters.

**Commented [AS2]:** I think it refers to the session law, but agree. We can ask the staff attys at the legislature how to deal with this.

**Commented [AS3]:** This comes from 26 USC 414(q). it's the definition that applies to 401K contribution limits.

during the current year or preceding year, or who received compensation from the employer in the preceding year in excess of the indexed compensation pursuant to 26 U.S.C. sec. 414(d).

Commented [AS4]: This is \$130K in 2020.

(76) "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.

(87) "Wage claim" means a claim for any unpaid wages owed to the claimant as an employee of an employer, as well as any other compensation, interest, statutory damages, liquidated damages, attorney's fees and costs, or statutory penalties that may be owed for violation of a local, state or federal wage law, including but not limited to chapters 39.12, 49.12, 49.46, 49.48, and 49.52 RCW, and the fair labor standards act, 29 U.S.C. Sec. 201 et seq. A wage claim does not include vacation or severance pay, contributions to an employee benefit plan, or paid leave except paid leave that is statutorily mandated.

(98) The definitions in RCW 62A.9A-102 apply to the following terms used in this Act:

- (a) "account";
- (b) "chattel paper";
- (c) "goods";
- (d) "instrument"; and
- (e) "payment intangibles".

NEW SECTION. Sec. 3. (1) (a) An employeeA person, except a highly compensated employee, who complies with Section 4 has a wage lien for wage claims on:

(i) Any goods and tangible chattel paper in the state of Washington, ~~accounts, and payment intangibles~~ that are owned or are subsequently acquired by the ~~employee~~person's employer;

(ii) Accounts and payment intangibles that are owned or subsequently acquired by the employee's employer;

(iii) Goods and tangible chattel paper in the state of Washington that are owned or are subsequently acquired by the employee's employer~~Any goods and tangible chattel paper in the state of Washington, accounts, and payment intangibles that are owned or are subsequently acquired by~~ an officer, vice principal, or agent of the employer who is personally liable for a wage claim under RCW 49.52.070;

~~(iv) and~~ Accounts and payment intangibles that are owned or subsequently acquired by an officer, vice principal, or agent of the employer who is personally liable for a wage claim under RCW 49.52.070; and

~~(vii)~~ Any real property in the state of Washington that the wage claimant has maintained, for all wage claims for maintenance of that property.

(b) A person does not have a wage lien under this chapter on any property that is or would be subject to a lien by that person under chapter 60.04 RCW.

(c) A wage lien is effective against the estate of the employer.

(5) This chapter does not affect the ownership or title in personal or real property of the state or other public entity or public ownership, nor does any lien attach to the fee simple title of the state or other public ownership.

NEW SECTION. **Sec. 4.** (1) To establish a wage lien on eligible real property pursuant to Section 3, the lien claimant must:

(a) File for recording a notice of claim of wage lien in the county where the property is located that includes:

(i) The name, telephone number, and address of the lien claimant and, if the wage lien has been assigned, the name of the person who assigned the lien;

(ii) The name of the employer;

(iii) The street address, legal description, and parcel number of the real property to be charged with the wage lien;

(iv) The name of the owner or reputed owner of the property, if known, and if not known, a statement saying the name of the owner is not known;

(v) The amount for which the wage lien is claimed;

(vi) The signature of the lien claimant or of a person authorized to act on the claimant's behalf; and

(vii) An acknowledgment and certification as set forth in subsection (4) of this section;

(b) Pay a filing fee to the county auditor as required by RCW 36.18.010; and

(c) Mail a copy of the notice filed under this subsection (1) to the employer's registered agent, the employer's registered business address, or the address where the employer resides, and to the property owner if known and if the employer is not the property owner, by certified mail with return receipt requested.

(2) Except as provided in subsection (3) of this section, to establish a wage lien on eligible personal property pursuant to Section 3, the lien claimant must:

(a) For an employer located in Washington, file for recording with the department of licensing a financing statement that satisfies the requirements of part 5 of chapter 62A.9A RCW; of the type used pursuant to chapter 62A.9A RCW with the department of licensing, for an employer located in Washington,; or for an employer located outside Washington, file such a financing statement with the office state agency that accepts such filings designated by section 9-501(a) (2) of the commercial code of for the state in which the employer is located. For purposes of this filing:

(i) "debtor" means the owner of the property encumbered by the wage lien.

(ii) a description of the collateral covered by the lien that states that the wage lien covers all goods and tangible chattel paper located in Washington State, as well as all accounts, and payment intangibles is sufficient.

**Commented [A5]:** Note that we should replace references to signatures with appropriate language re: authentication

(b) Pay a filing fee established by the department of licensing. All receipts from fees collected under this subsection shall be deposited into the department of licensing wage lien account created under section 19 of this act. Moneys in the fund may be spent only after appropriation and may be used only to administer the wage lien filings in this subsection; and

(c) Mail a copy of the financing statement filed under this subsection (2) and a notice of wage lien claim ~~filed under this subsection (2)~~ to the employer's registered agent, the employer's registered business address, or the address where the employer resides, by certified mail with return receipt requested. The notice of wage lien claim must include:

(i) The name, telephone number, and address of the lien claimant and, if the wage lien has been assigned, the name of the person who assigned the lien;

(ii) The name of the employer;

(iii) A description of the personal property subject to the wage lien or a statement that the wage lien covers all goods and tangible chattel paper located in Washington State, as well as all accounts, and payment intangibles;

(iv) The name of the owner or reputed owner of the property, if known, and if not known, a statement saying the name of the owner is not known;

(v) The principal amount for which the wage lien is claimed;

(vi) The signature of the lien claimant or of a person authorized to act on the claimant's behalf; and

(vii) An acknowledgment and certification as set forth in subsection (4) of this section;

(3) Except as provided in subsection~~paragraph~~ (d) of this section~~below~~, to establish a wage lien on a vehicle or vessel goods covered by a certificate of title issued pursuant to chapter 46.12 RCW or chapter 88.02 RCW~~[list Washington's COT statute]~~, the lien claimant must:

(a) File for recording a notice of claim of wage lien with the department of licensing that includes:

(i) The name, telephone number, and address of the lien claimant and, if the wage lien has been assigned, the name of the person who assigned the lien;

(ii) The name of the employer;

(iii) A description of the ~~vehicle or vessel goods~~ subject to the wage lien, including ~~and~~ the vehicle identification number or hull identification number of the ~~goods vehicle or vessel~~;

(iv) The name of the registered or legal owner or reputed owner of the property, if known, and if not known, a statement saying the name of the owner is not known;

(v) The principal amount for which the wage lien is claimed;

(vi) The signature of the lien claimant or of a person authorized to act on his or her behalf; and

(vii) An acknowledgment and certification as set forth in subsection (4) of this section;

(b) Pay a filing fee to the department of licensing as required under RCW 46.17.005; and

(c) Mail a copy of the notice filed under this subsection to the employer's registered agent, the employer's registered business address, or the address where the employer resides, by certified mail with return receipt requested.

(d) subsection (3) of this section does not apply to: (i) goods held for sale or lease by a person, or leased by that person as lessor, if that person is in the business of selling goods of that kind, or (ii) vessels documented under Title 46 of the United States Code, for which Washington-State title is required to be surrendered under 46 U.S.C. sec. 12106.-

(4) A notice of claim of wage lien, acknowledgment, and certificate that is substantially in the following form is sufficient to satisfy subsection (1) (a) of this section, provided it complies with the formatting requirements of RCW 65.04.045 (1) (a) and (b), (2), and (3). A notice of claim of wage lien,

acknowledgment, and certificate that is substantially in the following form is sufficient to satisfy subsections (2) (ca) and (3) (a) of this section, provided it also complies with any requirements created by the department under section 18 of this act.

When Recorded Return to:.....

CLAIM OF WAGE LIEN

. . . . ., claimant, vs. . . . ., name of person indebted to claimant:

Notice is hereby given that the claimant named below asserts a wage lien pursuant to chapter 60.--- RCW (the new chapter created in section 21 of this act). In support of this wage lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:.....

TELEPHONE NUMBER:.....

ADDRESS:.....

2. NAME OF EMPLOYER:.....

3. DESCRIPTION OF THE PROPERTY AGAINST WHICH A WAGE LIEN IS CLAIMED (If real property, state the street address, legal description, and parcel number. If personal property, provide information that will reasonably describe the property, or statement that the wage lien covers all personal property. If a vehicle or vessel, the vehicle identification number or hull identification number of the vehicle or vessel):.....  
.....  
.....  
.....  
.....

4. NAME OF REGISTERED OR LEGAL OWNER OR REPUTED OWNER (If not known, state "Unknown")

.....

5. PRINCIPAL AMOUNT FOR WHICH THE WAGE LIEN IS CLAIMED IS:

.....

6. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE AND STATE THE NAME OF THE ASSIGNOR:.....

.....

7. IF THE PERSON SIGNING THIS CLAIM OF WAGE LIEN IS NOT THE CLAIMANT, BUT IS AUTHORIZED TO ACT ON THE CLAIMANT'S BEHALF, STATE THE PERSON'S NAME AND REPRESENTATIVE CAPACITY:

NAME:.....

REPRESENTATIVE CAPACITY (e.g., officer or employee of claimant; attorney or agent; representative of lien filing service; administrator, representative, or agent of trustees of employee benefit plan):.....

.....

ACKNOWLEDGMENT

FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

STATE OF WASHINGTON, COUNTY OF

. . . . ., ss.

. . . . ., being sworn, says: I, . . . . .(name of person). . . . ., am the claimant. I have read the foregoing claim of wage lien, believe the claim of wage lien to be true and correct under penalty of perjury, and believe the claim of wage lien is not frivolous, is made with reasonable cause, and is not clearly excessive. The foregoing claim of wage lien is my free and voluntary act for the uses and purposes stated therein.

. . . . .Dated:.....  
.....  
.....  
.....

(Signature)

FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

STATE OF WASHINGTON, COUNTY OF

. . . . ., ss.

. . . . ., being sworn, says: I, . . .(name of person). . . ,  
am authorized to act on behalf of the claimant. I have read the  
foregoing claim of wage lien, believe the claim of wage lien to be  
true and correct under penalty of perjury, and believe the claim of  
wage lien is not frivolous, is made with reasonable cause, and is  
not clearly excessive. The foregoing claim of wage lien is the free  
and voluntary act of the claimant for the uses and purposes stated  
therein.

. . . . .Dated:.....  
.....  
.....  
.....

(Signature)

CERTIFICATE

FOR A CERTIFICATE OF ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

I certify that I know or have satisfactory evidence that . . .  
(name of person) . . . is the person who appeared before me, and  
said person acknowledged that he/she signed this instrument and

acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

. . . . .Dated:.....  
.....  
.....  
.....

(Signature)

(Seal or stamp)

. . . . . Title.....  
. . . . . My appointment.....  
. . . . . Expires.....

FOR A CERTIFICATE OF ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

I certify that I know or have satisfactory evidence that . . . (name of person) . . . is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the . . . (type of authority, e.g., officer or employee, etc.) . . . of . . . (name of party on behalf of whom instrument was executed) . . . to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

. . . . .Dated:.....  
.....  
.....

(Signature)

(Seal or Stamp)

. . . . . Title.....  
 . . . . . My appointment.....  
 . . . . . Expires.....

(5) (a) For a notice of claim of wage lien on real property filed under this section, the notice must comply with the recording standards in chapter 65.04 RCW and the county auditor shall record the notice in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of wage lien for registered land need not be recorded in the Torrens register.

(b) For a notice of claim of wage lien on personal property, including vehicles and vessels, filed under this section, the department of licensing shall record the notice.

(6) The notice of claim of wage lien must be filed within a period of two years from when the wages were first due.

(7) Mistakes or errors in the claimed amount owed do not invalidate the wage lien unless made with the intent to defraud.

(8) A wage lien under this chapter ~~continues in~~ attaches to all identifiable proceeds of the property subject to the wage lien except instruments and chattel paper.

NEW SECTION. Sec. 5. The department of licensing shall file and index the filings indexed under section 4 of this Act in the same systems as those filings made under RCW 62A.9A-519.

NEW SECTION. Sec. 5. Any wage lien or right of wage lien created by this chapter and the right of action to recover the wage lien is assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made.

**Commented [A56]:** All section numbers need to be changed and formatted into the autonumber format. The legislative staff can help with that and other formatting.

NEW SECTION. Sec. 6. (1) After a wage claim for which a wage lien has been recorded as to real property ~~affecting title to real property~~ has been commenced in any court, but no later than eight months after the recording of the wage lien, the wage claimant or the claimant's assignee must file with the auditor of each county in which the property is situated a notice of the pendency of the wage claim, containing:

(a) The names of the parties and assignees, if any;

(b) The object of the action;

(c) A description of the real property located within that county; and

(d) The name of the court where the action was filed and the cause number for the action.

(2) The county auditor must index the notice in a manner similar to the auditor practice for indexing a notice of lis pendens filed under RCW 4.28.320 or 4.28.325.

(3) The filing of the notice under subsection (1) of this section is constructive notice ~~to a purchaser or encumbrancer of the property, and to~~ every subsequent purchaser or encumbrancer, and such purchaser or encumbrancer is bound by all proceedings taken after the filing of the notice to the same extent as if he or she were a party to the action.

(4) The court in which the action was commenced may, at its discretion, at any time after the action is settled, discontinued, or abated, with notice and on a showing of good cause, order the notice canceled by the county auditor, and such cancellation shall be evidenced by the recording of the court order.

(5) If a wage claim is filed with an administrative agency of a local government, that agency must file a notice under the provisions of this section, using a substantially similar form.

(6) If a wage claim is filed with the department, the department must file a notice under the provisions of this section, using a substantially similar form.

NEW SECTION. **Sec. 7.** (1) A wage lien may be judicially foreclosed by an action in:

(a) For real property, a superior court in any county in this state, or in United States district court for any district in the state of Washington when the action is brought by the United States department of labor;

(b) For personal property, a district court of this state if the amount~~value~~ of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or

(c) For personal property, a superior court of this state if the amount~~value~~ of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020.

(2) Except as provided in subsection (4) of this section, an action to foreclose ~~the wage lien must be filed within eight months of the date the wage lien was recorded~~a wage lien may not be commenced more than eight months after the date the wage lien was recorded.

(3) If the claimant has instituted an action in a court of this state for the wage claim that is the subject of the wage lien, and that court is the court authorized by subsection (1) of this section to foreclose on the lien, that action shall be deemed an action to foreclose on the property subject to the lien.

(4) (a) If the claimant receives a judgment on a wage claim from a federal, state, or municipal court, the judgment, in addition to any applicable post-judgment interest, establishes the amount owed for the purposes of foreclosure under this chapter.

(b) If the claimant receives a judgment on a wage claim from a federal, state, or municipal court, that is not authorized to adjudicate the foreclosure of the claimant's wage lien, a separate action to foreclose the wage lien must be filed within ninety days of the date of that court's judgment. The entry of such a judgment shall not revive a wage lien that has been extinguished pursuant to section 9 of this act.

(5) (a) A final and binding assessment of wages owed by the department or by any local agency with authority to adjudicate wage claims, in addition to any applicable post-judgment interest, establishes the amount owed for the purposes of foreclosure under this chapter.

(b) A wage lien may also be foreclosed by:

(i) The department using the department's collection procedures under RCW 49.48.086 when the claimant has pursued a wage claim in an administrative proceeding and a final and binding citation and notice of assessment has been issued;

(ii) The claimant 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 action on his or her own, without the department's assistance; or

(iii) An administrative agency of a local government.

(c) The foreclosure pursuant to this subsection by the claimant of a wage lien affecting real property must be commenced by the filing of an action in superior court in the county where the real property is located within ninety days of the date the department's citation and notice of assessment becomes final and binding.

(d) The extinguishment of a wage lien pursuant to section 9 of this act shall not preclude the department from using the collection procedures under RCW 49.48.086.

(6) A foreclosure action may be brought by the employee individually, the department, an administrative agency of a local government, the United States department of labor, the office of the attorney general, or a representative of the employee, including a collective bargaining representative or class representative. Multiple wage claims against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings.

(7) In the judgment resulting from an action to foreclose on the wage lien, the court may order the sale at sheriff's auction or the

transfer to the lien claimant of title or possession of any property subject to the wage lien. Whether or not the court makes such an order as part of the judgment, a writ of sale may be issued for any property subject to the wage lien for ten years after a judgment for a wage claim is issued. A wage lien based on an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

(8) In an action to foreclose on a wage lien on titled goods~~a vehicle or vessel~~, the lien claimant must comply with the requirements of subsection (1) of this section and any other requirements of the department of licensing regarding transferring title and taking ownership of the titled goods~~vehicle or vessel~~.

(9) A lien claimant who prevails in a foreclosure action is entitled to costs, including the cost of recording or filing the lien and costs of title reports, and reasonable attorney's fees.

**NEW SECTION. Sec. 8.** (1) ~~The lien provided by this chapter, for which claims of lien have been recorded,~~ A lien under this chapter may be foreclosed and enforced as provided under section 7 of this act. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The interest in the ~~real~~ property of any person who, prior to the commencement of the action, has a recorded interest in the property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

(2) A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation until disposition of the application or other time set by the court.

(3) The court shall grant the application for joinder unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just.

(4) If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this chapter, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien.

NEW SECTION. **Sec. 9.** (1) A wage lien is extinguished:

(a) If an action for the underlying wage claim is not brought within eight months of the date the wage lien was recorded or if the notice required by section 6 of this act was not recorded within eight months of the date the wage lien was recorded;

(b) If the action for the underlying wage claim is dismissed with prejudice and no appeal is filed within the applicable appeals period. If an appeal is filed, the wage lien continues in force until final judgment is rendered; ~~or~~

(c) Upon payment and acceptance of payment for the employee's wage claim; ~~or~~

~~(d) Upon proper recording or filing a bond meeting the requirements of section 14 of this act.~~

(2) (a) When the wage lien has been extinguished, the lien claimant shall ~~release the lien in writing,~~ within fifteen days. ~~For liens on real property and titled goods, the lien claimant shall file a release of the wage lien at the place where the wage lien was~~

**Commented [AS7]:** Will need to be adjusted after sections numbers are fixed.

**Commented [AS8]:** Will need to change this if we change the approach in the bond in lieu of lien section. See below.

recorded and pay a filing fee established by the agency where the notice is filed. For liens on personal property filed pursuant to section (4) subsection (3) of this act, the lien claimant shall file a termination statement of the type used pursuant to chapter 62A.9A RCW with the department of licensing and pay a filing fee established by the department. ~~If a lien claimant fails to file a release of the wage lien as required wage lien,~~ upon demand and fifteen days' notice by the employer or any affected party, mailed to the lien claimant's address as indicated on the notice of the wage lien by certified mail with return receipt requested, the employer or affected party may petition the court for an order releasing the wage lien. If the lien claimant acted unreasonably and in bad faith in refusing to file a release of the wage lien, the employer or affected party shall be entitled to recover its attorneys' fees and costs incurred in the action, and the court in its discretion may also issue a fine not to exceed one thousand dollars.

(b) For liens on real property and titled goods, the release must include:

- (i) The name, telephone number, address, and relationship to the wage lien of the person filing the notice;
- (ii) The name, telephone number, and address of the lien claimant;
- (iii) The name of the employer;
- (iv) A description of the property subject to the wage lien;
- (v) The amount for which the wage lien was claimed;
- (vi) The signature of the lien claimant, the lien claimant's assignor, or a person authorized to act on the lien claimant's behalf;
- (vii) A certified acknowledgment as set forth in subsection (4) of this section; and
- (viii) The reference number of the original or amended wage lien.

**Commented [AS9]:** This is parallel to the language I used in Section 4 in an attempt to describe the UCC-1. Trying to get at the UCC-3 here.

Language above: a financing statement that satisfies the requirements of part 5 of chapter 62A.9A RCW

(3) The person filing the release or termination statement must mail a copy of the release or termination statement to the person against whom the lien claim was made by first-class mail within ten days of filing the notice.

(4) (a) A release of wage lien on real property must comply with the recording standards established in RCW 65.04.045 and the county auditor shall record the release in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW.

(b) For liens on real property and titled goods, a release of wage lien substantially in the following form is sufficient, provided it complies with the formatting requirements of RCW 65.04.045 (1) (a) and (b), (2), and (3):

When Recorded Return to:.....

RELEASE OF WAGE LIEN

. . . . ., claimant, vs. . . . . ., name of person indebted to claimant:

Notice is hereby given that the wage lien described below is released.

1. NAME OF PERSON FILING RELEASE:.....

RECORDED LIEN NUMBER IF THE LIEN WAS RECORDED AGAINST REAL PROPERTY:.....

TELEPHONE NUMBER:.....

ADDRESS:.....

RELATIONSHIP TO WAGE LIEN (lien claimant, representative of lien claimant, assignee of lien claimant):.....

IF THE PERSON SIGNING THIS NOTICE IS NOT THE CLAIMANT, BUT IS AUTHORIZED TO ACT ON BEHALF OF THE CLAIMANT, STATE THE PERSON'S NAME AND REPRESENTATIVE CAPACITY (e.g., officer or employee of claimant;

attorney or agent; representative of lien filing service;  
administrator, representative, or agent of trustees of employee  
benefit plan):.....  
.....

2. NAME OF LIEN CLAIMANT:.....

TELEPHONE NUMBER:.....

ADDRESS:.....

3. NAME OF EMPLOYER:.....

4. DESCRIPTION OF THE PERSONAL PROPERTY AGAINST WHICH THE LIEN  
IS CLAIMED OR FOR A LIEN ON REAL PROPERTY: (1) THE REFERENCE NUMBER  
OF PREVIOUSLY FILED LIEN, (2) AN ABBREVIATED LEGAL DESCRIPTION OF  
THE PROPERTY AS DESCRIBED IN RCW 65.04.045, AND (3) THE PARCEL  
NUMBER OF THE REAL PROPERTY:.....  
.....  
.....  
.....

5. NAME OF REGISTERED OR LEGAL OWNER OR REPUTED OWNER (If not  
known, state "Unknown").....  
.....  
.....

6. AMOUNT OF WAGE LIEN CLAIM:.....

ACKNOWLEDGMENT

FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

STATE OF WASHINGTON, COUNTY OF

. . . . ., ss.

. . . . ., being sworn, says: I, . . .(name of person). . . ,  
am the (claimant/assignee of the claimant). I have read the  
foregoing release of wage lien and believe the notice to be true and  
correct under penalty of perjury.

. . . . .Dated:.....  
.....  
.....

(Signature)

FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

STATE OF WASHINGTON, COUNTY OF

. . . . ., ss.

. . . . ., being sworn, says: I, . . .(name of person). . . ,  
am authorized to act on behalf of (claimant/assignee of the  
claimant). I have read the foregoing release of wage lien and  
believe the notice to be true and correct under penalty of perjury.

. . . . .Dated:.....  
.....  
.....

(Signature)

CERTIFICATE

FOR A CERTIFICATE OF ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

I certify that I know or have satisfactory evidence that . . .  
(name of person) . . . is the person who appeared before me, and  
said person acknowledged that he/she signed this instrument and  
acknowledged it to be his/her free and voluntary act for the uses  
and purposes mentioned in the instrument.

. . . . Dated:.....  
.....  
.....

(Signature)

(Seal or stamp)

. . . . . Title.....  
. . . . . My appointment.....  
. . . . . Expires.....

FOR A CERTIFICATE OF ACKNOWLEDGMENT IN A REPRESENTATIVE  
CAPACITY:

I certify that I know or have satisfactory evidence that . . .  
(name of person) . . . is the person who appeared before me, and  
said person acknowledged that he/she signed this instrument, on oath  
stated that he/she was authorized to execute the instrument and  
acknowledged it as the . . . (type of authority, e.g., officer or  
employee, etc.) . . . of . . . (name of party on behalf of whom  
instrument was executed) . . . to be the free and voluntary act of  
such party for the uses and purposes mentioned in the instrument.

. . . . . Dated:.....  
.....  
.....

(Signature)

(Seal or stamp)

. . . . . Title.....  
. . . . . My appointment.....

. . . . . Expires.....

NEW SECTION. **Sec. 10.**

(1) Priority among wage liens recorded pursuant to this chapter is determined by date of recording. The first to be recorded has priority.

(2) A wage lien as to real property recorded pursuant to this chapter shall be prior to any security interest, lien, mortgage, deed of trust, or other encumbrance that attached to the real property after, or was unrecorded at the time, such wage lien was recorded. A wage lien recorded as to real property pursuant to this chapter shall be subject and subordinate to any prior perfected security interest, lien, mortgage, deed of trust, or other encumbrance.

(3) With respect to personal property:

(a) A security interest perfected pursuant to chapter 62A RCW has priority over a wage lien recorded pursuant to this chapter if the security interest was perfected or a financing statement covering the collateral was filed before the wage lien was recorded, provided there is no period thereafter when there is neither filing nor perfection. For the purposes of this subsection, the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds of the collateral.

(b) A buyer in ordinary course of business, as such term is defined in RCW 62A.1-201(b) (9), takes free of wage lien on the goods bought.

(c) (i) A buyer of goods subject to a certificate of title that does not contain a statement that the goods are or may be subject to a wage lien takes free of a wage lien on such goods if the buyer gives value and receives delivery of the goods without knowledge of the wage lien.

(ii) A perfected security interest in goods subject to a certificate of title that does not contain a statement that the goods are or may be subject to a wage lien has priority over a wage lien on such goods.

(4) A wage lien is not effective against:

(a) With respect to goods:

(i) a buyer in the ordinary course of business, as such term is defined in RCW 62A.1-201(b) (9), or

(ii) a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys without knowledge of the security interest, for value, primarily for the buyer's personal, family, or household purposes; and before the filing of the wage lien covering the goods;

(b) Third persons who, prior to the filing of the wage lien notice required under this chapter, acquired title in good faith, for value and without actual notice of the wage lien, to property other than goods; or

(c) The interest in real property of any person, who, prior to the filing of the wage lien notice required under this chapter, was a grantee under a recorded instrument conveying such interest, provided such person acquired the interest in good faith, for value, and without actual notice of the wage lien. A wage lien that is not

effective against any person pursuant to this subsection is ineffective against the heirs, successors, or assigns of such person.

NEW SECTION. **Sec. 11.** A contract between an employer and employee may not waive or require an employee to waive the right to a wage lien under this chapter. A provision of a contract made in violation of this section is void as against the public policy of this state.

NEW SECTION. **Sec. 12.** The claim of wage lien, when filed as required by this chapter, constitutes notice to the spouse or the domestic partner of the person who appears on record to be the owner of the property sought to be charged with the wage lien, and subjects all the community interest of both spouses or both domestic partners to the wage lien.

NEW SECTION. **Sec. 13.** (1) Any owner of real or personal property subject to a recorded claim of lien under this chapter, or lender or another lien claimant who believes the claim of lien to be frivolous and made without reasonable cause or clearly excessive, may apply by motion to the appropriate court, as specified under section 7 of this act, for the county where the property or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be

released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee pursuant to RCW 36.18.016(18). If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties.

NEW SECTION. Sec. 14. (1) Any owner of ~~real~~ property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or another lien claimant who disputes the correctness or validity of the claim of lien may ~~record~~, either before or after the commencement of an action to enforce the lien, ~~in the office of the county recorder or auditor in the county where the claim of lien was recorded, provide~~ a bond issued by a surety company authorized to issue surety bonds in the state. For a lien on real property, the bond shall be recorded in the office of the county recorder or auditor in the county where the claim of lien was recorded. For a lien on personal property, the bond shall be filed with the department of licensing. The surety shall be listed in the latest federal department of the treasury list of surety companies

**Commented [AS10]:** Need to confirm with DOL that this works.

Next: loop in legislative staff; write a provision that has personal property owners procure and serve bond notice directly on the lienholder for personal property where lien is filed in another state. Require prompt cancellation of lien.

Bottom line - we will have a bond in lieu of lien provision in some form.

acceptable on federal bonds, published in the federal register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the claim of lien and ~~real~~ property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien.

(2) A separate bond shall be required for each claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one claim of lien by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant.

(3) The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien.

(4) ~~The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed.~~ Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in **section 9** of this act, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

(5) Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure

**Commented [A11]:** Flagging as needing to be adjusted

the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien.

NEW SECTION. **Sec. 15.** This chapter is to be liberally construed to provide security for all persons intended to be protected by its provisions.

**Sec. 16.** RCW 36.18.016 and 2018 c 36 s 7 are each amended to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2) (a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of fifty-four dollars. The clerk of the superior court shall transmit monthly forty-eight dollars of the fifty-four dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based domestic violence services within the county, except for five percent of the six dollars, which may be retained by the court for administrative purposes. On or before December 15th of each year, the county shall report to the department of social and health services revenues associated with this section and community-based domestic violence services expenditures. The department of social and health services shall develop a reporting form to be utilized by counties for uniform reporting purposes.

(3) (a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of five dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed thirty dollars per hour.

(12) For processing ex parte orders, the clerk may collect a fee of thirty dollars.

(13) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audiotape and twenty-five dollars for each video or other electronic storage medium.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(16) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(17) For filing an adjudication claim under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) For filing a claim of frivolous lien under RCW 60.04.081 or section 13 of this act, a fee of thirty-five dollars must be charged.

(19) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(20) A service fee of five dollars for the first page and one dollar for each additional page must be charged for receiving faxed

documents, pursuant to Washington state rules of court, general rule 17.

(21) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(22) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(23) Investment service charge and earnings under RCW 36.48.090 must be charged.

(24) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(25) For filing a request for civil arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred fifty dollars as established by authority of local ordinance. Two hundred twenty dollars of this charge shall be used to offset the cost of the civil arbitration program. Thirty dollars of each fee collected under this subsection must be used for indigent defense services.

(26) For filing a request for trial de novo of a civil arbitration award, a fee not to exceed four hundred dollars as established by authority of local ordinance must be charged.

(27) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(28) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

(29) For the collection of an adult offender's unpaid legal financial obligations, the clerk may impose an annual fee of up to one hundred dollars, pursuant to RCW 9.94A.780.

(30) A surcharge of up to twenty dollars may be charged in dissolution and legal separation actions as authorized by RCW 26.12.260.

The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits.

**Sec. 17.** RCW 49.48.086 and 2014 c 210 s 1 are each amended to read as follows:

(1) After a final order is issued under RCW 49.48.084, if an employer defaults in the payment of: (a) Any wages determined by the department to be owed to an employee, including interest; or (b) any civil penalty ordered by the department under RCW 49.48.083, the director may file with the clerk of any county within the state a warrant in the amount of the payment plus any filing fees. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of payment due on it plus any filing fees, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in, all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee

which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the employer within three days of filing with the clerk.

(2) (a) The director may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an employer upon whom a notice of assessment has been served by the department for payments or civil penalties due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

(b) The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director. The director shall hold the property in trust for application on the employer's indebtedness to the

department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an employer and the property subject to it is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(c) As an alternative to the methods of service described in this section, the department may electronically serve a financial institution with a notice and order to withhold and deliver by providing a list of its outstanding warrants, except those for which a payment agreement is in good standing, to the department of revenue. The department of revenue may include the warrants provided by the department in a notice and order to withhold and deliver served under RCW 82.32.235(3). A financial institution that is served with a notice and order to withhold and deliver under this subsection (2)(c) must answer the notice within the time period applicable to service under RCW 82.32.235(3). The department and the department of revenue may adopt rules to implement this subsection (2)(c).

(3)(a) In addition to the procedure for collection of wages owed, including interest, and civil penalties as set forth in this section, the department may recover wages owed, including interest, and civil penalties assessed under RCW 49.48.083 in a civil action brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

(b) The department may use the procedures under this section to foreclose wage liens established under chapter 60.--- RCW (the new chapter created in section 21 of this act). When the department is foreclosing on a wage lien, the date the wage lien was originally

filed shall be the date by which priority is determined, regardless of the date the warrant is filed under this section. If a claimant has timely notified the department that the claimant will pursue foreclosure on their own, without the department's assistance, the department is not required to file a warrant under this section and is relieved from any liability related to foreclosing on the claimant's wage lien.

(4) Whenever any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any outstanding citation and notice of assessment or penalty against the employer's business under this chapter if, at the time of the conveyance of the business, the successor has: (a) Actual knowledge of the fact and amount of the outstanding citation and notice of assessment or (b) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the outstanding citation and notice of assessment from the department. If the citation and notice of assessment or penalty is not paid in full by the employer within ten days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the citation and notice of assessment or penalty, and payment thereof by the successor must, to the extent thereof, be deemed a payment upon the purchase price. If the payment is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the employer.

(5) This section does not affect other collection remedies that are otherwise provided by law.

NEW SECTION. Sec. 18. A new section is added to chapter 43.24 RCW to read as follows:

For the purposes of implementing the notice and filing provisions under sections 4(2) (a) and 9 of this act that are applicable to the department of licensing, the department of licensing may, by rule, create wage lien forms specific to the

department of licensing, so long as the forms include the information described in those sections.

NEW SECTION. **Sec. 19.** A new section is added to chapter 43.24 RCW to read as follows:

The department of licensing wage lien account is created in the state treasury. All receipts from wage lien filing fees collected by the department of licensing must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to administer wage lien filings in section 4 of this act.

NEW SECTION. **Sec. 20.** This act takes effect January 1, 2021.

NEW SECTION. **Sec. 21.** Sections 1 through 15 and 20 of this act constitute a new chapter in Title 60 RCW.

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