

publish and distribute, on a monthly basis, a newsletter describing current activities and developments in education in the state.

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## CHAPTER 181

[Substitute Senate Bill No. 3453]

### LIENS—NONCONSENSUAL COMMON LAW LIENS

AN ACT Relating to liens; amending RCW 60.28.010; and adding a new chapter to Title 60 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) It is the intent of this chapter to limit the circumstances in which nonconsensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

(a) "Lien" means an encumbrance on property as security for the payment of a debt; and

(b) "Nonconsensual common law lien" is a lien that:

(i) Is recognized now or hereafter under the common law of this state;

(ii) Does not depend upon the consent of the owner of the property affected for its existence; and

(iii) Is not a court-imposed equitable or constructive lien.

(3) Nothing in this chapter is intended to affect:

(a) Any lien provided for by statute;

(b) Any consensual liens now or hereafter recognized under the common law of this state; or

(c) The ability of courts to impose equitable or constructive liens.

NEW SECTION. Sec. 2. Nonconsensual common law liens against real property shall not be recognized or enforceable. Nonconsensual common law liens claimed against any personal property shall not be recognized or enforceable if, at any time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property.

NEW SECTION. Sec. 3. No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien.

NEW SECTION. Sec. 4. No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may

exist to disclose a claim of lien authorized by statute or imposed by order of a court having jurisdiction over property affected by the lien.

**NEW SECTION.** Sec. 5. A person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a common law lien of record.

Sec. 6. Section 14, chapter 260, Laws of 1981 as last amended by section 1, chapter 146, Laws of 1984 and RCW 60.28.010 are each amended to read as follows:

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work

shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims.

~~(7) ((On projects commenced after June 7, 1984, the trust fund established pursuant to subsection (1) of this section may be reserved for the protection of the owner or owners of such public improvements when specifically required by regulations of the farmers home administration for the provision of grant or loan funds administered by that agency)) Contracts on projects funded in whole or in part by Farmers Home Administration and subject to Farmers Home Administration regulations shall not be subject to subsections (1) through (6) of this section.~~

NEW SECTION. Sec. 7. Sections 1 through 5 of this act shall constitute a new chapter to Title 60 RCW.

Passed the Senate March 8, 1986.

Passed the House March 5, 1986.

Approved by the Governor April 1, 1986.

Filed in Office of Secretary of State April 1, 1986.

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## CHAPTER 182

[Substitute Senate Bill No. 4425]

### LIVESTOCK SOLD FOR PERSONAL CONSUMPTION—SALES AND USE TAX EXEMPTION

AN ACT Relating to livestock; and amending RCW 82.08.0293 and 82.12.0293.

Be it enacted by the Legislature of the State of Washington: