
**Labor & Workplace Standards
Committee**

HB 1369

Brief Description: Establishing wage liens.

Sponsors: Representatives Bronoske, Sells, Davis, Ryu, Fey, Fitzgibbon, Gregerson, Simmons, Berry, Wicks, Bateman, Goodman, Macri, Ramel, Harris-Talley and Pollet.

Brief Summary of Bill

- Creates a statutory wage lien for claims on unpaid wages.
- Creates procedures for establishing, foreclosing, extinguishing, and prioritizing wage liens.

Hearing Date: 2/2/21

Staff: Trudes Tango (786-7384).

Background:

Various laws, such as the Minimum Wage Act and Wage Payment Act, establish standards for the payment of wages and makes 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). 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 a wage claim 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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, including any compensation, interest, statutory damages, liquidated damages, or attorneys' fees and costs, or statutory penalties, 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.

Property subject to wage liens

A wage lien may be placed on the following property owned or subsequently acquired by the employer, or by an employer's officer, vice president, or agent, who is personally liable for a wage claim: (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 if the property is 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. Generally, the claimant must bring an action in court to foreclose on the lien. Alternatively, the lien may be foreclosed by the Department through its

collection procedures when the claimant has pursued a wage claim administratively and a final and binding citation and notice of assessment has been issued. 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. A lien claimant may assign the right to a wage lien to another person or entity.

Extinguishing wage liens

A wage lien is extinguished if an action for the underlying wage claim is not timely brought, the wage claim is dismissed with prejudice, payment of the wage claim has been accepted, or a sufficient bond has been purchased. 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.

A wage lien account for the Department of Licensing is created in the State Treasury for receipt of filing fees.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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