

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1164

**Introduced by Assembly Member Lowenthal
(Coauthor: Assembly Member Roger Hernández)**

February 22, 2013

An act to add Chapter 3 (commencing with Section 3000) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 1164, as amended, Lowenthal. Liens: employees and workers.

Existing law grants specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement the right to record a mechanic's lien upon the property so improved.

~~This bill would state the intent of the Legislature to enact legislation that would allow an employee or worker to record a lien on the real or personal property of his or her employer if the employer fails to pay the wages to which the employee or worker is entitled.~~

This bill would authorize an employee to record and enforce a wage lien upon specified real and personal property for wages, other compensation, and related penalties and damages owed the employee. The bill would prescribe requirements relating to the recording and enforcement of the wage lien. The bill would require a notice of lien on real property to be executed under penalty of perjury.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3 (commencing with Section 3000) is
2 added to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

3

4

CHAPTER 3. WAGE LIENS

5

6 3000. (a) An employee shall have a lien for the full amount of
7 any wages, other compensation, and related penalties and damages
8 owed to the employee on the following property:

9 (1) All property of the employer, including any after-acquired
10 property.

11 (2) The property upon which the employee bestowed labor,
12 provided that the amount of the lien on this property shall be equal
13 to the amount of wages, compensation, and related penalties and
14 damages accrued during the time the employee bestowed labor
15 on that specific property.

16 (b) The amount of this lien shall include unpaid wages, all other
17 compensation required under California law, penalties and
18 damages available under the Labor Code, interest at the same rate
19 as for prejudgment interest in this state, and the costs of filing and
20 service of the lien. The amount of compensation that may be
21 claimed as a lien under this section includes the entire
22 compensation package agreed to be paid to the employee, but no
23 less than the amount required by law, including direct wages and
24 compensation required to be paid to other persons or entities, that
25 would qualify as “employer payments” described in Section 1773.1
26 of the Labor Code.

27 (c) An employee’s lien upon personal property shall be limited
28 to property subject to a security interest under the Commercial
29 Code pursuant to the filing of a financing statement with the
30 Secretary of State.

1 (d) Any act authorized or required under this chapter with
2 regard to an employee may also be undertaken by any person or
3 entity, including any governmental agency, to which a portion of
4 an employer's compensation is payable or that has standing under
5 applicable law to maintain a direct legal action on behalf of the
6 employee to collect any portion of compensation owed to the
7 employee.

8 (e) A lien pursuant to this chapter shall not be claimed by an
9 employee who is exempt from the protections of Industrial Welfare
10 Commission wage orders. However, in any action involving such
11 a lien, the employer or property owner shall plead and prove
12 exempt status as an affirmative defense.

13 (f) A lien pursuant to this chapter is in addition to any other
14 lien rights held by the employee and shall not be construed to limit
15 these rights.

16 3001. (a) The lien described in Section 3000 shall be
17 permanently extinguished unless a notice of lien in accordance
18 with Section 3002 or 3003 is recorded and served within one year
19 of the date that the employee ceased working for the employer.

20 (b) The employee shall commence an action to enforce the lien
21 and prove the amount owed within 180 days of the date of filing
22 or recording of the notice of lien. If the employee does not
23 commence an action to enforce the lien within that time, the lien
24 shall be permanently extinguished and is unenforceable.

25 (c) (1) Subdivision (b) does not apply if the employee and the
26 owner of the property subject to the lien agree to extend the time
27 for enforcing the lien in writing and record or file notice of the
28 fact and terms of the extension within either of the following
29 periods:

30 (A) 180 days after recordation or filing of the notice of lien.

31 (B) More than 180 days after recordation or filing of the notice
32 of lien but before a purchaser or encumbrancer acquires rights in
33 the property for value and in good faith.

34 (2) In the event of an extension, the employee shall commence
35 an action to enforce the lien within 180 days after the expiration
36 of the extension. If the employee does not commence an action to
37 enforce the lien within that time, the lien shall be permanently
38 extinguished and is unenforceable.

1 (d) If the lien has been extinguished pursuant to subdivision (b)
2 or (c), upon demand and 15 days' notice by any affected party,
3 the employee shall record or file a release of the lien.

4 3002. (a) With regard to a lien on real property, the employee
5 shall record a notice of lien with the county recorder in the county
6 where the real property is located.

7 (b) The notice of lien shall be executed under penalty of perjury
8 and shall include all of the following:

9 (1) A statement of the employee's demand for unpaid wages,
10 other compensation, related penalties, and damages. The statement
11 shall specify the amount owed to the employee, and if the amount
12 is estimated, shall provide an explanation for the basis of the
13 estimate.

14 (2) A general statement of the kind of work furnished by the
15 employee and the dates of employment.

16 (3) The name of the person by whom the employee was
17 employed.

18 (4) The employee's mailing address.

19 (5) For property described in paragraph (2) of subdivision (a)
20 of Section 3000, both of the following:

21 (i) A description of the site upon which the work was performed
22 sufficient for identification.

23 (ii) The name of the owner or reputed owner, if known.

24 (c) The employee or employee representative shall serve the
25 notice of lien on the employer and the owner or reputed owner of
26 the real property subject to the lien, as follows:

27 (1) For an employer, notice of lien shall be served by registered
28 mail, certified mail, or first-class mail, evidenced by a certificate
29 of mailing, postage prepaid, addressed to the employer at the
30 employer's residence or place of business.

31 (2) For an owner or reputed owner who is not the employer,
32 notice of lien shall be served by registered mail, certified mail, or
33 first-class mail, evidenced by a certificate of mailing, postage
34 prepaid, addressed to the address of the property subject to the
35 lien or to the residence or place of business of the owner or reputed
36 owner.

37 (d) For property described in paragraph (1) of subdivision (a)
38 of Section 3000, the lien attaches to all real property owned by
39 the employer at the time of the filing of the notice of lien, or that
40 is subsequently acquired by the employer, that is located in any

1 county in which the notice of lien is recorded, regardless of whether
2 the property is identified in the notice of lien. For property
3 described in paragraph (2) of subdivision (a) of Section 3000, the
4 lien attaches only to the property that is specifically identified in
5 the notice of lien.

6 3003. (a) With regard to a lien on personal property, the
7 employee shall file a notice of lien with the Secretary of State.
8 Except as otherwise provided in this chapter, the manner, form,
9 and place of filing shall be as described in Chapter 5 (commencing
10 with Section 9501) of Division 9 of the Commercial Code. The
11 notice of the lien shall be placed in the same file as financing
12 statements pursuant to Section 9522 of the Commercial Code.

13 (b) The notice shall be executed under penalty of perjury and
14 shall state the following:

15 (1) The amount of the claim for unpaid wages, other
16 compensation, related penalties, and damage, and if the amount
17 is estimated, shall provide an explanation for the basis of the
18 estimation.

19 (2) A general statement of the kind of work furnished by the
20 employee and the dates of employment.

21 (3) The name of the person by whom the employee was
22 employed.

23 (4) The employee's mailing address.

24 (5) To the extent known, a description of the property on which
25 the lien is made. Regardless of whether the property is specifically
26 described in the notice, the lien attaches to all personal property
27 owned by the employer or subsequently acquired by the employer
28 that can be made subject to a security interest under the
29 Commercial Code.

30 (c) The employee or employee representative shall serve the
31 notice of lien on the employer and the owner or reputed owner of
32 the property subject to the lien, as follows:

33 (1) For an employer, notice of lien shall be served by registered
34 mail, certified mail, or first-class mail, evidenced by a certificate
35 of mailing, postage prepaid, addressed to the employer at the
36 employer's residence or place of business.

37 (2) For an owner or reputed owner who is not the employer,
38 notice of lien shall be served by registered mail, certified mail, or
39 first-class mail, evidenced by a certificate of mailing, postage

1 *prepaid, addressed to the residence or place of business of the*
2 *owner or reputed owner.*

3 *(d) For property described in paragraph (1) of subdivision (a)*
4 *of Section 3000, the lien attaches to all personal property that can*
5 *be made subject to a security interest under the Commercial Code*
6 *that is owned by the employer at the time of filing of the notice of*
7 *lien or that is subsequently acquired by the employer, regardless*
8 *of whether the property is identified in the notice of lien. For*
9 *property described in paragraph (2) of subdivision (a) of Section*
10 *3000, the lien attaches only to the property that is identified in the*
11 *notice of lien.*

12 *3004. (a) In order to enforce a lien under Section 3000, the*
13 *employee shall demonstrate in a civil action, or in a proceeding*
14 *under Section 98 of the Labor Code, that he or she is owed wages*
15 *or other compensation and any related penalties and damages. In*
16 *addition, if the owner or reputed owner of the property is not the*
17 *employer, the employee shall demonstrate that the property was*
18 *property subject to the lien under paragraph (2) of subdivision (a)*
19 *of Section 3000.*

20 *(b) If the employee chooses to pursue the wage claim in an*
21 *administrative proceeding before the Labor Commissioner*
22 *pursuant to Section 98 of the Labor Code, the Labor Commissioner*
23 *may establish the amount of lien if a lien has been recorded. If no*
24 *lien has been recorded at the time the administrative claim is filed,*
25 *the Labor Commissioner may record the lien on behalf of the*
26 *employee.*

27 *(c) If a notice of lien is recorded or filed pursuant to Sections*
28 *3002 or 3003 and an action to recover unpaid wages has been*
29 *filed by the employee or employee representative, that action shall*
30 *also be deemed an action to enforce the lien and foreclose upon*
31 *any property subject to the recorded lien. In the judgment resulting*
32 *from an action, the court may order the sale at a sheriff's auction*
33 *or the transfer to the plaintiff of title or possession of any property*
34 *subject to the lien. Whether or not the court makes an order as*
35 *part of the judgment, any property subject to the lien may be*
36 *foreclosed upon at any point after a judgment for unpaid wages*
37 *is issued.*

38 *(d) The employee or employee representative is entitled to court*
39 *costs and reasonable attorneys' fees for filing a successful action*
40 *to enforce a lien pursuant to this section.*

1 (e) If judgment is entered against the employee or employee
2 representative in the action to enforce the lien or if the case is
3 dismissed with prejudice, the lien shall be extinguished upon
4 expiration of the applicable appeals period if no appeal is filed.
5 If an appeal is filed, the lien shall continue in force until all issues
6 on the appeal have been decided. If the lien is extinguished, upon
7 demand and 15 days' notice by the property owner, the employee
8 or employee representative shall file a release of the lien.

9 (f) Any number of claims to enforce employee liens against the
10 same employer may be joined in a single proceeding, but the court
11 may order separate trials or hearings. If the proceeds of the sale
12 of the property subject to a lien are insufficient to pay all the
13 claimants, whether or not claims have been joined together, the
14 court shall order the claimants to be paid in proportion to the
15 amount due each claimant.

16 3005. (a) A lien established pursuant to this chapter takes
17 precedence over all other liens, claims, or encumbrances perfected
18 after the date that the notice of lien is filed or recorded, and is
19 effective against the estate of the employer, or any subsequent
20 purchaser of the property subject to the lien.

21 (b) In addition, as to the first fifty thousand dollars (\$50,000)
22 of the amount claimed, a lien established pursuant to this chapter
23 takes precedence over all other liens, claims, or encumbrances
24 perfected prior to the date of filing or recording of the notice of
25 lien, except for the following:

26 (1) A tax lien or other government lien.

27 (2) A purchase money mortgage.

28 (3) Other liens that also arise from the performance of labor,
29 including, but not limited to, mechanics liens arising under Section
30 8400.

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 SECTION 1. It is the intent of the Legislature to enact legislation
2 that would allow an employee or worker to record a lien on the
3 real or personal property of his or her employer if the employer
4 fails to pay the wages to which the employee or worker is entitled.

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