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AMENDED IN SENATE AUGUST 22, 2014
AMENDED IN SENATE AUGUST 20, 2014
AMENDED IN SENATE AUGUST 18, 2014
AMENDED IN SENATE JUNE 26, 2014
AMENDED IN ASSEMBLY MAY 23, 2014
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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2416

**Introduced by Assembly Member Stone
(Principal coauthor: Assembly Member Lowenthal)
(Coauthors: Assembly Members Gonzalez, Roger Hernández, and
Pan)**

February 21, 2014

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 2416, as amended, Stone. Liens: laborers and employees.

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. Under existing law, when an employer fails to pay wages due, the employee has the right to file a claim against his or her employer, or former

employer, with the Division of Labor Standards Enforcement, which is authorized to conduct investigations, hold hearings, and impose fines and penalties for nonpayment of wages.

This bill would enact the California Wage Theft Recovery Act to ~~authorize an employee, with certain exceptions, to record and enforce specified employees to request that the Labor Commissioner record, on his or her behalf,~~ a wage lien upon real and personal property of an employer, or a property owner, as specified, for unpaid wages and other compensation owed the employee, and certain other penalties, interest, and costs. The bill would prescribe requirements relating to the recording and enforcement of the wage lien and for its extinguishment and removal. The bill would require a notice of lien on real property to be executed under penalty of perjury. The bill would authorize the employer or property owner to use a procedure to release the notice of lien or reduce the amount of the lien if the employer makes specified contentions, and would require a specific certification under the procedure to be made under penalty of perjury. The bill would also require the Department of Industrial Relations to issue a report to the Legislature by January 1, 2019, on the effect of these provisions, as specified.

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: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 California Wage Theft Recovery Act.
- 3 SEC. 2. Chapter 3 (commencing with Section 3000) is added
- 4 to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3. WAGE LIENS

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3000. (a) An employee shall have a lien on all property of the employer in California, including after-acquired property, for the full amount of any wages and other compensation, penalties, and interest owed to the employee.

(b) If the employer is a natural person, a lien under this section shall not apply to the employer’s principal residence.

(c) The amount of the lien under this section shall include unpaid wages and other compensation required by California law, penalties available under the Labor Code, interest at the same rate as for prejudgment interest in this state, and the costs of filing and service of the lien. The amount of compensation that may be claimed as lien under this section includes all wages agreed to be paid to the employee, but no less than the amount required by law, including direct wages and compensation required to be paid to other persons or entities, that would qualify as “employer payments” described in Section 1773.1 of the Labor Code.

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

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

(f) A lien pursuant to this section shall not be claimed by an employee who is exempt from the protections of Industrial Welfare Commission wage orders under the administrative, executive, or professional exemptions. In any action involving such a lien, the employer shall plead and prove exempt status as an affirmative defense.

(g) A lien pursuant to this section is in addition to any other lien rights held by the employee and shall not be construed to limit these rights.

1 3001. (a) The lien described in Section 3000 shall not attach
2 if the employer has obtained a surety bond or insurance that
3 provides for payment of the wages and other compensation,
4 penalties, and interest, claimed by the employee and is in an
5 amount that is adequate to fully satisfy the employee's claim. If
6 the surety bond or insurance contract is inadequate to cover the
7 entire amount of the employee's claim, the lien shall be limited to
8 the amount of the claim that exceeds the bond or insurance
9 coverage. Within 30 days of being provided with proof of a valid
10 surety bond or insurance contract that applies to the claim, the
11 employee shall file a release of any lien recorded or a notice
12 reducing the lien to the amount that exceeds the bond or insurance
13 coverage.

14 (b) The lien described in Section 3000 shall not attach for labor
15 performed under a valid collective bargaining agreement if the
16 agreement expressly provides for a regular hourly pay of not less
17 than 30 percent more than the state minimum wage rate, addresses
18 the issue of security for the payment of wages, and expressly
19 waives requirements of this chapter in clear and unambiguous
20 terms. If part of the labor was performed under a collective
21 bargaining agreement as so described the lien shall be limited to
22 the amount of the claim based on labor that was not performed
23 under the agreement. Within 30 days of being provided with proof
24 of such a collective bargaining agreement, the employee shall file
25 a release of any lien recorded or a notice reducing the lien to the
26 amount permitted by this chapter.

27 (c) If an employee, after receiving proper notice under this
28 section, acts unreasonably and in bad faith in recording or filing
29 a notice of lien or in refusing to file a release or reduction of the
30 lien, the employer shall be entitled to recover attorney's fees and
31 costs in an action to remove or reduce the lien, and the court in its
32 discretion may also issue a fine, not to exceed one thousand dollars
33 (\$1,000).

34 (d) The lien described in Section 3000 shall not attach if the
35 employer receives a court order finding that the employee does
36 not have a reasonable likelihood of success on the claim for wages
37 and other compensation, penalties, and interest owed to the
38 employee. The employee shall release the lien within 30 days of
39 being provided with proof of the order.

1 3001.5. (a) At least 20 days prior to recording a notice of lien
2 with a county recorder pursuant to Section 3003 or filing a notice
3 of lien with the Secretary of State pursuant to Section 3004, the
4 employee shall provide the owner or reputed owner of the property
5 against which the lien is to be recorded preliminary written notice
6 of the intent to record a notice of lien.

7 (b) Notice under this part shall include the following:

8 (1) All of the information required by subdivision (b) of Section
9 3003, to the extent known to the person giving the notice.

10 (2) The following statement in boldface type:
11

12 **NOTICE TO EMPLOYER**, if the person who has given you this
13 notice is not paid in full for work performed in your employ, a lien
14 may be placed on your property after a period of 20 days after this
15 notice is served. Foreclosure of the lien may lead to loss of all or
16 part of your property. You may wish to protect yourself against
17 this by (1) ensuring that the person who has given you this notice
18 is paid in full for work performed in your employ, or (2) any other
19 method that is appropriate under the circumstances. This notice is
20 required by law to be served by the undersigned as a statement of
21 your legal rights.
22

23 (c) Notice is not invalid by reason of any variance from the
24 requirements of this section if the notice is sufficient to
25 substantially inform the employer given notice of the information
26 required by this section and other information required in the
27 notice.

28 (d) Service of the notice required by this section shall be by the
29 means described in subdivision (c) of Section 3004 and shall be
30 deemed to have been given three business days after mailing of
31 the notice.

32 3002. (a) The lien described in Section 3000 shall be
33 permanently extinguished unless a notice of lien in accordance
34 with Section 3003 or 3004 is recorded or filed, and served upon
35 the employer, within 180 days of the date that the employee ceased
36 working for the employer. The lien described in Section 3000 shall
37 also be permanently extinguished as to property that is transferred
38 or sold by the employer, unless a notice of lien was recorded or
39 filed before the transfer or sale in accordance with Section 3003
40 or 3004.

1 (b) (1) The employee shall commence an action to enforce the
 2 lien and prove the amount owed within 45 days of the date of filing
 3 or recording of the notice of lien. If the employee does not
 4 commence an action to enforce the lien within that time, the lien
 5 shall be permanently extinguished and is unenforceable, unless
 6 the employee and the owner of the property subject to the lien
 7 agree to extend the time for enforcing the lien in writing and record
 8 or file notice of the fact and terms of the extension prior to the
 9 expiration of the time for commencing an action to enforce the
 10 lien. If the employee does not commence an action to enforce the
 11 lien within the extended time period, the lien shall be permanently
 12 extinguished and is unenforceable.

13 (2) If a lien has been permanently extinguished pursuant to this
 14 subdivision because the employee has not commenced an action
 15 to enforce the lien within the applicable time period, the employee
 16 shall not record or file another lien under Section 3000 claiming
 17 the same unpaid wages, compensation, penalties, or costs claimed
 18 by the extinguished lien.

19 (c) If the lien has been extinguished pursuant to subdivision (a)
 20 or (b), upon demand and 15 days' notice by the employer or any
 21 affected party, the employee shall record or file a release of the
 22 lien. If an employee fails to file a release of the lien after proper
 23 notice has been mailed to the employee's address as indicated on
 24 the notice of the lien, the employer or affected party may petition
 25 the court for an order releasing the lien. If the employee acted
 26 unreasonably and in bad faith in refusing to file a release of lien,
 27 the employer or affected party shall be entitled to recover its
 28 attorney's fees and costs incurred in the action, and the court in
 29 its discretion may also issue a fine not to exceed one thousand
 30 dollars (\$1,000).

31 3003. (a) With regard to a lien on real property under Section
 32 3000, the employee shall ~~record~~ *request that the Labor*
 33 *Commissioner record, on behalf of the employee,* a notice of lien
 34 with the county recorder in the county where the real property is
 35 located. *The employee or the employee's agent, as described in*
 36 *subdivision (e) of Section 3000, shall provide the Labor*
 37 *Commissioner with an executed notice of lien and a copy of the*
 38 *preliminary notice that the employee provided to the property*
 39 *owner pursuant to Section 3001.5.*

1 (b) The notice of lien shall be executed under penalty of perjury,
2 as defined in Section 118 of the Penal Code, and shall include all
3 of the following:

4 (1) A statement of the employee’s demand for payment of the
5 wages and other compensation, penalties, and interest. The
6 statement shall specify the amount owed to the employee, and if
7 the amount is estimated, shall provide an explanation for the basis
8 of the estimate.

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

11 (3) The name of the employer.

12 (4) The employee’s mailing address.

13 (5) A description of the address or site of the property sufficient
14 for identification.

15 (c) *If the Labor Commissioner is satisfied that preliminary*
16 *notice has been given, that the notice of lien is in proper form, and*
17 *that the notice of lien is not fraudulent or being used for purposes*
18 *of harassment, the Labor Commissioner shall record the notice*
19 *of lien on behalf of the employee. A determination made by the*
20 *Labor Commissioner pursuant to this subdivision shall not be*
21 *subject to judicial review, and shall not be evidence in any*
22 *proceeding of the merit or lack of merit of the employee’s demand*
23 *or of the amount of that demand.*

24 ~~(e)~~

25 (d) ~~The employee~~ *Labor Commissioner shall serve the notice*
26 *of lien on the employer, by certified mail with return receipt*
27 *requested, evidenced by a certificate of mailing, postage prepaid,*
28 *addressed to the employer at the employer’s residence or place of*
29 *business. The Labor Commissioner shall also mail a copy of the*
30 *recorded notice of lien to the employee at the address that the*
31 *employee has provided to the Labor Commissioner.*

32 ~~(e)~~

33 (e) The lien attaches to all real property owned by the employer
34 at the time of the filing of the notice of lien, or that is subsequently
35 acquired by the employer, that is located in any county in which
36 the notice of lien is recorded.

37 3004. (a) With regard to a lien on personal property under
38 Section 3000, the employee shall ~~file~~ *request that the Labor*
39 *Commissioner file, on behalf of the employee,* a notice of lien with
40 the Secretary of State on the standard form of initial financing

1 statement pursuant to Section 9521 of the Commercial Code. *The*
2 *employee or the employee’s agent, as described in subdivision (e)*
3 *of Section 3000, shall provide the Labor Commissioner with an*
4 *executed standard form completed as required by this section and*
5 *a copy of the preliminary notice that the employee provided to the*
6 *property owner pursuant to Section 3001.5. The standard form*
7 shall be completed in the following manner:

8 (1) The employee shall be identified as the secured party.

9 (2) The employer shall be identified as the debtor.

10 (3) The description of the collateral shall include the following
11 statements:

12 (A) A statement of the employee’s demand for payment of the
13 wages and other compensation, penalties, and interest. The
14 statement shall specify the amount owed to the employee, and if
15 the amount is estimated, shall provide an explanation for the basis
16 of the estimate.

17 (B) A general statement of the kind of work furnished by the
18 employee and the dates of employment.

19 (C) A statement that reads: “By authorizing or directly
20 submitting this notice of lien to the Secretary of State, the employee
21 affirms, under penalty of perjury as defined in Section 118 of the
22 Penal Code, that the employee has read this description of collateral
23 and that all the statements in the description of collateral are true
24 and correct.”

25 (b) For the purpose of the Secretary of State’s index pursuant
26 to Sections 9515, 9516, and 9522 of the Commercial Code and for
27 the purpose of the issuance of a certificate pursuant to Section
28 9519 or 9528 of the Commercial Code, the Secretary of State shall
29 treat a notice of lien pursuant to this section as a financing
30 statement.

31 (c) *If the Labor Commissioner is satisfied that preliminary*
32 *notice has been given, that the notice of lien is in proper form, and*
33 *that the notice of lien is not fraudulent or being used for purposes*
34 *of harassment, the Labor Commissioner shall record the notice*
35 *of lien on behalf of the employee. A determination made by the*
36 *Labor Commissioner pursuant to this subdivision shall not be*
37 *subject to judicial review, and shall not be evidence in any*
38 *proceeding of the merit or lack of merit of the employee’s demand*
39 *or of the amount of that demand.*

40 (e)

1 ~~(d)~~ The ~~employee~~ *Labor Commissioner* shall serve the notice
2 of lien on the employer by certified mail with return receipt
3 requested, evidenced by a certificate of mailing, postage prepaid,
4 addressed to the employer at the employer's residence or place of
5 business. *The Labor Commissioner shall also mail a copy of the*
6 *filed notice of lien to the employee at the address that the employee*
7 *has provided to the Labor Commissioner.*

8 ~~(d)~~

9 (e) The lien attaches to all personal property that is owned by
10 the employer at the time of the filing of the notice of lien, or that
11 is subsequently acquired by the employer, that can be made subject
12 to a security interest under the Commercial Code.

13 ~~(e)~~

14 (f) The notice of claim of lien to which the termination statement
15 relates ceases to be effective upon the filing of a termination
16 statement with the office of the Secretary of State. A termination
17 statement for a notice of lien may be filed in the same manner as
18 a termination statement for a financing statement filed pursuant
19 to Section 9513 of the Commercial Code.

20 ~~(f)~~

21 (g) A notice of lien shall not be deemed invalid by reason of
22 any variance from the requirements of this section or the
23 requirements of the financing statement pursuant to Section 9521
24 of the Commercial Code, if all of the following occur:

25 (1) The Secretary of State accepts the notice of lien for filing.

26 (2) The notice of lien provides substantially the same
27 information.

28 (3) The notice serves as an effective notice.

29 3005. (a) In order to enforce a lien under Section 3000, the
30 employee shall demonstrate in a civil action, or in a proceeding
31 under Section 98 of the Labor Code, that he or she is owed wages
32 or other compensation and any related penalties and interest, or
33 the employer's liability shall be established pursuant to a citation
34 issued under Section 1197.2 of the Labor Code and the process
35 for contesting such a citation.

36 (b) If the employee chooses to pursue the wage claim in an
37 administrative proceeding before the Labor Commissioner pursuant
38 to Section 98 of the Labor Code, the Labor Commissioner may
39 establish the amount of lien if a lien has been recorded. If no lien
40 has been recorded at the time the administrative claim is filed, the

1 Labor Commissioner may provide the notice and record the lien
2 on behalf of the employee.

3 (c) If the Labor Commissioner issues a citation under Section
4 1197.2 of the Labor Code for the failure to pay wages to an
5 employee, the Labor Commissioner may provide preliminary notice
6 and record a lien on behalf of the employee.

7 (d) If a notice of lien is recorded or filed pursuant to Section
8 3003 or 3004 and an action to recover unpaid wages has been filed
9 by the employee, that action shall also be deemed an action to
10 enforce the lien and foreclose upon any property subject to the
11 recorded lien. In the judgment resulting from an action, the court
12 may order the sale at a sheriff's auction or the transfer to the
13 plaintiff of title or possession of any property subject to the lien.
14 Whether or not the court makes an order as part of the judgment,
15 any property subject to the lien may be foreclosed upon at any
16 point after a judgment for unpaid wages is issued.

17 (e) The employee is entitled to court costs and reasonable
18 attorney's fees for filing a successful action to enforce a lien
19 pursuant to this section.

20 (f) If judgment is entered against the employee in the action to
21 enforce the lien or if the case is dismissed with prejudice, the lien
22 shall be extinguished. The judgment shall include the date the
23 notice of lien was recorded and, to the extent applicable, the county
24 in which it was recorded, the book and page or series number of
25 the place in the legal records in which the lien was recorded, and
26 a legal description of the property to which the lien attaches. The
27 judgment may be appealed by filing a notice of appeal on or before
28 60 days after the entry of judgment. If an appeal is filed, the lien
29 shall continue in force until all issues on the appeal have been
30 decided. If the period for appeal runs without an appeal having
31 been filed, or if the appeal fails, the judgment entered under this
32 section shall be equivalent to cancellation of the lien and its
33 removal from the record. A judgment entered pursuant to this
34 subdivision is a recordable instrument. Upon recordation of a
35 certified copy of the judgment, the property described in the
36 judgment is released from claim of lien. Alternatively, if the lien
37 is extinguished, upon demand and 15 days' notice by the property
38 owner, the employee shall file a release of the lien. If an employee
39 refuses to file a release of the lien after proper notice, an employer
40 or property owner may petition the court for an order to file a

1 release of the lien. If the employee acted unreasonably and in bad
2 faith in refusing to file a release of the lien, the employer or
3 property owner shall be entitled to attorney's fees and costs
4 incurred in the action, and the court in its discretion may also issue
5 a fine not to exceed one thousand dollars (\$1,000).

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

13 (h) If a court finds that false information was knowingly and in
14 bad faith included in a notice of lien by an employee with an intent
15 to defraud, both of the following shall apply:

16 (1) The lien shall be extinguished and the right to a lien as
17 provided by this chapter shall be forfeited.

18 (2) The court may award reasonable attorney's fees and court
19 costs to the property owner or employer for action taken to defeat
20 the lien claim.

21 3005.5. (a) An employer may use the procedure established
22 pursuant to this section to release the notice of lien or reduce the
23 amount of the lien if the employer contends any of the following:

24 (1) That a notice of lien established pursuant to Section 3000
25 is not effective.

26 (2) That the lien has been extinguished because the
27 circumstances provided by Section 3000 are not present.

28 (3) All wages due the employee have been paid.

29 (4) The employer has obtained a surety bond pursuant to
30 subdivision (a) of Section 3001.

31 (5) The exception provided by subdivision (b) of Section 3001
32 applies.

33 (6) The employee has failed to provide the notice required by
34 Section 3001.5.

35 (7) The employee or Labor Commissioner has failed to
36 commence an action to enforce the lien within the specified time.

37 (8) The action has been resolved against the employee.

38 (9) That there is no basis for the employee's demand or for the
39 amount of that demand.

1 (b) The procedure to release the notice of lien or reduce the
2 amount of the lien shall be as follows:

3 (1) The employer shall provide notice to the employee that the
4 employer believes that the lien should be released or reduced and
5 the basis for that belief, and request that the employee record or
6 file a release of the notice of lien or reduction in the amount of the
7 lien. The notice shall be made by certified mail with return receipt
8 requested, evidenced by a certificate of mailing, postage prepaid,
9 addressed to the employee at the employee’s residence or place
10 of business.

11 (2) If the employee fails to record or file a release of notice of
12 lien or reduction in the amount of the lien within 30 days of the
13 date of mailing of the notice provided by paragraph (1), the
14 employer may give notice to the Labor Commissioner that the
15 employee did not release or reduce the lien, and request that the
16 Labor Commissioner file or record a release of the notice of lien
17 or reduction in the amount of the lien. The notice shall include a
18 copy of the notice of lien, a copy of the notice sent to the employee
19 pursuant to paragraph (1), and a certification, made under penalty
20 of perjury, that the employer followed the procedures provided by
21 this section and that the employee did not release or reduce the
22 lien.

23 (3) Upon receiving a request pursuant to paragraph (2), the
24 Labor Commissioner shall notify the employee that unless the
25 employee serves an objection on the Labor Commissioner within
26 30 days, the Labor Commissioner shall release the notice of lien,
27 or reduce the amount of the lien, as requested by the employer.
28 The notice shall be made by certified mail with return receipt
29 requested, evidenced by a certificate of mailing, postage prepaid,
30 addressed to the employee at the employee’s residence or place
31 of business. If the employee does not serve a timely objection, the
32 Labor Commissioner shall record or file a release of the notice of
33 lien, or a reduction in the amount of the lien, as requested by the
34 employer.

35 (4) If the employee serves a timely objection pursuant to
36 paragraph (3), and the employer contends that the employee’s
37 objection is frivolous, the employer may request that the Labor
38 Commissioner investigate the lien notice. The request shall be
39 accompanied by an explanation as to why the employer contends
40 that the objection is frivolous. Upon receipt of that request, the

1 Labor Commissioner shall promptly provide the employee with
2 notice of the employer's contention, including a copy of any
3 material received from the employer, and notify the employee that
4 he or she has 30 days from receipt of that notice to provide a
5 response to the Labor Commissioner. If the employee fails to
6 establish to the satisfaction of the Labor Commissioner that there
7 is a nonfrivolous basis for the employee's objection, the Labor
8 Commissioner shall record or file a release of the notice of lien or
9 reduction in the amount of the lien. A lien shall not be released
10 nor lien amount reduced on a basis not identified in the notice
11 provided to the employee pursuant to this paragraph. A
12 determination made by the Labor Commissioner pursuant to this
13 paragraph shall not be subject to judicial review and shall not be
14 evidence in any proceeding of the merit or lack of merit of the
15 employee's demand or of the amount of that demand.

16 (5) If the employer or the Labor Commissioner is notified that
17 the employee is represented by an attorney, a copy of any notice
18 under this section shall also be served on the employee's attorney.

19 (c) The procedure established pursuant to this section to release
20 the notice of lien is an additional means of releasing a notice of
21 lien.

22 3010. (a) An employee *of a contractor described in Section*
23 *2810 of the Labor Code, which covers construction, farm labor,*
24 *garment, janitorial, security guard, and warehouse contractors,*
25 shall have a lien on the real property at which the employee
26 performed work, for the amount of any wages and other
27 compensation, penalties, and interest owed to the employee for
28 performing work at that property, under either of the following
29 circumstances:

30 (1) The property owner and the employee's employer are related
31 parties. If the property owner is a natural person, this lien shall not
32 apply to the property owner's principal residence.

33 (2) The employee was employed by a contractor or subcontractor
34 performing services for the property owner or its agent, or for a
35 related party to the property owner, or for the related party's agent,
36 regardless of whether a written contract exists. This paragraph
37 shall not apply if the services were provided to a household or
38 residence.

39 (b) For purposes of this section, "related parties" means a party
40 owns or controls, or is owned or controlled, or is under common

1 ownership or control, with the other party. For purposes of defining
2 “related parties,” “ownership” means 50 percent or greater
3 ownership, and “control” means the right granted by law to exercise
4 decision power over administration, finances, and operations.

5 (c) The amount of the lien under this section shall include unpaid
6 wages and other compensation required by California law, penalties
7 available under the Labor Code, interest at the same rate as for
8 prejudgment interest in this state, and the costs of filing and service
9 of the lien. The amount of compensation that may be claimed as
10 lien under this section includes all wages agreed to be paid to the
11 employee, but no less than the amount required by law, including
12 direct wages and compensation required to be paid to other persons
13 or entities, that would qualify as “employer payments” described
14 in Section 1773.1 of the Labor Code.

15 (d) Any act authorized or required under this chapter with regard
16 to an employee may also be undertaken by any person or entity,
17 including any governmental agency, to which a portion of an
18 employee’s compensation is payable or that has standing under
19 applicable law to maintain a direct legal action on behalf of the
20 employee to collect any portion of compensation owed to the
21 employee, or that is authorized by the employee to act on the
22 employee’s behalf.

23 (e) A lien pursuant to this section shall not be claimed by an
24 employee who is exempt from the protections of Industrial Welfare
25 Commission wage orders under the administrative, executive, or
26 professional exemptions. In any action involving a lien, the
27 property owner shall plead and prove exempt status as an
28 affirmative defense.

29 (f) This section shall not apply to the extent that the employee
30 would be entitled to a mechanic’s lien on the same property under
31 Section 8400.

32 (g) A lien pursuant to this section is in addition to any other lien
33 rights held by the employee and shall not be construed to limit
34 these rights.

35 3011. (a) The lien described in Section 3010 shall not attach
36 if the employer or property owner has obtained a surety bond or
37 insurance that provides for payment of the wages and other
38 compensation, penalties, and interest claimed by the employee and
39 is in an amount that is adequate to fully satisfy the employee’s
40 claim. If the surety bond or insurance contract is inadequate to

1 cover the entire amount of the employee's claim, the lien shall be
2 limited to the amount of the claim that exceeds the bond or
3 insurance coverage. Within 30 days of being provided with proof
4 of a valid surety bond or insurance contract that applies to the
5 claim, the employee shall file a release of any lien recorded or a
6 notice reducing the lien to the amount that exceeds the bond or
7 insurance coverage.

8 (b) The lien described in Section 3010 shall not attach for labor
9 performed under a valid collective bargaining agreement if the
10 agreement expressly provides for a regular hourly pay of not less
11 than 30 percent more than the state minimum wage rate, addresses
12 the issue of security for the payment of wages, and expressly
13 waives requirements of this chapter in clear and unambiguous
14 terms. If part of the labor was performed under a collective
15 bargaining agreement as so described, the lien shall be limited to
16 the amount of the claim based on labor that was not performed
17 under the agreement. Within 30 days of being provided with proof
18 of such a collective bargaining agreement, the employee shall file
19 a release of any lien recorded or a notice reducing the lien to the
20 amount permitted by this chapter.

21 (c) If an employee, after receiving proper notice under this
22 section, acts unreasonably and in bad faith in recording or filing
23 a notice of lien or in refusing to file a release or reduction of the
24 lien, the property owner shall be entitled to recover attorney's fees
25 and costs in an action to remove or reduce the lien, and the court
26 in its discretion may also issue a fine not to exceed one thousand
27 dollars (\$1,000).

28 (d) The lien described in Section 3010 shall not attach if the
29 employer or property owner receives a court order finding that the
30 employee does not have a reasonable likelihood of success on the
31 claim for wages and other compensation, penalties, and interest
32 owed to the employee. The employee shall release the lien within
33 30 days of being provided with proof of the order.

34 3012. (a) At least 20 days prior to recording a notice of lien
35 with a county recorder pursuant to Section 3014, the employee
36 shall provide the owner or reputed owner of the property against
37 which the lien is to be recorded preliminary written notice of the
38 intent to record a notice of lien.

39 (b) Notice under this part shall include the following:

1 (1) All of the information required by subdivision (b) of Section
2 3014.

3 (2) The name and address of any entity with which the
4 employee’s employer has contracted to provide the labor for which
5 the employee seeks past due wages or other compensation, to the
6 extent known by the person giving notice.

7 (3) The following statement in boldface type:
8

9 **NOTICE TO PROPERTY OWNER**, if the person who has given
10 you this notice is not paid in full for work performed at real
11 property you own, a lien may be placed on your property after a
12 period of 20 days from the date this notice is served. Foreclosure
13 of the lien may lead to loss of all or part of your property. You
14 may wish to protect yourself against this by (1) ensuring that the
15 person who has given you this notice is paid in full for work
16 performed, or (2) any other method that is appropriate under the
17 circumstances. This notice is required by law to be served by the
18 undersigned as a statement of your legal rights. This notice is not
19 intended to reflect upon the financial condition of your related
20 party, contractor, subcontractor, tenant, or subtenant.
21

22 (c) Notice is not invalid by reason of any variance from the
23 requirements of this section if the notice is sufficient to
24 substantially inform the person given notice of the information
25 required by this section and other information required in the
26 notice.

27 (d) An employer, contractor, subcontractor, tenant, or subtenant
28 shall make available to any person seeking to give preliminary
29 notice the name and address of the property owner.

30 (e) Service of the notice required by this section shall be by the
31 means described in subdivision (c) of Section 3014 and shall be
32 deemed to have been given three business days after mailing of
33 the notice.

34 3013. (a) The lien described in Section 3010 shall be
35 permanently extinguished unless a notice of lien in accordance
36 with Section 3014 is recorded, and served upon the property owner,
37 within 180 days of the date that the employee ceased to perform
38 work at the property. The lien described in Section 3010 shall also
39 be permanently extinguished as to property that is transferred or

1 sold by the property owner, unless a notice of lien was recorded
2 before the transfer or sale in accordance with Section 3014.

3 (b) (1) The employee shall commence an action to enforce the
4 lien and prove the amount owed within 45 days of the date of filing
5 or recording of the notice of lien. If the employee does not
6 commence an action to enforce the lien within that time, the lien
7 shall be permanently extinguished and is unenforceable, unless
8 the employee and the owner of the property subject to the lien
9 agree to extend the time for enforcing the lien in writing and record
10 or file notice of the fact and terms of the extension prior to the
11 expiration of the time for commencing an action to enforce the
12 lien. If the employee does not commence an action to enforce the
13 lien within the extended time period, the lien shall be permanently
14 extinguished and is unenforceable.

15 (2) If a lien has been permanently extinguished pursuant to this
16 subdivision because the employee has not commenced an action
17 to enforce the lien within the applicable time period, the employee
18 shall not record or file another lien under Section 3010 claiming
19 the same unpaid wages, compensation, penalties, or costs claimed
20 by the extinguished lien.

21 (c) If the lien has been extinguished pursuant to subdivision (a)
22 or (b), upon demand and 15 days' notice by the property owner or
23 any affected party, the employee shall record or file a release of
24 the lien. If an employee fails to file a release of the lien after proper
25 notice has been mailed to the employee's address as indicated on
26 the notice of the lien, the employer or affected party may petition
27 the court for an order releasing the lien. If the employee acted
28 unreasonably and in bad faith in refusing to file a release of the
29 lien, the property owner or affected party shall be entitled to
30 recover its attorney's fees and costs incurred in the action, and the
31 court in its discretion may also issue a fine not to exceed one
32 thousand dollars (\$1,000).

33 3014. (a) The employee shall ~~record~~ request that the Labor
34 Commissioner record, on behalf of the employee, a notice of lien
35 with the county recorder in the county where the real property is
36 located. *The employee shall provide the Labor Commissioner with*
37 *an executed notice of lien and a copy of the preliminary notice*
38 *that the employee provided to the property owner pursuant to*
39 *Section 3001.5.*

1 (b) The notice of lien shall be executed under penalty of perjury,
2 as defined in Section 118 of the Penal Code, and shall include all
3 of the following:

4 (1) A statement of the employee’s demand for payment of the
5 wages and other compensation, penalties, and interest. The
6 statement shall specify the amount owed to the employee, and if
7 the amount is estimated, shall provide an explanation for the basis
8 of the estimate.

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

11 (3) The name of the employer.

12 (4) The employee’s mailing address.

13 (5) A description of the address or site of the property at which
14 the work was performed sufficient for identification.

15 (6) The name of the property owner or reputed owner, if known.

16 (c) *If the Labor Commissioner is satisfied that preliminary*
17 *notice has been given, that the notice of lien is in proper form, and*
18 *that the notice of lien is not fraudulent or being used for purposes*
19 *of harassment, the Labor Commissioner shall record the notice*
20 *of lien on behalf of the employee. A determination made by the*
21 *Labor Commissioner pursuant to this subdivision shall not be*
22 *subject to judicial review, and shall not be evidence in any*
23 *proceeding of the merit or lack of merit of the employee’s demand*
24 *or of the amount of that demand.*

25 ~~(e)~~

26 (d) ~~The employee~~ Labor Commissioner shall serve the notice
27 of lien on the employer and the property owner or reputed owner,
28 by certified mail with return receipt requested, evidenced by a
29 certificate of mailing, postage prepaid, addressed to the employer
30 at the employer’s residence or place of business, to the address of
31 the property subject to the lien, and to the residence or place of
32 business of the property owner or reputed owner. *The Labor*
33 *Commissioner shall also mail a copy of the recorded notice of lien*
34 *to the employee at the address that the employee has provided to*
35 *the Labor Commissioner.*

36 ~~(e)~~

37 (e) The lien attaches only to real property owned by the property
38 owner described in Section 3010 at the time of the recording of
39 the notice of lien. The lien attaches only to the property that is
40 specifically identified in the notice of lien.

1 3015. (a) In order to enforce a lien under Section 3010, the
2 employee shall demonstrate in a civil action that he or she is owed
3 wages or other compensation and any related penalties and interest
4 and that the property is property subject to a lien under Section
5 3010.

6 (b) If a notice of lien is recorded or filed pursuant to Section
7 3014 and an action to recover unpaid wages has been filed by the
8 employee against the employer, and the property owner has been
9 joined as a party, that action shall also be deemed an action to
10 enforce the lien and foreclose upon any property subject to the
11 recorded lien. In the judgment resulting from an action, the court
12 may order the sale at a sheriff's auction or the transfer to the
13 plaintiff of title or possession of any property subject to the lien.
14 Whether or not the court makes an order as part of the judgment,
15 any property subject to the lien may be foreclosed upon at any
16 point after a judgment for unpaid wages is issued.

17 (c) The employee is entitled to court costs and reasonable
18 attorney's fees for filing a successful action to enforce a lien
19 pursuant to this section.

20 (d) If judgment is entered against the employee in the action to
21 enforce the lien or if the case is dismissed with prejudice, the lien
22 shall be extinguished. The judgment shall include the date the
23 notice of lien was recorded, the county in which it was recorded,
24 the book and page or series number of the place in the legal records
25 in which the lien was recorded, and a legal description of the
26 property to which the lien attaches. The judgment may be appealed
27 by filing a notice of appeal on or before 60 days after the entry of
28 judgment. If an appeal is filed, the lien shall continue in force until
29 all issues on the appeal have been decided. If the period for appeal
30 runs without an appeal having been filed, or if the appeal fails, the
31 judgment entered under this section shall be equivalent to
32 cancellation of the lien and its removal from the record. A judgment
33 entered pursuant to this subdivision is a recordable instrument.
34 Upon recordation of a certified copy of the judgment, the property
35 described in the judgment is released from claim of lien.
36 Alternatively, if the lien is extinguished, upon demand and 15
37 days' notice by the property owner, the employee shall file a release
38 of the lien. If an employee refuses to file a release of the lien after
39 proper notice, a property owner may petition the court for an order
40 to file a release of the lien. If the employee acted unreasonably

1 and in bad faith in refusing to file a release of the lien, the property
2 owner shall be entitled to attorney's fees and costs incurred in the
3 action, and the court in its discretion may also issue a fine not to
4 exceed one thousand dollars (\$1,000).

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

12 (f) If a court finds that false information was knowingly and in
13 bad faith included in a notice of lien by an employee with an intent
14 to defraud, the following shall apply:

15 (1) The lien shall be extinguished and the right to a lien as
16 provided by this chapter shall be forfeited.

17 (2) The court may award reasonable attorney's fees and court
18 costs to the property owner for action taken to defeat the lien claim.

19 3015.5. (a) An employer or property owner may use the
20 procedure established pursuant to this section to release the notice
21 of lien if the employer or property owner contend any of the
22 following:

23 (1) That a notice of lien established pursuant to Section 3010
24 is not effective.

25 (2) The lien has been extinguished because the circumstances
26 provided by Section 3010 are not present.

27 (3) The amount claimed by the employee has been paid.

28 (4) The employer or property owner has obtained a surety bond
29 pursuant to subdivision (a) of Section 3011.

30 (5) The exception provided by subdivision (b) of Section 3011
31 applies.

32 (6) The employee has failed to provide the notice required by
33 Section 3012.

34 (7) The employee or Labor Commissioner has failed to
35 commence an action to enforce the lien within the specified time.

36 (8) The action has been resolved against the employee.

37 (b) The procedure to release the notice of lien shall be as
38 follows:

39 (1) The employer or property owner shall provide notice to the
40 employee that the employer or property owner believes that the

1 lien should be released and the basis for that belief, and request
2 that the employee record or file a release of the notice of lien. The
3 notice shall be made by certified mail with return receipt requested,
4 evidenced by a certificate of mailing, postage prepaid, addressed
5 to the employee at the employee's residence or place of business.

6 (2) If the employee fails to respond within 30 days of the date
7 of mailing of the notice provided by paragraph (1), the employer
8 or property owner may give notice to the Labor Commissioner
9 that the employee did not respond, and request that the Labor
10 Commissioner file or record a release of the notice of lien. The
11 notice shall include a copy of the notice of lien and a certification,
12 made under penalty of perjury, that the employer or property owner
13 followed the procedures provided by this section and that the
14 employee did not respond.

15 (3) Upon receiving a request pursuant to paragraph (2), the
16 Labor Commissioner shall notify the employee that unless the
17 employee serves an objection on the Labor Commissioner within
18 30 days, the Labor Commissioner shall release the notice of lien.
19 The notice shall be made by certified mail with return receipt
20 requested, evidenced by a certificate of mailing, postage prepaid,
21 addressed to the employee at the employee's residence or place
22 of business. If the employee does not serve a timely objection, the
23 Labor Commissioner shall record or file a release of the notice of
24 lien, or a reduction in the amount of the lien, as requested by the
25 employer or property owner.

26 (4) If the employer or property owner serves a timely objection
27 pursuant to paragraph (3), and the employer or property owner
28 contends that the employee's objection is frivolous, the employer
29 or property owner may request that the Labor Commissioner
30 investigate the lien notice. The request shall be accompanied by
31 an explanation as to why the employer or property owner contends
32 that the objection is frivolous. Upon receipt of that request, the
33 Labor Commissioner shall promptly provide the employee with
34 notice of the employer's or property owner's contention, including
35 a copy of any material received from the employer or property
36 owner, and notify the employee that he or she has 30 days from
37 receipt of that notice to provide a response to the Labor
38 Commissioner. If the employee fails to establish to the satisfaction
39 of the Labor Commissioner that there is a nonfrivolous basis for
40 the employee's objection, the Labor Commissioner shall record

1 or file a release of the notice of lien or reduction in the amount of
 2 the lien. A lien shall not be released nor lien amount reduced on
 3 a basis not identified in the notice provided to the employee
 4 pursuant to this paragraph. A determination made by the Labor
 5 Commissioner pursuant to this paragraph shall not be subject to
 6 judicial review and shall not be evidence in any proceeding on the
 7 merit or lack of merit of the employee’s demand or of the amount
 8 of that demand.

9 (5) If the employer, property owner, or the Labor Commissioner
 10 is notified that the employee is represented by an attorney, a copy
 11 of any notice under this section shall also be served on the
 12 employee’s attorney.

13 (c) The procedure established pursuant to this section to release
 14 the notice of lien is an additional means of releasing a notice of
 15 lien.

16 3016. If the judgment in an action is against the property of a
 17 property owner who is not the employer, the owner may deduct
 18 the amount of the judgment and costs from any amount owed to
 19 the employer. If the amount of the judgment and costs exceed the
 20 amount owed to the employer, the owner may recover from the
 21 owner, or the sureties on a bond given by the employer, if any, the
 22 remaining amount of the judgment and costs.

23 3017. On or before January 1, 2019, the Department of
 24 Industrial Relations shall issue a report to the Legislature, in
 25 compliance with Section 9795 of the Government Code, on the
 26 impact of this chapter, known as the California Wage Theft
 27 Recovery Act. The report at a minimum, shall report on the number
 28 of wage liens filed, the number of wage liens that led to foreclosure
 29 or seizure of property, and the impact of this chapter on unpaid
 30 wage collection.

31 SEC. 3. 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

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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