

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2517

Introduced by Assembly Member Eng

February 24, 2012

An act to *amend Section 8414 of, to add Sections 8451 and 8465 to, and to add Chapter 3 (commencing with Section 3000) to Title 14 of Part 4 of Division 3 of, the Civil Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2517, as amended, Eng. ~~Employment: payment of wages: liens.~~ *Wage liens: laborers and car washing and polishing employees.*

(1) Existing law provides that specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement, shall have a mechanic's lien upon the property so improved.

This bill would authorize ~~an~~ *a car washing and polishing* employee to record and enforce a wage lien upon specified real and personal property for wages *and 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.

(2) *Existing law provides that a claimant other than a direct contractor may not enforce a lien unless the claimant records a claim of lien after he or she ceases to provide work, and before the earlier of (a) 90 days after completion of the work of improvement or (b) 30 days after the owner records a notice of completion or cessation.*

This bill would provide that a laborer may not enforce a lien unless he or she records a claim of lien after he or she ceases to furnish labor or services, and before the earlier of (a) one year after completion of the work of improvement or (b) 180 days after the owner records a notice of completion or cessation.

(3) Existing law provides that a mechanic's lien, subject to a specified exception, has priority over a lien, mortgage, deed of trust, or other encumbrance on the work of improvement or the real property on which the work of improvement is situated, that (a) attaches after commencement of the work of improvement or (b) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice.

This bill would provide that a mechanic's lien on behalf of a laborer shall be preferred to any lien, mortgage, deed of trust, or other encumbrance upon the work of improvement and the site, regardless of whether the lien, mortgage, deed of trust, or other encumbrance attached prior to or subsequent to the commencement of the labor or services, except that the lien would not take precedence over a preexisting lien, mortgage, deed of trust, or other encumbrance that was recorded prior to the commencement of the labor or services if the laborer is shown to have had actual knowledge of it prior to providing the labor or services.

(4) Existing law requires the court, in an action to enforce a mechanic's lien, to allow as costs, in addition to any other costs allowed by law, the amount paid to verify and record the claim of lien, as specified.

This bill would provide that a laborer shall be entitled to the court costs and attorney's fees incurred as a result of recording and foreclosing on a mechanic's lien, and, upon award, these amounts shall be considered part of the lien and shall relate back to the date of recording of the lien.

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

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:

CHAPTER 3. CAR WASHING AND POLISHING EMPLOYEE WAGE
LIENS

3000. *As used in this chapter, the following terms have the following meanings:*

(a) *“Car washing and polishing” means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. “Car washing and polishing” does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.*

(b) (1) *“Employer” means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.*

(2) *“Employer” does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. “Employer” does not include any licensed vehicle dealer or car rental agency that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles. “Employer” does not include either a new motor vehicle dealer, as defined in Section 426 of the Vehicle Code, that is primarily engaged in the business of selling, leasing, renting, or servicing vehicles or an automotive repair dealer, as defined by subdivision (a) of Section 9880.1 of the Business and Professions Code, who is primarily engaged in the business of repairing and diagnosing malfunctions of motor vehicles. “Employer” does not include any self-service car wash or automated car wash that has employees for cashiering or maintenance purposes only.*

(c) *“Employee” means any person, including an alien or minor, who renders actual car washing and polishing services in any business for an employer, whether for tips or for wages, and whether wages are calculated by time, piece, task, commission, or other method of calculation, and whether the services are rendered on a commission, concessionaire, or other basis.*

(d) *“Commissioner” means the Labor Commissioner.*

~~3000.~~

3001. (a) *If all of the requirements of this chapter section are met, an employee has a lien for the amount of wages and other*

1 *compensation* and related penalties and damages owed the
2 employee by his or her employer on all of the following:

3 (1) Real and personal property owned by the employer that is
4 located within the state.

5 (2) Real and personal property that is located within the state
6 upon which the employee performed work or for which the
7 employee furnished materials, as part of the employee's
8 employment, at the request of the owner or a person acting under
9 the owner's authority. A lien as to the property described in this
10 paragraph may attach only for the time that the employee
11 performed work on or furnished materials for that property.

12 (b) (1) To establish the lien described in subdivision (a) upon
13 real property, the employee, employee representative, or the ~~Labor~~
14 ~~Commissioner~~ *commissioner* shall record a notice of lien with the
15 county recorder in the county where the real property is located.

16 (2) The notice of lien shall include all of the following:

17 (A) A statement of the claimant's demand after deducting all
18 just credits and offsets.

19 (B) The name of the owner or reputed owner, if known.

20 (C) A general statement of the kind of work furnished by the
21 claimant.

22 (D) The name of the person by whom the claimant was
23 employed or to whom the claimant furnished work.

24 (E) ~~A~~ *For property described in paragraph (2) of subdivision*
25 *(a), a description of the site upon which the work was performed*
26 *sufficient for identification. For property described in paragraph*
27 *(1) of subdivision (a), the lien attaches to all real property owned*
28 *by the employer or subsequently acquired by the employer that is*
29 *located in any county in which the notice of lien is recorded,*
30 *regardless of whether the property is identified in the notice of*
31 *lien.*

32 (F) The claimant's address.

33 (3) The employee, employee representative, or the ~~Labor~~
34 ~~Commissioner~~ *commissioner* shall serve the notice of lien on the
35 real property owner *and employer*, as follows:

36 (A) For an *employer*, owner, or reputed owner to be notified
37 who resides in or outside this state, by registered mail, certified
38 mail, or first-class mail, evidenced by a certificate of mailing,
39 postage prepaid, addressed to ~~the owner or reputed owner at the~~

1 ~~owner's or reputed owner's~~ *that person at that person's* residence
2 or place of business address.

3 (B) If the *employer*, owner, or reputed owner cannot be served
4 by this method, the notice may be given by registered mail,
5 certified mail, or first-class mail, evidenced by a certificate of
6 mailing, postage prepaid, addressed to the construction lender or
7 to the original contractor, if applicable.

8 (c) (1) To establish the lien described in subdivision (a) upon
9 personal property, the employee, employee representative, or the
10 ~~Labor Commissioner~~ *commissioner* shall record a notice of lien
11 with the Secretary of State. The notice shall specify the nature and
12 amount of the wage claim, *and to the extent known*, describe the
13 property on which the lien is made, and state that a lien is claimed
14 on the property. *Regardless of whether the property is specifically*
15 *described in the notice, the lien attaches to all personal property*
16 *owned by employer or subsequently acquired by the employer,*
17 *whether tangible or intangible.* Except as otherwise provided in
18 this chapter, the manner, form, and place of filing shall be as
19 described in Chapter 5 (commencing with Section 9501) of
20 Division 9 of the Commercial Code. The notice of the lien shall
21 be placed in the same file as financing statements pursuant to
22 Section 9522 of the Commercial Code.

23 (2) The employee, employee representative, or the ~~Labor~~
24 ~~Commissioner~~ *commissioner* shall serve a copy of the notice by
25 personal service to the owner in the same manner as a summons
26 or by mail as described in paragraph (3) of subdivision (b).

27 ~~(d) (1) If treble damages are owed pursuant to subdivision (b)~~
28 ~~of Section 206 of the Labor Code, the Labor Commissioner shall~~
29 ~~record a lien for those damages, which will be separate and apart~~
30 ~~from any other lien under this section.~~

31 ~~(2) Failure to record or perfect a lien for damages under~~
32 ~~subdivision (b) of Section 206 of the Labor Code shall have no~~
33 ~~effect on the enforceability or perfection of any other lien under~~
34 ~~this section.~~

35 (d) *A lien under this section may be used to recover the entire*
36 *compensation package agreed to be paid to the employee, but not*
37 *less than the amount required by law to be paid to the employee,*
38 *including direct wages and compensation required to be paid to*
39 *other persons or entities, if those payments would qualify as*
40 *employer payments under Section 1773.1 of the Labor Code. The*

1 *lien may be used to recover interest on compensation from the*
2 *date due, at the same rate as for prejudgment interest, costs of*
3 *filing and service, attorney's fees, and other costs for the recording*
4 *and enforcement of the lien.*

5 (e) A lien under this section is perfected when the lien is
6 recorded and noticed as described in this section.

7 (f) A lien may be filed pursuant to this section at any time before
8 the expiration of the statute of limitations for the wage claim the
9 lien would enforce.

10 (g) Mistakes or errors in the claimed amount owed that the lien
11 would enforce do not invalidate the lien unless made with the intent
12 to defraud.

13 ~~3001.~~

14 3002. (a) An action to enforce a lien under this chapter may
15 be brought by the employee, employee representative, or the ~~Labor~~
16 ~~Commissioner~~ *commissioner*, and may be included in *any action*
17 *to enforce a right under the Labor Code*, any action brought under
18 Chapter 5 (commencing with Section 17200) of Part 2 of Division
19 7 of the Business and Professions Code, any action brought by
20 collective bargaining representatives, or any class action or
21 representative action.

22 (b) *In order to enforce a lien under this chapter, the employee*
23 *shall demonstrate that he or she is owed wages or other*
24 *compensation and any related penalties and damages. The*
25 *determination that the employee is owed wages, compensation,*
26 *penalties, or damages may be made by the commissioner in a*
27 *hearing held pursuant to Section 98 of the Labor Code or by a*
28 *court.*

29 ~~(b)~~

30 (c) If the action is brought in an administrative proceeding before
31 the ~~Labor Commissioner~~ *commissioner* pursuant to Section 98 of
32 the Labor Code, the ~~Labor Commissioner~~ *shall determine the*
33 ~~validity of the lien~~ *commissioner's determination of the amount*
34 *of unpaid wages, compensation, or related damages or penalties*
35 *due the employee shall be deemed a determination of the amount*
36 *and validity of the lien created pursuant to this chapter.* If no lien
37 has been recorded at the time the administrative claim is filed, the
38 ~~Labor Commissioner~~ *shall commissioner may record and notice a*
39 *lien pursuant to Section* ~~3000~~ 3001 *on behalf of the employee.*

40 ~~(e)~~

1 (d) Actions pursuant to this chapter against the same employer
2 may be joined in a single proceeding, but the court may order
3 separate trials or hearings.

4 ~~3002.~~

5 ~~3003.~~ (a) If a lien is recorded pursuant to Section ~~3000~~ 3001
6 and an action to recover wages *and other compensation* and related
7 penalties and damages owed the employee has already been filed
8 *or is later filed*, that action shall also be deemed an action to
9 enforce the lien upon any property subject to the recorded lien. In
10 the judgment resulting from the action, the court may order the
11 sale at a public auction, or the transfer to the plaintiff of title or
12 possession, of any property subject to the lien. Regardless of
13 whether the order is made part of the judgment, a writ of sale may
14 be issued for any property subject to the lien at any point after a
15 judgment for unpaid wages is issued.

16 (b) If judgment is entered in favor of the employer in an action
17 to recover wages *and other compensation* and related penalties
18 and damages owed the employee or if the case is dismissed with
19 prejudice, any applicable lien shall be extinguished upon expiration
20 of the appeals period if no appeal is filed. If an appeal is filed, the
21 lien shall continue in force until all issues on appeal have been
22 decided. If the lien is extinguished, upon demand and 15 days'
23 notice by any affected party, the employee; *or* employee
24 representative; ~~or Labor Commissioner~~ shall file a release of the
25 lien in the manner prescribed by Sections 697.370 and 697.650 of
26 the Code of Civil Procedure.

27 (c) To enforce the lien, an action shall be brought within one
28 year of the recording of the lien. If an action to enforce the lien is
29 not brought within one year of the recording of the lien, the lien
30 shall be extinguished. Upon demand and 15 days' notice by any
31 affected party, the employee; *or* employee representative; ~~or Labor~~
32 ~~Commissioner~~ shall file a release of the lien in the manner
33 prescribed by Sections 697.370 and 697.650 of the Code of Civil
34 Procedure.

35 ~~3003.~~

36 3004. A lien established pursuant to this chapter takes
37 precedence over all other debts, judgments, decrees, liens, or
38 mortgages perfected on or after January 1, 2013, except a tax lien,
39 ~~against the employer~~, regardless as to whether the debts, judgments,
40 decrees, liens, or mortgages originated before or after the wage

1 lien or were perfected prior to the wage lien. An employee's lien
2 is effective against the employer, the estate of the employer, or a
3 subsequent bona fide purchaser of the property subject to the
4 employee's lien.

5 ~~3004.~~

6 3005. The employee, employee representative, or ~~Labor~~
7 ~~Commissioner~~ commissioner may recover court costs and
8 reasonable attorney's fees in a successful action to enforce a lien
9 brought pursuant to this chapter.

10 SEC. 2. Section 8414 of the Civil Code is amended to read:

11 8414. (a) A claimant other than a direct contractor, or a
12 laborer as described in subdivision (b), may not enforce a lien
13 unless the claimant records a claim of lien within the following
14 times:

15 ~~(a)~~

16 (1) After the claimant ceases to provide work.

17 ~~(b)~~

18 (2) Before the earlier of the following times:

19 ~~(1)~~

20 (A) Ninety days after completion of the work of improvement.

21 ~~(2)~~

22 (B) Thirty days after the owner records a notice of completion
23 or cessation.

24 (b) A "laborer," as defined in Section 8024, may not enforce a
25 lien unless he or she records a claim of lien within the following
26 period:

27 (1) After the laborer ceases to furnish labor or services.

28 (2) Before the earlier of the following times:

29 (A) One year after completion of the work of improvement.

30 (B) One hundred eighty days after the owner records a notice
31 of completion or cessation.

32 SEC. 3. Section 8451 is added to the Civil Code, to read:

33 8451. A lien provided for in this chapter on behalf of a laborer,
34 as defined in Section 8024, shall be preferred to any lien, mortgage,
35 deed of trust, or other encumbrance upon the work of improvement
36 and the site, regardless of whether the lien, mortgage, deed of
37 trust, or other encumbrance attached prior to or subsequent to the
38 commencement of the labor or services. However, the lien shall
39 not take precedence over a preexisting lien, mortgage, deed of
40 trust, or other encumbrance that was recorded prior to the

1 *commencement of the labor or services if the laborer is shown to*
2 *have had actual knowledge of it prior to providing the labor or*
3 *services.*

4 *SEC. 4. Section 8465 is added to the Civil Code, to read:*

5 *8465. A “laborer,” as defined in Section 8024, shall be entitled*
6 *to the court costs and attorney’s fees incurred as a result of*
7 *recording and foreclosing on a lien. Upon award, these amounts*
8 *shall be considered part of the lien and shall relate back to the*
9 *date of recording of the lien.*

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