

AMENDED IN ASSEMBLY APRIL 30, 2012

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. 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, *until January 1, 2018*, 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.

3001. (a) If all of the requirements of this 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, *except that if the employer is a natural*
5 *person, the lien shall not be applied to real property that is used*
6 *as the employer's primary dwelling.*

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

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

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

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

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

22 (C) A general statement of the kind of work furnished by the
23 claimant.

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

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

34 (F) The claimant's address.

35 (3) The employee, employee representative, or the commissioner
36 shall serve the notice of lien on the real property owner and
37 employer, as follows:

38 (A) For an employer, owner, or reputed owner to be notified
39 who resides in or outside this state, by registered mail, certified
40 mail, or first-class mail, evidenced by a certificate of mailing,

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

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

27 (d) A lien under this section may be used to recover the entire
28 compensation package agreed to be paid to the employee, but not
29 less than the amount required by law to be paid to the employee,
30 including direct wages and compensation required to be paid to
31 other persons or entities, if those payments would qualify as
32 employer payments under Section 1773.1 of the Labor Code. The
33 lien may be used to recover interest on compensation from the
34 date due, at the same rate as for prejudgment interest, costs of
35 filing and service, attorney's fees, and other costs for the recording
36 and enforcement of the lien.

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

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

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

7 3002. (a) An action to enforce a lien under this chapter may
8 be brought by the employee, employee representative, or the
9 commissioner, and may be included in any action to enforce a right
10 under the Labor Code, any action brought under Chapter 5
11 (commencing with Section 17200) of Part 2 of Division 7 of the
12 Business and Professions Code, any action brought by collective
13 bargaining representatives, or any class action or representative
14 action.

15 (b) In order to enforce a lien under this chapter, the employee
16 shall demonstrate that he or she is owed wages or other
17 compensation and any related penalties and damages. The
18 determination that the employee is owed wages, compensation,
19 penalties, or damages may be made by the commissioner in a
20 hearing held pursuant to Section 98 of the Labor Code or by a
21 court.

22 (c) If the action is brought in an administrative proceeding before
23 the commissioner pursuant to Section 98 of the Labor Code, the
24 commissioner's determination of the amount of unpaid wages,
25 compensation, or related damages or penalties due the employee
26 shall be deemed a determination of the amount and validity of the
27 lien created pursuant to this chapter. If no lien has been recorded
28 at the time the administrative claim is filed, the commissioner may
29 record and notice a lien pursuant to Section 3001 on behalf of the
30 employee.

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

34 3003. (a) If a lien is recorded pursuant to Section 3001 and an
35 action to recover wages and other compensation and related
36 penalties and damages owed the employee has already been filed
37 or is later filed, that action shall also be deemed an action to enforce
38 the lien upon any property subject to the recorded lien. In the
39 judgment resulting from the action, the court may order the sale
40 at a public auction, or the transfer to the plaintiff of title or

1 possession, of any property subject to the lien. Regardless of
2 whether the order is made part of the judgment, a writ of sale may
3 be issued for any property subject to the lien at any point after a
4 judgment for unpaid wages is issued.

5 (b) If judgment is entered in favor of the employer in an action
6 to recover wages and other compensation and related penalties
7 and damages owed the employee or if the case is dismissed with
8 prejudice, any applicable lien shall be extinguished upon expiration
9 of the appeals period if no appeal is filed. If an appeal is filed, the
10 lien shall continue in force until all issues on appeal have been
11 decided. If the lien is extinguished, upon demand and 15 days'
12 notice by any affected party, the employee or employee
13 representative shall file a release of the lien in the manner
14 prescribed by Sections 697.370 and 697.650 of the Code of Civil
15 Procedure.

16 (c) To enforce the lien, an action shall be brought within one
17 year of the recording of the lien. If an action to enforce the lien is
18 not brought within one year of the recording of the lien, the lien
19 shall be extinguished. Upon demand and 15 days' notice by any
20 affected party, the employee or employee representative shall file
21 a release of the lien in the manner prescribed by Sections 697.370
22 and 697.650 of the Code of Civil Procedure.

23 3004. (a) A lien established pursuant to this chapter takes
24 precedence over all other debts, judgments, decrees, liens, or
25 mortgages perfected on or after January 1, 2013, except a tax lien
26 *and a purchase-money mortgage*, regardless as to whether the
27 debts, judgments, decrees, liens, or mortgages originated before
28 or after the wage lien or were perfected prior to the wage lien. An
29 employee's lien is effective against the employer, the estate of the
30 employer, or a subsequent bona fide purchaser of the property
31 subject to the employee's lien.

32 (b) *All liens established pursuant to this chapter shall have*
33 *equal priority. If there are insufficient funds to fully satisfy all*
34 *perfected liens established pursuant to this chapter, the funds*
35 *resulting from the sale of property that is subject to the liens shall*
36 *be divided proportionally among lien claimants.*

37 3005. The employee, employee representative, or commissioner
38 may recover court costs and reasonable attorney's fees in a
39 successful action to enforce a lien brought pursuant to this chapter.

1 3006. *This chapter, except for Section 3007, shall remain in*
2 *effect only until January 1, 2018, and as of that date is repealed,*
3 *unless a later enacted statute, that is enacted before January 1,*
4 *2018, deletes or extends that date.*

5 3007. *Any lien perfected under the provisions of Sections 3000*
6 *to 3006, inclusive, prior to the repeal of those sections remain in*
7 *full force and effect.*

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

9 8414. (a) A claimant other than a direct contractor, or a laborer
10 as described in subdivision (b), may not enforce a lien unless the
11 claimant records a claim of lien within the following times:

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

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

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

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

17 (b) A “laborer,” as defined in Section 8024, may not enforce a
18 lien unless he or she records a claim of lien within the following
19 period:

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

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

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

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

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

26 8451. A lien provided for in this chapter on behalf of a laborer,
27 as defined in Section 8024, shall be preferred to any lien, mortgage,
28 deed of trust, or other encumbrance upon the work of improvement
29 and the site, regardless of whether the lien, mortgage, deed of trust,
30 or other encumbrance attached prior to or subsequent to the
31 commencement of the labor or services. However, the lien shall
32 not take precedence over a preexisting lien, mortgage, deed of
33 trust, or other encumbrance that was recorded prior to the
34 commencement of the labor or services if the laborer is shown to
35 have had actual knowledge of it prior to providing the labor or
36 services.

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

38 8465. A “laborer,” as defined in Section 8024, shall be entitled
39 to the court costs and attorney’s fees incurred as a result of
40 recording and foreclosing on a lien. Upon award, these amounts

- 1 shall be considered part of the lien and shall relate back to the date
- 2 of recording of the lien.

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