

AMENDED IN ASSEMBLY JANUARY 23, 2014

AMENDED IN ASSEMBLY MAY 6, 2013

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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, with certain exceptions, authorize an employee to record and enforce a wage lien upon real and personal property of an employer, or a property owner, as specified, 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 *and for its cancellation and removal*. 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: 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 Fair Paycheck Act.

3 ~~SECTION 1.~~

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

6
7 CHAPTER 3. WAGE LIENS
8

9 3000. (a) An employee shall have a lien for the full amount
10 of any wages, other compensation, and related penalties and
11 damages owed to the employee on the following property:

12 (1) All property of the employer, including any after-acquired
13 property, except that if the employer is a natural person, a lien
14 shall apply to the employer’s principal residence only to the extent
15 that the employee provided labor to the benefit of that household
16 or residence.

17 (2) The property upon which the employee bestowed labor for
18 the benefit of the property owner and with the owner’s consent or
19 knowledge that such labor was being provided. The amount of the
20 lien on such property shall be limited to the amount of wages,
21 compensation, and related penalties and damages accrued during
22 the time the employee bestowed labor on that specific property.

23 (b) The amount of this lien shall include unpaid wages, all other
24 compensation required under California law, penalties and damages
25 available under the Labor Code, interest at the same rate as for
26 prejudgment interest in this state, and the costs of filing and service
27 of the lien. The amount of compensation that may be claimed as
28 a lien under this section includes all wages agreed to be paid to
29 the employee, but no less than the amount required by law,
30 including direct wages and compensation required to be paid to

1 other persons or entities, that would qualify as “employer
2 payments” described in Section 1773.1 of the Labor Code.

3 (c) The lien shall be subject to the following limits:

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

8 (2) The lien described in paragraph (2) of subdivision (a) shall
9 not apply to *a claim relating to* property bought or services
10 furnished primarily for personal, family, or household purposes,
11 including *those benefitting* any real property that is the principal
12 residence of the owner.

13 (3) *The lien described in paragraph (2) of subdivision (a) shall*
14 *not attach if the employer has obtained a surety bond or insurance*
15 *that provides for payment of the wages, related damages, and*
16 *penalties sought by the employee and is in an amount that is*
17 *adequate to fully satisfy the employee’s claim. If the surety bond*
18 *or insurance contract is inadequate to cover the entire amount of*
19 *the employee’s claim, the lien shall be limited to the amount of the*
20 *claim that exceeds the bond or insurance coverage. Within 30 days*
21 *of being provided with proof of a valid surety bond or insurance*
22 *contract that applies to the claim, the employee shall file a release*
23 *of any lien recorded against that property or a notice reducing*
24 *the lien to the amount that exceeds the bond or insurance coverage.*

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

32 (e) A lien pursuant to this chapter shall not be claimed by an
33 employee who is exempt from the protections of Industrial Welfare
34 Commission wage orders *under the administrative, executive, or*
35 *professional exemptions*. However, in any action involving such
36 a lien, the employer or property owner shall plead and prove
37 exempt status as an affirmative defense.

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

1 3001. (a) The lien described in Section 3000 shall be
 2 permanently extinguished unless a notice of lien in accordance
 3 with Section 3002 or 3003 is recorded and served within ~~one year~~
 4 *180 days* of the date that the employee ceased working for the
 5 employer.

6 (b) The employee shall commence an action to enforce the lien
 7 and prove the amount owed within ~~180~~ *90* days of the date of filing
 8 or recording of the notice of lien. If the employee does not
 9 commence an action to enforce the lien within that time, the lien
 10 shall be permanently extinguished and is unenforceable.

11 (c) (1) Subdivision (b) does not apply if the employee and the
 12 owner of the property subject to the lien agree to extend the time
 13 for enforcing the lien in writing and record or file notice of the
 14 fact and terms of the extension within either of the following
 15 periods:

16 (A) ~~180~~ *Ninety* days after recordation or filing of the notice of
 17 lien.

18 (B) More than ~~180~~ *90* days after recordation or filing of the
 19 notice of lien but before a purchaser or encumbrancer acquires
 20 rights in the property for value and in good faith.

21 (2) In the event of an extension, the employee shall commence
 22 an action to enforce the lien within ~~180~~ *90* days after the expiration
 23 of the extension. If the employee does not commence an action to
 24 enforce the lien within that time, the lien shall be permanently
 25 extinguished and is unenforceable.

26 (d) If the lien has been extinguished pursuant to subdivision (b)
 27 or (c), upon demand and 15 days' notice by any affected party, the
 28 employee shall record or file a release of the lien. *If an employee*
 29 *or employee representative refuses to file a release of the lien after*
 30 *proper notice, an employer or property owner may petition the*
 31 *court for an order to file a release of the lien and the employer or*
 32 *property owner shall be entitled to attorney's fees and costs*
 33 *incurred in the action. The court in its discretion may also issue*
 34 *a fine, not to exceed one thousand dollars (\$1,000), for refusing*
 35 *to file a release of lien after proper notice.*

36 3002. (a) With regard to a lien on real property, the employee
 37 shall record a notice of lien with the county recorder in the county
 38 where the real property is located.

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 unpaid wages,
5 other compensation, related penalties, and damages. The statement
6 shall specify the amount owed to the employee, and if the amount
7 is estimated, shall provide an explanation for the basis of the
8 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 person by whom the employee was
12 employed.

13 (4) The employee's mailing address.

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

16 (A) A description of the site upon which the work was
17 performed sufficient for identification.

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

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

22 (1) For an employer, notice of lien shall be served by ~~registered~~
23 ~~mail, certified mail, or first-class mail~~, *certified mail with return*
24 *receipt requested*, evidenced by a certificate of mailing, postage
25 prepaid, addressed to the employer at the employer's residence or
26 place of business.

27 (2) For an owner or reputed owner who is not the employer,
28 notice of lien shall be served by ~~registered mail, certified mail, or~~
29 ~~first-class mail~~, *certified mail with return receipt requested*,
30 evidenced by a certificate of mailing, postage prepaid, addressed
31 to the address of the property subject to the lien or to the residence
32 or place of business of the owner or reputed owner.

33 (d) For property described in paragraph (1) of subdivision (a)
34 of Section 3000, the lien attaches to all real property owned by the
35 employer at the time of the filing of the notice of lien, or that is
36 subsequently acquired by the employer, that is located in any
37 county in which the notice of lien is recorded, regardless of whether
38 the property is identified in the notice of lien. For property
39 described in paragraph (2) of subdivision (a) of Section 3000, the

1 lien attaches only to the property that is specifically identified in
 2 the notice of lien.

3 3003. (a) With regard to a lien on personal property, the
 4 employee shall file a notice of lien with the Secretary of State.
 5 Except as otherwise provided in this chapter, the manner, form,
 6 and place of filing shall be as described in Chapter 5 (commencing
 7 with Section 9501) of Division 9 of the Commercial Code. The
 8 notice of the lien shall be placed in the same file as financing
 9 statements pursuant to Section 9522 of the Commercial Code.

10 (b) The notice shall be executed under penalty of perjury, *as*
 11 *defined in Section 118 of the Penal Code*, and shall state the
 12 following:

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

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

19 (3) The name of the person by whom the employee was
 20 employed.

21 (4) The employee’s mailing address.

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

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

31 (1) For an employer, notice of lien shall be served by ~~registered~~
 32 ~~mail, certified mail, or first-class mail,~~ *certified mail with return*
 33 *receipt requested*, evidenced by a certificate of mailing, postage
 34 prepaid, addressed to the employer at the employer’s residence or
 35 place of business.

36 (2) For an owner or reputed owner who is not the employer,
 37 notice of lien shall be served by ~~registered mail, certified mail, or~~
 38 ~~first-class mail,~~ *certified mail with return receipt requested*,
 39 evidenced by a certificate of mailing, postage prepaid, addressed
 40 to the residence or place of business of the owner or reputed owner.

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

10 (e) *This section shall become operative on July 1, 2016, or on*
11 *a date that the Secretary of State determines, whichever is sooner.*

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 pursuant
22 to Section 98 of the Labor Code, the Labor Commissioner may
23 establish the amount of lien if a lien has been recorded. If no lien
24 has been recorded at the time the administrative claim is filed, the
25 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 filed
29 by the employee or employee representative, that action shall also
30 be deemed an action to enforce the lien and foreclose upon any
31 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 part
35 of the judgment, any property subject to the lien may be foreclosed
36 upon at any point after a judgment for unpaid wages is issued.

37 (d) The employee or employee representative is entitled to court
38 costs and reasonable attorneys' fees for filing a successful action
39 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 *extinguished. The judgment shall include the date the notice of*
6 *lien was recorded, the county in which it was recorded, the book*
7 *and page or series number of the place in the legal records in*
8 *which the lien was recorded, and a legal description of the property*
9 *to which the lien attaches. The judgment may be appealed by filing*
10 *a notice of appeal on or before 60 days after the entry of judgment.*
11 *If an appeal is filed, the lien shall continue in force until all issues*
12 *on the appeal have been decided. If the period for appeal runs*
13 *without an appeal having been filed, or if the appeal fails, the*
14 *judgment entered under this section shall be equivalent to*
15 *cancellation of the lien and its removal from the record. A judgment*
16 *entered pursuant to this subdivision is a recordable instrument.*
17 *Upon recordation of a certified copy of the judgment, the property*
18 *described in the judgment is released from claim of lien.*
19 *Alternatively, if the lien is extinguished, upon demand and 15 days'*
20 *notice by the property owner, the employee or employee*
21 *representative shall file a release of the lien. If an employee or*
22 *employee representative refuses to file a release of the lien after*
23 *proper notice, an employer or property owner may petition the*
24 *court for an order to file a release of the lien and the employer or*
25 *property owner shall be entitled to attorney's fees and costs*
26 *incurred in the action. The court in its discretion may also issue*
27 *a fine, not to exceed one thousand dollars (\$1,000), for refusing*
28 *to file a release of lien after proper notice.*

29 (f) Any number of claims to enforce employee liens against the
30 same employer may be joined in a single proceeding, but the court
31 may order separate trials or hearings. If the proceeds of the sale
32 of the property subject to a lien are insufficient to pay all the
33 claimants, whether or not claims have been joined together, the
34 court shall order the claimants to be paid in proportion to the
35 amount due each claimant.

36 (g) *If a court finds that false information was knowingly and in*
37 *bad faith included in a notice of lien by an employee or an*
38 *employee's representative with an intent to defraud, the following*
39 *shall apply:*

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

3 (2) *The court may award reasonable attorney’s fees and court*
4 *costs to the property owner or employer for action taken to defeat*
5 *the lien claim.*

6 3005. *If the judgment in the action is against the property of*
7 *a property owner who is not the employer, the owner may deduct*
8 *the amount of the judgment and costs from any amount owed to*
9 *the employer. If the amount of the judgment and costs exceed the*
10 *amount owed to the employer, the owner may recover from the*
11 *employer, or the sureties on a bond given by the employer, if any,*
12 *the remaining amount of the judgment and costs.*

13 ~~SEC. 2.~~

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.