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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 ~~with certain exceptions~~, would *enact the California Wage Theft Recovery Act* to authorize an employee, *with certain exceptions*, to record and enforce 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:

5
6 CHAPTER 3. WAGE LIENS

7
8 3000. (a) An employee shall have a lien on all property of the
9 employer in California, including after-acquired property, for the
10 full amount of any wages and other compensation, penalties, and
11 interest owed to the employee.

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

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

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

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

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

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

34 3001. (a) The lien described in Section 3000 shall not attach
35 if the employer has obtained a surety bond or insurance that
36 provides for payment of the wages and other compensation,
37 penalties, and interest, claimed by the employee and is in an
38 amount that is adequate to fully satisfy the employee's claim. If
39 the surety bond or insurance contract is inadequate to cover the
40 entire amount of the employee's claim, the lien shall be limited to

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

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

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

27 (d) The lien described in Section 3000 shall not attach if the
28 employer receives a court order ~~or an order from the Labor~~
29 ~~Commissioner~~ finding that the employee does not have a
30 reasonable likelihood of success on the claim for wages and other
31 compensation, penalties, and interest owed to the employee. The
32 employee shall release the lien within 30 days of being provided
33 with proof of the order.

34 3001.5. (a) At least 20 days prior to recording a notice of lien
35 with a county recorder pursuant to Section 3003 or filing a notice
36 of lien with the Secretary of State pursuant to Section 3004, the
37 employee shall provide the owner or reputed owner of the property
38 against which the lien is to be recorded preliminary written notice
39 of the intent to record a notice of lien.

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

1 (1) All of the information required by subdivision (b) of Section
2 3003, to the extent known to the person giving the notice.

3 (2) The following statement in boldface type:
4

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

16 (c) Notice is not invalid by reason of any variance from the
17 requirements of this section if the notice is sufficient to
18 substantially inform the ~~person~~ *employer* given notice of the
19 information required by this section and other information required
20 in the notice.

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

25 3002. (a) The lien described in Section 3000 shall be
26 permanently extinguished unless a notice of lien in accordance
27 with Section 3003 or 3004 is recorded or filed, and served upon
28 the employer, within 180 days of the date that the employee ceased
29 working for the employer. The lien described in Section 3000 shall
30 also be permanently extinguished as to property that is transferred
31 or sold by the employer, unless a notice of lien was recorded or
32 filed before the transfer or sale in accordance with Section 3003
33 or 3004.

34 (b) (1) The employee shall commence an action to enforce the
35 lien and prove the amount owed within 45 days of the date of filing
36 or recording of the notice of lien. If the employee does not
37 commence an action to enforce the lien within that time, the lien
38 shall be permanently extinguished and is unenforceable, unless
39 the employee and the owner of the property subject to the lien
40 agree to extend the time for enforcing the lien in writing and record

1 or file notice of the fact and terms of the extension prior to the
2 expiration of the time for commencing an action to enforce the
3 lien. If the employee does not commence an action to enforce the
4 lien within the extended time period, the lien shall be permanently
5 extinguished and is unenforceable.

6 (2) If a lien has been permanently extinguished pursuant to this
7 subdivision because the employee has not commenced an action
8 to enforce the lien within the applicable time period, the employee
9 ~~may~~ shall not record or file another lien under Section 3000
10 claiming the same unpaid wages, compensation, penalties, or costs
11 claimed by the extinguished lien.

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

24 3003. (a) With regard to a lien on real property under Section
25 3000, the employee shall record a notice of lien with the county
26 recorder in the county where the real property is located.

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

30 (1) A statement of the employee's demand for payment of the
31 wages and other compensation, penalties, and interest. The
32 statement shall specify the amount owed to the employee, and if
33 the amount is estimated, shall provide an explanation for the basis
34 of the estimate.

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

37 (3) The name of the ~~person or entity by whom the employee~~
38 ~~was employed:~~ *employer*.

39 (4) The employee's mailing address.

1 (5) A description of the address or site of the property sufficient
2 for identification.

3 (c) The employee shall serve the notice of lien on the employer,
4 by certified mail with return receipt requested, evidenced by a
5 certificate of mailing, postage prepaid, addressed to the employer
6 at the employer's residence or place of business.

7 (d) The lien attaches to all real property owned by the employer
8 at the time of the filing of the notice of lien, or that is subsequently
9 acquired by the employer, that is located in any county in which
10 the notice of lien is recorded.

11 3004. (a) With regard to a lien on personal property under
12 Section 3000, the employee shall file a notice of lien with the
13 Secretary of State. ~~Except as otherwise provided in this chapter,~~
14 ~~the manner, form, and place of filing shall be as described in~~
15 ~~Chapter 5 (commencing with Section 9501) of Division 9 of the~~
16 ~~Commercial Code. The notice of the lien shall be placed in the~~
17 ~~same file as financing statements pursuant to Section 9522 of the~~
18 ~~Commercial Code. State on the standard form of initial financing~~
19 ~~statement pursuant to Section 9521 of the Commercial Code. The~~
20 ~~standard form shall be completed in the following manner:~~

21 ~~(b) The notice shall be executed under penalty of perjury, as~~
22 ~~defined in Section 118 of the Penal Code, and shall state the~~
23 ~~following:~~

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

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

26 (3) *The description of the collateral shall include the following*
27 *statements:*

28 (1)

29 (A) A statement of the employee's demand for payment of the
30 wages and other compensation, penalties, and interest. The
31 statement shall specify the amount owed to the employee, and if
32 the amount is estimated, shall provide an explanation for the basis
33 of the estimate.

34 (2)

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

37 (3) ~~The name of the person by whom the employee was~~
38 ~~employed.~~

39 (4) ~~The employee's mailing address.~~

1 (C) A statement that reads: “By authorizing or directly
2 submitting this notice of lien to the Secretary of State, the employee
3 affirms, under penalty of perjury as defined in Section 118 of the
4 Penal Code, that the employee has read this description of
5 collateral and that all the statements in the description of collateral
6 are true and correct.”

7 (b) For the purpose of the Secretary of State’s index pursuant
8 to Sections 9515, 9516, and 9522 of the Commercial Code and for
9 the purpose of the issuance of a certificate pursuant to Section
10 9519 or 9528 of the Commercial Code, the Secretary of State shall
11 treat a notice of lien pursuant to this section as a financing
12 statement.

13 (c) The employee shall serve the notice of lien on the employer
14 by certified mail with return receipt requested, evidenced by a
15 certificate of mailing, postage prepaid, addressed to the employer
16 at the employer’s residence or place of business.

17 (d) The lien attaches to all personal property that is owned by
18 the employer at the time of the filing of the notice of lien, or that
19 is subsequently acquired by the employer, that can be made subject
20 to a security interest under the Commercial Code.

21 (e) The notice of claim of lien to which the termination statement
22 relates ceases to be effective upon the filing of a termination
23 statement with the office of the Secretary of State.

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

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

29 (2) The notice of lien provides substantially the same
30 information.

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

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

39 (b) If the employee chooses to pursue the wage claim in an
40 administrative proceeding before the Labor Commissioner pursuant

1 to Section 98 of the Labor Code, the Labor Commissioner may
2 establish the amount of lien if a lien has been recorded. If no lien
3 has been recorded at the time the administrative claim is filed, the
4 Labor Commissioner may provide the notice and record the lien
5 on behalf of the employee.

6 (c) If the Labor Commissioner issues a citation under Section
7 1197.2 of the Labor Code for the failure to pay wages to an
8 employee, the Labor Commissioner may provide preliminary notice
9 and record a lien on behalf of the employee.

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

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

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

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

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

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

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

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

24 3005.5. (a) An employer may use the procedure established
25 pursuant to this section to release the notice of lien *or reduce the*
26 *amount of the lien* if the employer contends any of the following:

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

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

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

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

34 (5) The exception provided by subdivision (b) of Section 3001
35 applies.

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

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

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

1 (9) *That there is no basis for the employee's demand or for the*
2 *amount of that demand.*

3 (b) The procedure to release the notice of lien *or reduce the*
4 *amount of the lien shall be as follows:*

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

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

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

37 (4) *If the employee serves a timely objection pursuant to*
38 *paragraph (3), and the employer contends that the employee's*
39 *objection is frivolous, the employer may request that the Labor*
40 *Commissioner investigate the lien notice. The request shall be*

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

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

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

24 3010. (a) An employee shall have a lien on the real property
25 at which the employee performed work, for the amount of any
26 wages and other compensation, penalties, and interest owed to the
27 employee for performing work at that property, under any of the
28 following circumstances:

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

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

38 (3) The employee was employed to perform property services
39 work on commercial property by the property owner's lawful
40 tenant or subtenant or by the tenant's or subtenant's agent, or by

1 a contractor or subcontractor in the execution of a contract awarded
2 by the tenant or subtenant or by the tenant's or subtenant's agent,
3 regardless of whether a written contract exists. For purposes of
4 this subdivision, "property services work" means work in the
5 janitorial, security guard, parking services, and landscaping and
6 gardening industries. ~~This subdivision~~ *paragraph* shall not apply
7 if the commercial property was leased by the property owner
8 pursuant to a lease entered into prior to January 1, 2015, unless
9 the lease is modified or extended after that date.

10 (b) For purposes of this section, "related parties" means a party
11 owns or controls, or is owned or controlled, or is under common
12 ownership or control, with the other party. For purposes of defining
13 "related parties," "ownership" means 50 percent or greater
14 ownership, and "control" means the right granted by law to exercise
15 decision power over administration, finances, and operations.

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

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

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

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

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

7 3011. (a) The lien described in Section 3010 shall not attach
8 if the employer or property owner has obtained a surety bond or
9 insurance that provides for payment of the wages and other
10 compensation, penalties, and interest claimed by the employee and
11 is in an amount that is adequate to fully satisfy the employee’s
12 claim. If the surety bond or insurance contract is inadequate to
13 cover the entire amount of the employee’s claim, the lien shall be
14 limited to the amount of the claim that exceeds the bond or
15 insurance coverage. Within 30 days of being provided with proof
16 of a valid surety bond or insurance contract that applies to the
17 claim, the employee shall file a release of any lien recorded or a
18 notice reducing the lien to the amount that exceeds the bond or
19 insurance coverage.

20 (b) The lien described in Section 3010 shall not attach for labor
21 performed under a valid collective bargaining agreement if the
22 agreement expressly provides for a regular hourly pay of not less
23 than 30 percent more than the state minimum wage rate, addresses
24 the issue of security for the payment of wages, and expressly
25 waives requirements of this chapter in clear and unambiguous
26 terms. If part of the labor was performed under a collective
27 bargaining agreement as so described, the lien shall be limited to
28 the amount of the claim based on labor that was not performed
29 under the agreement. Within 30 days of being provided with proof
30 of such a collective bargaining agreement, the employee shall file
31 a release of any lien recorded or a notice reducing the lien to the
32 amount permitted by this chapter.

33 (c) If an employee, after receiving proper notice under this
34 section, acts unreasonably and in bad faith in recording or filing
35 a notice of lien or in refusing to file a release or reduction of the
36 lien, the property owner shall be entitled to recover attorney’s fees
37 and costs in an action to remove or reduce the lien, and the court
38 in its discretion may also issue a fine not to exceed one thousand
39 dollars (\$1,000).

1 (d) The lien described in Section 3010 shall not attach if the
2 employer receives a court order or an order from the Labor
3 Commissioner finding that the employee does not have a
4 reasonable likelihood of success on the claim for wages and other
5 compensation, penalties, and interest owed to the employee. The
6 employee shall release the lien within 30 days of being provided
7 with proof of the order.

8 3012. (a) At least 20 days prior to recording a notice of lien
9 with a county recorder pursuant to Section 3014, the employee
10 shall provide the owner or reputed owner of the property against
11 which the lien is to be recorded preliminary written notice of the
12 intent to record a notice of lien.

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

14 (1) All of the information required by subdivision (b) of Section
15 3014.

16 (2) The name and address of any entity with which the
17 employee's employer has contracted to provide the labor for which
18 the employee seeks past due wages or other compensation, to the
19 extent known by the person giving notice.

20 (3) The following statement in boldface type:

21
22 **NOTICE TO PROPERTY OWNER**, if the person ~~that~~ *who* has
23 given you this notice is not paid in full for work performed at real
24 property you own, a lien may be placed on your property after a
25 period of 20 days from the date this notice is served. Foreclosure
26 of the lien may lead to loss of all or part of your property. You
27 may wish to protect yourself against this by (1) ensuring that the
28 person ~~that~~ *who* has given you this notice is paid in full for work
29 performed, or (2) any other method that is appropriate under the
30 circumstances. This notice is required by law to be served by the
31 undersigned as a statement of your legal rights. This notice is not
32 intended to reflect upon the financial condition of your related
33 party, contractor, subcontractor, tenant, or subtenant.

34
35 (c) Notice is not invalid by reason of any variance from the
36 requirements of this section if the notice is sufficient to
37 substantially inform the person given notice of the information
38 required by this section and other information required in the
39 notice.

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

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

8 3013. (a) The lien described in Section 3010 shall be
 9 permanently extinguished unless a notice of lien in accordance
 10 with Section 3014 is recorded, and served upon the property owner,
 11 within 180 days of the date that the employee ceased to perform
 12 work at the property. The lien described in Section 3010 shall also
 13 be permanently extinguished as to property that is transferred or
 14 sold by the property owner, unless a notice of lien was recorded
 15 before the transfer or sale in accordance with Section 3014.

16 (b) (1) The employee shall commence an action to enforce the
 17 lien and prove the amount owed within 45 days of the date of filing
 18 or recording of the notice of lien. If the employee does not
 19 commence an action to enforce the lien within that time, the lien
 20 shall be permanently extinguished and is unenforceable, unless
 21 the employee and the owner of the property subject to the lien
 22 agree to extend the time for enforcing the lien in writing and record
 23 or file notice of the fact and terms of the extension prior to the
 24 expiration of the time for commencing an action to enforce the
 25 lien. If the employee does not commence an action to enforce the
 26 lien within the extended time period, the lien shall be permanently
 27 extinguished and is unenforceable.

28 (2) If a lien has been permanently extinguished pursuant to this
 29 subdivision because the employee has not commenced an action
 30 to enforce the lien within the applicable time period, the employee
 31 ~~may~~ shall not record or file another lien under Section 3010
 32 claiming the same unpaid wages, compensation, penalties, or costs
 33 claimed by the extinguished lien.

34 (c) If the lien has been extinguished pursuant to subdivision (a)
 35 or (b), upon demand and 15 days' notice by the property owner or
 36 any affected party, the employee shall record or file a release of
 37 the lien. If an employee fails to file a release of the lien after proper
 38 notice has been mailed to the employee's address as indicated on
 39 the notice of the lien, the employer or affected party may petition
 40 the court for an order releasing the lien. If the employee acted

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

6 3014. (a) The employee shall record a notice of lien with the
7 county recorder in the county where the real property is located.

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

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

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

18 (3) The name of the ~~person or entity by whom the employee~~
19 ~~was employed.~~ *employer.*

20 (4) The employee's mailing address.

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

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

24 (c) The employee shall serve the notice of lien on the employer
25 and the property owner or reputed owner, by certified mail with
26 return receipt requested, evidenced by a certificate of mailing,
27 postage prepaid, addressed to the employer at the employer's
28 residence or place of business, to the address of the property subject
29 to the lien, and to the residence or place of business of the property
30 owner or reputed owner.

31 (d) The lien attaches only to real property owned by the property
32 owner described in Section 3010 at the time of the recording of
33 the notice of lien. The lien attaches only to the property that is
34 specifically identified in the notice of lien.

35 3015. (a) In order to enforce a lien under Section 3010, the
36 employee shall demonstrate in a civil action that he or she is owed
37 wages or other compensation and any related penalties and interest
38 and that the property is property subject to a lien under Section
39 3010.

1 (b) If a notice of lien is recorded or filed pursuant to Section
2 3014 and an action to recover unpaid wages has been filed by the
3 employee against the employer, and the property owner has been
4 joined as a party, that action shall also be deemed an action to
5 enforce the lien and foreclose upon any property subject to the
6 recorded lien. In the judgment resulting from an action, the court
7 may order the sale at a sheriff's auction or the transfer to the
8 plaintiff of title or possession of any property subject to the lien.
9 Whether or not the court makes an order as part of the judgment,
10 any property subject to the lien may be foreclosed upon at any
11 point after a judgment for unpaid wages is issued.

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

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

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

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

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

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

15 3015.5. (a) An employer or property owner may use the
16 procedure established pursuant to this section to release the notice
17 of lien if the employer or property owner contend any of the
18 following:

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

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

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

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

26 (5) The exception provided by subdivision (b) of Section 3011
27 applies.

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

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

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

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

35 (1) The employer or property owner shall provide notice to the
36 employee that the employer or property owner believes that the
37 lien should be released and the basis for that belief, and request
38 that the employee record or file a release of the notice of lien. The
39 notice shall be made by certified mail with return receipt requested,

1 evidenced by a certificate of mailing, postage prepaid, addressed
2 to the employee at the employee's residence or place of business.

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

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

22 (c) The procedure established pursuant to this section to release
23 the notice of lien is an additional means of releasing a notice of
24 lien.

25 3016. If the judgment in an action is against the property of a
26 property owner who is not the employer, the owner may deduct
27 the amount of the judgment and costs from any amount owed to
28 the employer. If the amount of the judgment and costs exceed the
29 amount owed to the employer, the owner may recover from the
30 owner, or the sureties on a bond given by the employer, if any, the
31 remaining amount of the judgment and costs.

32 3017. On or before January 1, 2019, the Department of
33 Industrial Relations shall issue a report to the Legislature, in
34 compliance with Section 9795 of the Government Code, on the
35 impact of *this chapter, known as the California Wage Theft*
36 *Recovery Act*. The report ~~shall~~, at a minimum, *shall* report on the
37 number of wage liens filed, the number of wage liens that led to
38 foreclosure ~~of~~ or seizure of property, and the impact of ~~this act~~
39 *chapter* on unpaid wage collection.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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