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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2416

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

February 21, 2014

An act to add Chapter 3 (commencing with Section 3000) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 2416, as amended, Stone. Liens: laborers and employees.
Existing law grants specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement the right to record a mechanic's lien upon the property so improved. Under existing law, when an employer fails to pay wages due, the employee has the right to file a claim against his or her employer, or former employer, with the Division of Labor Standards Enforcement, which

is authorized to conduct investigations, hold hearings, and impose fines and penalties for nonpayment of wages.

This bill would enact the California Wage Theft Recovery Act to authorize an employee, with certain exceptions, to record and enforce 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 finding that the employee does
29 not have a reasonable likelihood of success on the claim for wages
30 and other compensation, penalties, and interest owed to the
31 employee. The employee shall release the lien within 30 days of
32 being provided with proof of the order.

33 3001.5. (a) At least 20 days prior to recording a notice of lien
34 with a county recorder pursuant to Section 3003 or filing a notice
35 of lien with the Secretary of State pursuant to Section 3004, the
36 employee shall provide the owner or reputed owner of the property
37 against which the lien is to be recorded preliminary written notice
38 of the intent to record a notice of lien.

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

1 (1) All of the information required by subdivision (b) of Section
2 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 who has given you this
6 notice is not paid in full for work performed in your employ, a lien
7 may be placed on your property after a period of 20 days after this
8 notice is served. Foreclosure of the lien may lead to loss of all or
9 part of your property. You may wish to protect yourself against
10 this by (1) ensuring that the person who has given you this notice
11 is paid in full for work performed in your employ, or (2) any other
12 method that is appropriate under the circumstances. This notice is
13 required by law to be served by the undersigned as a statement of
14 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 employer given notice of the information
19 required by this section and other information required in the
20 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 shall not record or file another lien under Section 3000 claiming
 10 the same unpaid wages, compensation, penalties, or costs claimed
 11 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 employer.

38 (4) The employee's mailing address.

39 (5) A description of the address or site of the property sufficient
 40 for identification.

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

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

9 3004. (a) With regard to a lien on personal property under
10 Section 3000, the employee shall file a notice of lien with the
11 Secretary of State on the standard form of initial financing
12 statement pursuant to Section 9521 of the Commercial Code. The
13 standard form shall be completed in the following manner:

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

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

16 (3) The description of the collateral shall include the following
17 statements:

18 (A) A statement of the employee’s demand for payment of the
19 wages and other compensation, penalties, and interest. The
20 statement shall specify the amount owed to the employee, and if
21 the amount is estimated, shall provide an explanation for the basis
22 of the estimate.

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

25 (C) A statement that reads: “By authorizing or directly
26 submitting this notice of lien to the Secretary of State, the employee
27 affirms, under penalty of perjury as defined in Section 118 of the
28 Penal Code, that the employee has read this description of collateral
29 and that all the statements in the description of collateral are true
30 and correct.”

31 (b) For the purpose of the Secretary of State’s index pursuant
32 to Sections 9515, 9516, and 9522 of the Commercial Code and for
33 the purpose of the issuance of a certificate pursuant to Section
34 9519 or 9528 of the Commercial Code, the Secretary of State shall
35 treat a notice of lien pursuant to this section as a financing
36 statement.

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

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

5 (e) The notice of claim of lien to which the termination statement
6 relates ceases to be effective upon the filing of a termination
7 statement with the office of the Secretary of State. A termination
8 statement for a notice of lien may be filed in the same manner as
9 a termination statement for a financing statement filed pursuant
10 to Section 9513 of the Commercial Code.

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

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

16 (2) The notice of lien provides substantially the same
17 information.

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

19 3005. (a) In order to enforce a lien under Section 3000, the
20 employee shall demonstrate in a civil action, or in a proceeding
21 under Section 98 of the Labor Code, that he or she is owed wages
22 or other compensation and any related penalties and interest, or
23 the employer’s liability shall be established pursuant to a citation
24 issued under Section 1197.2 of the Labor Code and the process
25 for contesting such a citation.

26 (b) If the employee chooses to pursue the wage claim in an
27 administrative proceeding before the Labor Commissioner pursuant
28 to Section 98 of the Labor Code, the Labor Commissioner may
29 establish the amount of lien if a lien has been recorded. If no lien
30 has been recorded at the time the administrative claim is filed, the
31 Labor Commissioner may provide the notice and record the lien
32 on behalf of the employee.

33 (c) If the Labor Commissioner issues a citation under Section
34 1197.2 of the Labor Code for the failure to pay wages to an
35 employee, the Labor Commissioner may provide preliminary notice
36 and record a lien on behalf of the employee.

37 (d) If a notice of lien is recorded or filed pursuant to Section
38 3003 or 3004 and an action to recover unpaid wages has been filed
39 by the employee, that action shall also be deemed an action to
40 enforce the lien and foreclose upon any property subject to the

1 recorded lien. In the judgment resulting from an action, the court
2 may order the sale at a sheriff's auction or the transfer to the
3 plaintiff of title or possession of any property subject to the lien.
4 Whether or not the court makes an order as part of the judgment,
5 any property subject to the lien may be foreclosed upon at any
6 point after a judgment for unpaid wages is issued.

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

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

36 (g) Any number of claims to enforce employee liens against the
37 same employer may be joined in a single proceeding, but the court
38 may order separate trials or hearings. If the proceeds of the sale
39 of the property subject to a lien are insufficient to pay all the
40 claimants, whether or not claims have been joined together, the

1 court shall order the claimants to be paid in proportion to the
2 amount due each claimant.

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

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

8 (2) The court may award reasonable attorney’s fees and court
9 costs to the property owner or employer for action taken to defeat
10 the lien claim.

11 3005.5. (a) An employer may use the procedure established
12 pursuant to this section to release the notice of lien or reduce the
13 amount of the lien if the employer contends any of the following:

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

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

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

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

21 (5) The exception provided by subdivision (b) of Section 3001
22 applies.

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

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

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

28 (9) That there is no basis for the employee’s demand or for the
29 amount of that demand.

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

32 (1) The employer shall provide notice to the employee that the
33 employer believes that the lien should be released or reduced and
34 the basis for that belief, and request that the employee record or
35 file a release of the notice of lien or reduction in the amount of the
36 lien. The notice shall be made by certified mail with return receipt
37 requested, evidenced by a certificate of mailing, postage prepaid,
38 addressed to the employee at the employee’s residence or place
39 of business.

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

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

25 (4) If the employee serves a timely objection pursuant to
26 paragraph (3), and the employer contends that the employee's
27 objection is frivolous, the employer may request that the Labor
28 Commissioner investigate the lien notice. The request shall be
29 accompanied by an explanation as to why the employer contends
30 that the objection is frivolous. Upon receipt of that request, the
31 Labor Commissioner shall promptly provide the employee with
32 notice of the employer's contention, including a copy of any
33 material received from the employer, and notify the employee that
34 he or she has 30 days from receipt of that notice to provide a
35 response to the Labor Commissioner. If the employee fails to
36 establish to the satisfaction of the Labor Commissioner that there
37 is a nonfrivolous basis for the employee's objection, the Labor
38 Commissioner shall record or file a release of the notice of lien or
39 reduction in the amount of the lien. A lien shall not be released
40 nor lien amount reduced on a basis not identified in the notice

1 provided to the employee pursuant to this paragraph. A
 2 determination made by the Labor Commissioner pursuant to this
 3 paragraph shall not be subject to judicial review and shall not be
 4 evidence in any proceeding of the merit or lack of merit of the
 5 employee’s demand or of the amount of that demand.

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

9 (c) The procedure established pursuant to this section to release
 10 the notice of lien is an additional means of releasing a notice of
 11 lien.

12 3010. (a) An employee shall have a lien on the real property
 13 at which the employee performed work, for the amount of any
 14 wages and other compensation, penalties, and interest owed to the
 15 employee for performing work at that property, under ~~any~~ *either*
 16 of the following circumstances:

17 (1) The property owner and the employee’s employer are related
 18 parties. If the property owner is a natural person, this lien shall not
 19 apply to the property owner’s principal residence.

20 (2) The employee was employed by a contractor or subcontractor
 21 performing services for the property owner or its agent, or for a
 22 related party to the property owner, or for the related party’s agent,
 23 regardless of whether a written contract exists. This paragraph
 24 shall not apply if the services were provided to a household or
 25 residence.

26 ~~(3) The employee was employed to perform property services~~
 27 ~~work on commercial property by the property owner’s lawful~~
 28 ~~tenant or subtenant or by the tenant’s or subtenant’s agent, or by~~
 29 ~~a contractor or subcontractor in the execution of a contract awarded~~
 30 ~~by the tenant or subtenant or by the tenant’s or subtenant’s agent,~~
 31 ~~regardless of whether a written contract exists. For purposes of~~
 32 ~~this subdivision, “property services work” means work in the~~
 33 ~~janitorial, security guard, parking services, and landscaping and~~
 34 ~~gardening industries. This paragraph shall not apply if the~~
 35 ~~commercial property was leased by the property owner pursuant~~
 36 ~~to a lease entered into prior to January 1, 2015, unless the lease is~~
 37 ~~modified or extended after that date.~~

38 (b) For purposes of this section, “related parties” means a party
 39 owns or controls, or is owned or controlled, or is under common
 40 ownership or control, with the other party. For purposes of defining

1 “related parties,” “ownership” means 50 percent or greater
2 ownership, and “control” means the right granted by law to exercise
3 decision power over administration, finances, and operations.

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

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

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

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

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

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

7 (b) The lien described in Section 3010 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 property owner shall be entitled to recover attorney's fees
24 and costs in an action to remove or reduce the lien, and the court
25 in its discretion may also issue a fine not to exceed one thousand
26 dollars (\$1,000).

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

33 3012. (a) At least 20 days prior to recording a notice of lien
34 with a county recorder pursuant to Section 3014, the employee
35 shall provide the owner or reputed owner of the property against
36 which the lien is to be recorded preliminary written notice of the
37 intent to record a notice of lien.

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

39 (1) All of the information required by subdivision (b) of Section
40 3014.

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

5 (3) The following statement in boldface type:
6

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

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

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

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

32 3013. (a) The lien described in Section 3010 shall be
33 permanently extinguished unless a notice of lien in accordance
34 with Section 3014 is recorded, and served upon the property owner,
35 within 180 days of the date that the employee ceased to perform
36 work at the property. The lien described in Section 3010 shall also
37 be permanently extinguished as to property that is transferred or
38 sold by the property owner, unless a notice of lien was recorded
39 before the transfer or sale in accordance with Section 3014.

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

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

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

31 3014. (a) The employee shall record a notice of lien with the
 32 county recorder in the county where the real property is located.

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

36 (1) A statement of the employee's demand for payment of the
 37 wages and other compensation, penalties, and interest. The
 38 statement shall specify the amount owed to the employee, and if
 39 the amount is estimated, shall provide an explanation for the basis
 40 of the estimate.

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

3 (3) The name of the employer.

4 (4) The employee's mailing address.

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

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

8 (c) The employee shall serve the notice of lien on the employer
9 and the property owner or reputed owner, by certified mail with
10 return receipt requested, evidenced by a certificate of mailing,
11 postage prepaid, addressed to the employer at the employer's
12 residence or place of business, to the address of the property subject
13 to the lien, and to the residence or place of business of the property
14 owner or reputed owner.

15 (d) The lien attaches only to real property owned by the property
16 owner described in Section 3010 at the time of the recording of
17 the notice of lien. The lien attaches only to the property that is
18 specifically identified in the notice of lien.

19 3015. (a) In order to enforce a lien under Section 3010, the
20 employee shall demonstrate in a civil action that he or she is owed
21 wages or other compensation and any related penalties and interest
22 and that the property is property subject to a lien under Section
23 3010.

24 (b) If a notice of lien is recorded or filed pursuant to Section
25 3014 and an action to recover unpaid wages has been filed by the
26 employee against the employer, and the property owner has been
27 joined as a party, that action shall also be deemed an action to
28 enforce the lien and foreclose upon any property subject to the
29 recorded lien. In the judgment resulting from an action, the court
30 may order the sale at a sheriff's auction or the transfer to the
31 plaintiff of title or possession of any property subject to the lien.
32 Whether or not the court makes an order as part of the judgment,
33 any property subject to the lien may be foreclosed upon at any
34 point after a judgment for unpaid wages is issued.

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

38 (d) If judgment is entered against the employee in the action to
39 enforce the lien or if the case is dismissed with prejudice, the lien
40 shall be extinguished. The judgment shall include the date the

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

23 (e) Any number of claims to enforce employee liens against the
24 same property owner may be joined in a single proceeding, but
25 the court may order separate trials or hearings. If the proceeds of
26 the sale of the property subject to a lien are insufficient to pay all
27 the claimants, whether or not claims have been joined together,
28 the court shall order the claimants to be paid in proportion to the
29 amount due each claimant.

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

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

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

37 3015.5. (a) An employer or property owner may use the
38 procedure established pursuant to this section to release the notice
39 of lien if the employer or property owner contend any of the
40 following:

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

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

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

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

8 (5) The exception provided by subdivision (b) of Section 3011
9 applies.

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

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

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

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

17 (1) The employer or property owner shall provide notice to the
18 employee that the employer or property owner believes that the
19 lien should be released and the basis for that belief, and request
20 that the employee record or file a release of the notice of lien. The
21 notice shall be made by certified mail with return receipt requested,
22 evidenced by a certificate of mailing, postage prepaid, addressed
23 to the employee at the employee's residence or place of business.

24 (2) If the employee fails to respond within 30 days of the date
25 of mailing of the notice provided by paragraph (1), the employer
26 or property owner may give notice to the Labor Commissioner
27 that the employee did not respond, and request that the Labor
28 Commissioner file or record a release of the notice of lien. The
29 notice shall include a copy of the notice of lien and a certification,
30 made under penalty of perjury, that the employer or property owner
31 followed the procedures provided by this section and that the
32 employee did not respond.

33 (3) Upon receiving a request pursuant to paragraph (2), the
34 Labor Commissioner shall notify the employee that unless the
35 employee serves an objection on the Labor Commissioner within
36 30 days, the Labor Commissioner shall release the notice of lien.
37 The notice shall be made by certified mail with return receipt
38 requested, evidenced by a certificate of mailing, postage prepaid,
39 addressed to the employee at the employee's residence or place
40 of business. If the employee does not serve a timely objection, the

1 Labor Commissioner shall record or file a release of the notice of
2 lien, or a reduction in the amount of the lien, as requested by the
3 employer or property owner.

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

27 (5) If the employer, property owner, or the Labor Commissioner
28 is notified that the employee is represented by an attorney, a copy
29 of any notice under this section shall also be served on the
30 employee's attorney.

31 (c) The procedure established pursuant to this section to release
32 the notice of lien is an additional means of releasing a notice of
33 lien.

34 3016. If the judgment in an action is against the property of a
35 property owner who is not the employer, the owner may deduct
36 the amount of the judgment and costs from any amount owed to
37 the employer. If the amount of the judgment and costs exceed the
38 amount owed to the employer, the owner may recover from the
39 owner, or the sureties on a bond given by the employer, if any, the
40 remaining amount of the judgment and costs.

1 3017. On or before January 1, 2019, the Department of
2 Industrial Relations shall issue a report to the Legislature, in
3 compliance with Section 9795 of the Government Code, on the
4 impact of this chapter, known as the California Wage Theft
5 Recovery Act. The report at a minimum, shall report on the number
6 of wage liens filed, the number of wage liens that led to foreclosure
7 or seizure of property, and the impact of this chapter on unpaid
8 wage collection.

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