

AMENDED IN ASSEMBLY SEPTEMBER 1, 2015

AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 588

Introduced by Senator De León

(Principal coauthor: Assembly Member Roger Hernández)

(Coauthors: Assembly Members ~~Alejo and Gray~~ *Alejo, Atkins, Gray, and Low*)

February 26, 2015

An act to add Chapter 10 (commencing with Section 690.020) to Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, and to amend Section 98 of, and to add Sections 96.8, 238, 238.1, 238.2, 238.3, 238.4, 238.5, and 558.1 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, De León. Employment: nonpayment of wages: Labor Commissioner: judgment enforcement.

(1) The Enforcement of Judgments Law provides for the enforcement of money judgments and other civil judgments. Under that law, a judgment creditor may levy upon the property of a judgment debtor to satisfy a judgment, and a levying officer holds the property until the final determination of any exemptions claimed by the judgment debtor.

This bill would enact special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state. The bill would authorize the Labor Commissioner to use any of the existing remedies available to a

judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided.

The bill would also authorize the Labor Commissioner to issue a notice of levy, as specified, if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor.

(2) Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Existing law requires the Labor Commissioner to determine all matters arising under his or her jurisdiction. Existing law makes any employer or other person acting on behalf of an employer who violates or causes to be violated specified provisions regulating hours and days of work in any order of the Industrial Welfare Commission to be subject to a civil penalty, as specified. *A violation of the general provisions governing working hours is a crime.*

This bill would authorize the Labor Commissioner to provide for a hearing *to recover civil penalties* against any employer or other person acting on behalf of an ~~employer~~ *employer, as defined*, for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission. ~~The bill would also authorize any person liable for a violation of those provisions to be held liable in various other actions relating to, among other things, an employer's failure to pay wages.~~ *Commission, as specified. This bill would provide that any employer or other person acting on behalf of an employer, as defined, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, other related provisions of law is authorized to be held liable as the employer for such violation. Because the bill expands liability and a violation of those provisions would be a crime, the bill would impose a state-mandated local program.*

Under existing law, within a specified period of time after service of notice of an order, decision, or award, the parties are authorized to seek review by filing an appeal to the superior court, where the appeal is required to be heard de novo.

This bill, beginning 20 days after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner, or in favor of any employee pursuant to an appeal, would authorize the Labor

Commissioner to, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. The bill would also require the judgment debtor to be served with a copy of the notice of levy. The bill would require any person who surrenders to the Labor Commissioner any credits, money, or property, or pays the debts owed to the judgment debtor to be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the Labor Commissioner as a result of the levy. The bill would make any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor liable in his or her own person or estate to the Labor Commissioner in an amount equal to the value of the credits, money, or property or in the amount of the levy, as provided.

If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, the bill would prohibit an employer from continuing to conduct business in this ~~state~~ *state, as specified*, unless the employer has obtained a bond from a surety company ~~admitted~~ and has filed a copy of that bond with the Labor Commissioner, as provided. As an alternative to the bond requirement, the bill would authorize the employer to provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. The bill would make any employer conducting business without satisfying the bond requirement subject to a specified civil ~~penalty~~ *penalty, as provided*. The bill, where an employer is conducting business in violation of the bond requirement, would authorize the Labor Commissioner to issue and serve on such employer a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The bill would make the failure of an employer, ~~officer, or anyone having direction, management, or control of any place of employment or of employees~~ *owner, director, officer, or managing agent of the employer* to observe a stop order guilty of a misdemeanor. By creating a new

crime, the bill would impose a state-mandated local program. Subject to required prior notice to the employer, the bill would authorize the Labor Commissioner to create a lien on any real or personal property in California of an employer *or a successor employer with respect to real property, as described*, that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, and penalties claimed to be owed to an employee, as specified.

Existing law generally provides for the licensure and regulation of various types of long-term care facilities by the State Department of Public Health and the State Department of Social Services.

If a final judgment against an employer arising from the ~~employer's~~ *employer's* nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal, this bill would prohibit an employer in the long-term care industry, as specified, from obtaining a license or renewing that license if the employer is conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, as described above. ~~The bill would make a specified entity that contracts with an employer to perform services in the property services, as defined, or long-term care industries jointly and severally liable where the entity has been named as a defendant with the employer for any unpaid wages and the employer was found liable for those unpaid wages pursuant to a specified action, as provided. The bill would require any individual or business entity that contracts for services in the property services or long-term care industries to be jointly and severally liable for any unpaid wages where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the Labor Commissioner in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract, as provided.~~

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. Chapter 10 (commencing with Section 690.020)
2 is added to Division 1 of Title 9 of Part 2 of the Code of Civil
3 Procedure, to read:

4
5 CHAPTER 10. ENFORCEMENT OF JUDGMENTS BY LABOR
6 COMMISSIONER
7

8 690.020. For the purpose of the remedies provided under this
9 chapter, jurisdiction is conferred upon the superior court.

10 690.030. (a) Except as otherwise provided by statute, whenever
11 a warrant or notice of levy may properly be issued by the Labor
12 Commissioner pursuant to Section 96.8 of the Labor Code, and
13 the warrant may be levied with the same effect as a levy pursuant
14 to a writ of execution, the Labor Commissioner may use any of
15 the remedies available to a judgment creditor, including, but not
16 limited to, those provided in Chapter 6 (commencing with Section
17 708.010) of Division 2.

18 (b) The proper court for the enforcement of the remedies
19 provided under this chapter is the superior court of any of the
20 following counties:

- 21 (1) The county where the employee resides.
22 (2) The county where the judgment debtor resides.
23 (3) The county where the person against whom the levy or
24 warrant was issued resides.

25 690.040. (a) Whenever the Labor Commissioner, pursuant to
26 Section 96.8 of the Labor Code, levies upon property pursuant to
27 a warrant or notice of levy for the collection of an unsatisfied
28 judgment or award:

29 (1) If the debtor is a natural person, the debtor is entitled to the
30 same exemptions to which a judgment debtor is entitled. Except
31 as provided in subdivisions (b) and (c), the claim of exemption
32 shall be made, heard, and determined as provided in Chapter 4
33 (commencing with Section 703.010) of Division 2 in the same
34 manner as if the property were levied upon under a writ of
35 execution.

36 (2) A third person may claim ownership or the right to
37 possession of the property or a security interest in or lien on the
38 property. Except as provided in subdivisions (b) and (c) or as

1 otherwise provided by statute, the third-party claim shall be made,
2 heard, and determined as provided in Division 4 (commencing
3 with Section 720.010) in the same manner as if the property were
4 levied upon under a writ of execution.

5 (b) In the case of a warrant or notice of levy issued pursuant to
6 Section 96.8 of the Labor Code, the claim of exemption or the
7 third-party claim shall be filed with the Labor Commissioner.

8 (c) A claim of exemption or a third-party claim pursuant to this
9 section shall be heard and determined in a superior court specified
10 in subdivision (b) of Section 690.030.

11 690.050. (a) Notwithstanding any other law, in the case of a
12 writ of execution issued by a court of competent jurisdiction
13 pursuant to Chapter 3 (commencing with Section 699.010) and
14 Chapter 5 (commencing with Section 706.010) of Division 2, the
15 Labor Commissioner, when collecting an unsatisfied judgment or
16 award pursuant to Section 96.8 of the Labor Code, may perform
17 the duties of the levying officer, except that the Labor
18 Commissioner need not give himself or herself the notices that the
19 levying officer is required to serve on a judgment creditor or the
20 notices that a judgment creditor is required to give to the levying
21 officer.

22 (b) Notwithstanding subdivision (a) of Section 700.140 and
23 Sections 700.150, 700.160, and 700.170, if the levy is for a deposit,
24 credits, money, or property in the possession or under the control
25 of a bank or savings and loan association or for an account
26 receivable or other general intangible owed to the judgment debtor
27 by an account debtor, the Labor Commissioner may deliver or
28 mail a notice of levy to a centralized location designated by the
29 bank or savings and loan association or, in the case of an account
30 receivable or other general intangible, to the agent for service of
31 process of the account debtor. If the notice of levy is received at
32 the designated central location for the bank or savings and loan
33 association, the notice of levy will apply to all deposits, credits,
34 money, and personal property held by the bank or savings and loan
35 association regardless of the location of that property. The notice
36 of levy may be issued directly by the Labor Commissioner, whether
37 or not a court has issued a writ of execution, and shall contain all
38 of the information required to be included in a writ of execution
39 under Section 699.520 and in a notice of levy under Section
40 699.540.

1 SEC. 2. Section 96.8 is added to the Labor Code, to read:

2 96.8. (a) Notwithstanding any other law, beginning 20 days
3 after a judgment is entered by a court of competent jurisdiction in
4 favor of the Labor Commissioner, or in favor of any employee
5 pursuant to subdivision (e) of Section 98.2, the Labor
6 Commissioner may, with the consent of any employee in whose
7 favor the judgment is entered, collect any outstanding amount of
8 the judgment by mailing a notice of levy upon all persons having
9 in their possession, or who will have in their possession or under
10 their control, any credits, money, or property belonging to the
11 judgment debtor, or who owe any debt to the judgment debtor at
12 the time they receive the notice of levy.

13 (b) Notwithstanding any other law, the Labor Commissioner
14 may execute a levy on any property that may be levied under
15 Section 700.140, 700.150, 700.160, or 700.170 of the Code of
16 Civil Procedure by mailing a notice of levy to the person against
17 whom the levy is directed and serving a copy on the judgment
18 debtor. The notice of levy shall contain all of the information
19 required to be included in a writ of execution under Section
20 699.520 of the Code of Civil Procedure and in a notice of levy
21 under Section 699.540 of the Code of Civil Procedure.

22 (c) Any person, upon whom a levy has been noticed having in
23 his or her possession or under his or her control any credits, money,
24 or property belonging to the judgment debtor or owing any debts
25 to the judgment debtor at the time of receipt of the levy or coming
26 into his or her possession or under his or her control within one
27 year of receipt of the notice of levy, shall surrender the credits,
28 money, or property to the Labor Commissioner or pay to the Labor
29 Commissioner the amount of any debt owed to the judgment debtor
30 within 10 days of service of the levy, and shall surrender the credits
31 or property, or the amount of any debt owing to the judgment
32 debtor coming into his or her own possession or control within
33 one year of receipt of the notice of levy within 10 days of the date
34 of coming into possession or control of the credits or property or
35 the amount of any debt owed to the judgment debtor.

36 (d) Any person who surrenders to the Labor Commissioner
37 pursuant to this section any credits, money, or property, or pays
38 the debts owed to the judgment debtor, shall be discharged from
39 any obligation or liability to the judgment debtor to the extent of
40 the amount paid to the Labor Commissioner as a result of the levy.

1 (e) If the levy is made on a deposit or credits, money, or property
2 in the possession or under the control of a bank, savings and loan
3 association, or other financial institution as defined by Section
4 669a(d)(1) of Title 42 of the United States Code, the notice of levy
5 may be delivered or mailed to a centralized location designated
6 by the bank, savings and loan association, or other financial
7 institution pursuant to Section 690.050 of the Code of Civil
8 Procedure.

9 (f) Any person who is noticed with a levy pursuant to this section
10 and who fails or refuses to surrender any credits, money, or
11 property or pay any debts owed to the judgment debtor shall be
12 liable in his or her own person or estate to the Labor Commissioner
13 in an amount equal to the value of the credits, money, or other
14 property or in the amount of the levy, up to the amount specified
15 in the levy.

16 (g) The fees, commissions, expenses, and the reasonable costs
17 associated with the sale of property levied upon by warrant or levy
18 pursuant to this section, including, but not limited to, appraisers'
19 fees, auctioneers' fees, and advertising fees are an obligation of
20 the judgment debtor and may be collected from the judgment debtor
21 by virtue of the warrant or levy or in any other manner as though
22 these items were part of the judgment or award outstanding.

23 (h) This section shall not apply to the judgment debtor's interest
24 in real property.

25 (i) This section shall not apply if enforcement of the judgment
26 has been stayed on appeal pursuant to Chapter 2 (commencing
27 with Section 916) of Title 13 of Part 2 of the Code of Civil
28 Procedure.

29 SEC. 3. Section 98 of the Labor Code is amended to read:

30 98. (a) The Labor Commissioner is authorized to investigate
31 employee complaints. The Labor Commissioner may provide for
32 a hearing in any action to recover wages, penalties, and other
33 demands for compensation, including liquidated damages if the
34 complaint alleges payment of a wage less than the minimum wage
35 fixed by an order of the Industrial Welfare Commission or by
36 statute, properly before the division or the Labor Commissioner,
37 including orders of the Industrial Welfare Commission, and shall
38 determine all matters arising under his or her jurisdiction. The
39 Labor Commissioner may also provide for a hearing ~~against any~~
40 ~~employer or other person acting on behalf of an employer for a~~

1 ~~violation of Section 558: to recover civil penalties due pursuant~~
2 ~~to Section 558 against any employer or other person acting on~~
3 ~~behalf of an employer, including, but not limited to, an individual~~
4 ~~liable pursuant to Section 558.1.~~ It is within the jurisdiction of the
5 Labor Commissioner to accept and determine claims from holders
6 of payroll checks or payroll drafts returned unpaid because of
7 insufficient funds, if, after a diligent search, the holder is unable
8 to return the dishonored check or draft to the payee and recover
9 the sums paid out. Within 30 days of the filing of the complaint,
10 the Labor Commissioner shall notify the parties as to whether a
11 hearing will be held, whether action will be taken in accordance
12 with Section 98.3, or whether no further action will be taken on
13 the complaint. If the determination is made by the Labor
14 Commissioner to hold a hearing, the hearing shall be held within
15 90 days of the date of that determination. However, the Labor
16 Commissioner may postpone or grant additional time before setting
17 a hearing if the Labor Commissioner finds that it would lead to an
18 equitable and just resolution of the dispute. A party who has
19 received actual notice of a claim before the Labor Commissioner
20 shall, while the matter is before the Labor Commissioner, notify
21 the Labor Commissioner in writing of any change in that party's
22 business or personal address within 10 days after the change in
23 address occurs.

24 It is the intent of the Legislature that hearings held pursuant to
25 this section be conducted in an informal setting preserving the
26 rights of the parties.

27 (b) When a hearing is set, a copy of the complaint, which shall
28 include the amount of compensation requested, together with a
29 notice of time and place of the hearing, shall be served on all
30 parties, personally or by certified mail, or in the manner specified
31 in Section 415.20 of the Code of Civil Procedure.

32 (c) Within 10 days after service of the notice and the complaint,
33 a defendant may file an answer with the Labor Commissioner in
34 any form as the Labor Commissioner may prescribe, setting forth
35 the particulars in which the complaint is inaccurate or incomplete
36 and the facts upon which the defendant intends to rely.

37 (d) No pleading other than the complaint and answer of the
38 defendant or defendants shall be required. Both shall be in writing
39 and shall conform to the form and the rules of practice and
40 procedure adopted by the Labor Commissioner.

1 (e) Evidence on matters not pleaded in the answer shall be
2 allowed only on terms and conditions the Labor Commissioner
3 shall impose. In all these cases, the claimant shall be entitled to a
4 continuance for purposes of review of the new evidence.

5 (f) If the defendant fails to appear or answer within the time
6 allowed under this chapter, no default shall be taken against him
7 or her, but the Labor Commissioner shall hear the evidence offered
8 and shall issue an order, decision, or award in accordance with the
9 evidence. A defendant failing to appear or answer, or subsequently
10 contending to be aggrieved in any manner by want of notice of the
11 pendency of the proceedings, may apply to the Labor
12 Commissioner for relief in accordance with Section 473 of the
13 Code of Civil Procedure. The Labor Commissioner may afford
14 this relief. No right to relief, including the claim that the findings
15 or award of the Labor Commissioner or judgment entered thereon
16 are void upon their face, shall accrue to the defendant in any court
17 unless prior application is made to the Labor Commissioner in
18 accordance with this chapter.

19 (g) All hearings conducted pursuant to this chapter are governed
20 by the division and by the rules of practice and procedure adopted
21 by the Labor Commissioner.

22 (h) (1) Whenever a claim is filed under this chapter against a
23 person operating or doing business under a fictitious business
24 name, as defined in Section 17900 of the Business and Professions
25 Code, which relates to the person's business, the division shall
26 inquire at the time of the hearing whether the name of the person
27 is the legal name under which the business or person has been
28 licensed, registered, incorporated, or otherwise authorized to do
29 business.

30 (2) The division may amend an order, decision, or award to
31 conform to the legal name of the business or the person who is the
32 defendant to a wage claim, if it can be shown that proper service
33 was made on the defendant or his or her agent, unless a judgment
34 had been entered on the order, decision, or award pursuant to
35 subdivision (d) of Section 98.2. The Labor Commissioner may
36 apply to the clerk of the superior court to amend a judgment that
37 has been issued pursuant to a final order, decision, or award to
38 conform to the legal name of the defendant, if it can be shown that
39 proper service was made on the defendant or his or her agent.

40 SEC. 4. Section 238 is added to the Labor Code, to read:

1 238. (a) If a final judgment against an employer arising from
2 the employer's nonpayment of wages for work performed in this
3 state remains unsatisfied after a period of ~~20~~ 30 days after the time
4 to appeal therefrom has expired and no appeal therefrom is pending,
5 the employer shall not continue to conduct business in this ~~state~~
6 *state, including conducting business using the labor of another*
7 *business, contractor, or subcontractor instead of the labor of an*
8 *employee, unless the employer has obtained a bond from a surety*
9 *company admitted to do business in this state and has filed a copy*
10 *of that bond with the Labor Commissioner. The bond shall be*
11 *effective and maintained until satisfaction of all judgments for*
12 *nonpayment of wages. The principal sum of the bond shall not be*
13 *less than ~~one hundred fifty thousand dollars (\$150,000).~~ the*
14 *following:*

15 (1) *Fifty thousand dollars (\$50,000) if the unsatisfied portion*
16 *of the judgment is no more than five thousand dollars (\$5,000).*

17 (2) *One hundred thousand dollars (\$100,000) if the unsatisfied*
18 *portion of the judgment is more than five thousand dollars (\$5,000)*
19 *and no more than ten thousand dollars (\$10,000).*

20 (3) *One hundred fifty thousand dollars (\$150,000) if the*
21 *unsatisfied portion of the judgment is more than ten thousand*
22 *dollars (\$10,000).*

23 (b) In lieu of filing and maintaining the bond required by this
24 section, the employer may provide the Labor Commissioner with
25 a notarized copy of an accord reached with an individual holding
26 an unsatisfied final judgment. If the accord provides for the
27 judgment to be paid in installments, and an installment payment
28 is not made, the employer is no longer excused from satisfying the
29 bond requirement of this section.

30 (c) (1) The bond required by this section shall be in favor of,
31 and payable to, the people of the State of California, and shall be
32 for the benefit of any employee damaged by his or her employer's
33 failure to pay wages, including any interest, penalties, and
34 attorney's fees.

35 (2) This section shall not require a bond in favor of employees
36 covered by a bona fide collective bargaining agreement, if the
37 agreement expressly provides for wages, hours of work, working
38 conditions, a process to resolve disputes concerning nonpayment
39 of wages, and a waiver of the bond required by this section.

1 (3) Thirty days prior to the cancellation or termination of any
2 bond required by this section, the surety shall send written notice
3 to both the employer and the Labor Commissioner, identifying the
4 bond and the date of the cancellation or termination. If the bond
5 is terminated or canceled, the employer shall obtain a new surety
6 bond and file a copy of that bond with the Labor Commissioner
7 to remain in compliance with this section.

8 (d) For purposes of this section, a judgment also includes any
9 final arbitration award where the time to file a petition for a trial
10 de novo or a petition to vacate or correct the arbitration award has
11 expired and no petition is pending.

12 (e) ~~An~~ *Subject to subdivision (f), an employer similar in*
13 *operation and ownership to an employer with an unsatisfied final*
14 *judgment for unpaid wages, upon receiving written notice of the*
15 *unsatisfied judgment, shall be deemed the same employer for*
16 *purposes of this section if (1) the employees of the subsequent*
17 *successor employer are engaged in substantially the same work*
18 *in substantially the same working conditions under substantially*
19 *the same supervisors or (2) if the new entity has substantially the*
20 *same production process or operations, produces substantially the*
21 *same products or offers substantially the same services, and has*
22 *substantially the same body of customers.*

23 (f) Any employer, or other person acting on behalf of an
24 employer, that conducts business in violation of this section shall
25 be subject to a civil penalty of two thousand five hundred dollars
26 (\$2,500). Any employer that has previously ~~paid~~ *been assessed*
27 *and failed to pay* a penalty pursuant to this section shall be subject
28 to an additional penalty of one hundred dollars (\$100) for each
29 calendar day that the employer conducts business in violation of
30 this section; however, this additional amount shall not exceed one
31 hundred thousand dollars (\$100,000). *These civil penalties may*
32 *be assessed under a citation issued by the Labor Commissioner*
33 *and the procedures for issuing, contesting, and enforcing judgments*
34 *shall be the same as those set forth in Section 1197.1. The Labor*
35 *Commissioner shall not assess these civil penalties against an*
36 *entity determined to be a successor employer pursuant to*
37 *subdivision (e) within the first 30 days after notice of the judgment.*

38 SEC. 5. Section 238.1 is added to the Labor Code, to read:

39 238.1. (a) Where an employer is conducting business in
40 violation of Section 238, the Labor Commissioner may issue and

1 serve on that employer a stop order prohibiting the use of employee
2 labor by that employer until the employer's compliance with
3 Section 238, provided that the stop order would not compromise
4 or imperil public safety or the life, health, and care of vulnerable
5 individuals. The stop order shall also prohibit the employer from
6 continuing to provide services by ~~subcontracting for labor.~~
7 *conducting business using the labor of another business,*
8 *contractor, or subcontractor.* The stop order shall become effective
9 immediately upon the service of the order. Any employee affected
10 by the work stoppage shall be paid by the employer for such time
11 lost, not exceeding 10 days, pending compliance by the employer.
12 The employer may protest the stop order by making and filing
13 with the Labor Commissioner a written request for a hearing within
14 20 days after service of the stop order. The hearing shall be held
15 within five days from the date of filing the request. The Labor
16 Commissioner shall notify the employer of the time and place of
17 the hearing by mail. At the conclusion of the hearing, the stop
18 order shall be immediately affirmed or dismissed, and within 24
19 hours thereafter, the Labor Commissioner shall issue and serve on
20 all parties to the hearing by registered or certified mail a written
21 notice of findings, accompanied by written findings. A writ of
22 mandate may be taken from the findings to the appropriate superior
23 court. The writ shall be taken within 45 days after the mailing of
24 the notice of findings accompanied by written findings. *The Labor*
25 *Commissioner may file an action in superior court for injunctive*
26 *and other appropriate relief to enforce the stop order and shall*
27 *be entitled to recovery of costs and attorney's fees if any relief is*
28 *obtained by the Labor Commissioner.*

29 (b) Failure of an employer, ~~officer, or anyone having direction,~~
30 ~~management, or control of any place of employment or of~~
31 ~~employees—~~ *owner, director, officer, or managing agent of the*
32 *employer* to observe a stop order issued and served upon him or
33 her pursuant to this section is guilty of a misdemeanor punishable
34 by imprisonment in the county jail not exceeding 60 days or by a
35 fine not exceeding ten thousand dollars (\$10,000), or both. ~~The~~
36 ~~Labor Commissioner may also obtain injunctive and other relief~~
37 ~~from the courts to carry out the purposes of this section.~~ *For the*
38 *purposes of this section, the term "managing agent" has the same*
39 *meaning as in subdivision (b) of Section 3294 of the Civil Code.*

40 SEC. 6. Section 238.2 is added to the Labor Code, to read:

1 238.2. (a) The Labor Commissioner may create a lien on any
2 real property in California of an ~~employer~~ *employer, or a successor*
3 *employer pursuant to subdivision (e) of Section 238*, that is
4 conducting business in violation of Section 238 for the full amount
5 of any wages, interest, and penalties claimed to be owed to any
6 employee. To the extent attorney's fees are specifically allowed
7 to be recovered by this code, such as by, but not limited to,
8 subdivision (f) of Section 2673.1 and Section 2802, during a
9 hearing pursuant to Section 98, the Labor Commissioner may
10 include that amount in the lien.

11 (b) The Labor Commissioner may create the lien provided in
12 this section by recording a certificate of lien using the same
13 procedure applicable under ~~subsection~~ *subdivision (g) of Section*
14 *98.2*.

15 (c) The Labor Commissioner shall issue a certificate of release,
16 releasing the lien created under this section, upon final satisfaction
17 of any judgment entered in favor of the employee, upon
18 adjudication of the claim in favor of the employer, upon the filing
19 of a surety bond pursuant to Section 238. The certificate of release
20 may be recorded by the employer at the employer's expense.

21 (d) Unless the lien is satisfied or released, a lien under this
22 section shall continue until 10 years from the date of its creation.

23 ~~(e) Prior to using this lien procedure in this section, the Labor~~
24 ~~Commissioner shall provide at least 20 days' preliminary notice~~
25 ~~to the employer. The preliminary notice shall advise the employer~~
26 ~~of the nature and amount of the employee's claim and of the Labor~~
27 ~~Commissioner's authority to create a lien on the employer's~~
28 ~~property to secure payment of the claim.~~

29 ~~(f) The Labor Commissioner shall serve the preliminary notice~~
30 ~~on the employer by certified mail with return receipt requested,~~
31 ~~evidenced by a certificate of mailing, postage prepaid, addressed~~
32 ~~to the employer at the employer's residence or place of business.~~
33 ~~The Labor Commissioner shall serve a copy of any notice of lien~~
34 ~~on the employer in the same manner.~~

35 ~~(g) Upon entry of a final order, decision, or award issued in an~~
36 ~~appeal pursuant to Section 98.2 against the employer for unpaid~~
37 ~~wages, or entry of a final judgment against the employer for unpaid~~
38 ~~wages in an action filed in the superior court, the Labor~~
39 ~~Commissioner may bring an action to foreclose on any lien created~~
40 ~~pursuant to this section.~~

1 (e) Prior to using the lien procedure in this section, the Labor
2 Commissioner shall provide at least 20 days' notice to the
3 employer. The notice shall advise the employer of the Labor
4 Commissioner's authority to create a lien on the property to secure
5 payment of the claim.

6 (f) The Labor Commissioner may serve the notice with and in
7 the same manner as the order, decision, and award in accordance
8 with Section 98.1.

9 ~~(h)~~

10 (g) A lien created pursuant to this section is in addition to any
11 other lien rights available to an employee or to the Labor
12 Commissioner and shall not be construed to limit those rights.

13 SEC. 7. Section 238.3 is added to the Labor Code, to read:

14 238.3. (a) The Labor Commissioner may create a lien on any
15 personal property in California of an employer that conducts
16 business in violation of Section 238 for the full amount of any
17 wages, interest, and penalties claimed to be owed to any employee.
18 To the extent attorney's fees are specifically allowed to be
19 recovered by this code, such as by, but not limited to, subdivision
20 (f) of Section 2673.1 and Section 2802, during a hearing pursuant
21 to Section 98, the Labor Commissioner may include that amount
22 in the lien.

23 (b) The Labor Commissioner may create the lien provided in
24 this section by filing a notice of lien with the Secretary of State
25 on the standard form of initial financing statement pursuant to
26 Section 9521 of the Commercial Code. The standard form shall
27 be completed in the following manner:

28 (1) The Labor Commissioner shall be identified as the secured
29 party.

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

31 (3) The description of the collateral shall include the following
32 statements:

33 (A) A statement of the Labor Commissioner's demand for
34 payment of the wages, penalties, interest, and attorney's fees, if
35 applicable. The statement shall specify the amount owed to the
36 employee, and if the amount is estimated, shall provide an
37 explanation for the basis of the estimate.

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

1 (c) For the purpose of the Secretary of State's index pursuant
2 to Sections 9515, 9516, and 9522 of the Commercial Code and for
3 the purpose of the issuance of a certificate pursuant to Section
4 9519 or 9528 of the Commercial Code, the Secretary of State shall
5 treat a notice of lien pursuant to this section as a financing
6 statement.

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

11 (e) The Labor Commissioner shall file a termination statement,
12 releasing the lien created under this section, upon final satisfaction
13 of any judgment entered in favor of the employee, upon
14 adjudication of the claim in favor of the employer, upon the filing
15 of a surety bond in a form acceptable to the Labor Commissioner
16 sufficient to secure the claim.

17 (f) The notice of claim of lien to which the termination statement
18 relates ceases to be effective upon the filing of a termination
19 statement with the office of the Secretary of State. A termination
20 statement for a notice of lien may be filed in the same manner as
21 a termination statement for a financing statement filed pursuant
22 to Section 9513 of the Commercial Code.

23 (g) Unless the lien is satisfied or released, a lien under this
24 section shall continue until 10 years from the date of its creation.

25 (h) Prior to using this lien procedure in this section, the Labor
26 Commissioner shall provide at least 20 days' preliminary notice
27 to the employer. The preliminary notice shall advise the employer
28 of the nature and amount of the employee's claim and of the Labor
29 Commissioner's authority to create a lien on the employer's
30 personal property to secure payment of the claim.

31 (i) The Labor Commissioner shall serve the preliminary notice
32 on the employer by certified mail with return receipt requested,
33 evidenced by a certificate of mailing, postage prepaid, addressed
34 to the employer at the employer's residence or place of business.
35 The Labor Commissioner shall serve a copy of any notice of lien
36 on the employer in the same manner.

37 (j) Upon entry of a final order, decision, or award issued in an
38 appeal pursuant to Section 98.2 against the employer for unpaid
39 wages, or entry of a final judgment against the employer for unpaid
40 wages in an action filed in the superior court, the Labor

1 Commissioner may bring an action to foreclose on any lien created
2 pursuant to this section.

3 (k) A lien created pursuant to this section in addition to any
4 other lien rights available to an employee or to the Labor
5 Commissioner shall not be construed to limit those rights.

6 SEC. 8. Section 238.4 is added to the Labor Code, to read:

7 238.4. (a) An employer in the long-term care industry that is
8 also required to obtain a license from the State Department of
9 Public Health or the State Department of Social Services pursuant
10 to Division 2 (commencing with Section 1200) of the Health and
11 Safety Code may not obtain a license or renew that license if the
12 employer is conducting business in violation of Section 238.

13 (b) For purposes of this section “long-term care” means the
14 operation of a skilled nursing facility, intermediate care facility,
15 congregate living facility, hospice facility, adult residential facility,
16 residential care facility for persons with chronic life-threatening
17 illness, residential care facility for the elderly, continuing care
18 retirement community, home health agency, or home care
19 organization, as those terms are used in Division 2 (commencing
20 with Section 1200) of the Health and Safety Code.

21 SEC. 9. Section 238.5 is added to the Labor Code, to read:

22 ~~238.5. (a) An individual, partnership, corporation, limited~~
23 ~~liability company, joint venture, or association that, as part of its~~
24 ~~business, contracts with an employer to perform services in the~~
25 ~~property services or long-term care industries shall be jointly and~~
26 ~~severally liable, where the individual, partnership, corporation,~~
27 ~~limited liability company, joint venture, or association has been~~
28 ~~named as a defendant and provided notice pursuant to subdivision~~
29 ~~(b) of Section 98, with the employer for any unpaid wages,~~
30 ~~including interest, and the employer was found liable for those~~
31 ~~unpaid wages by an order, decision or award issued pursuant to~~
32 ~~Section 98.2, to the extent the amounts are for services performed~~
33 ~~under that contract. The issue of joint and several liability under~~
34 ~~this section may be determined by the Labor Commissioner in a~~
35 ~~proceeding under Section 98.~~

36 *238.5. (a) (1) Any individual or business entity, regardless*
37 *of its form, that, as part of its business, contracts for services in*
38 *the property services or long-term care industries shall be jointly*
39 *and severally liable for any unpaid wages, including interest,*
40 *where the individual or business entity has been provided notice,*

1 by any party, of any proceeding or investigation by the Labor
2 Commissioner in which the employer is found liable for those
3 unpaid wages, to the extent the amounts are for services performed
4 under that contract.

5 (2) The issue of joint and several liability under this section
6 shall be determined (A) in a proceeding under Section 98 if the
7 individual or contracting business is provided notice in the
8 administrative complaint alleging such liability and named a
9 defendant in the course of the Section 98 proceeding, (B) in an
10 administrative proceeding brought by the Labor Commissioner to
11 investigate, prosecute, or recover unpaid wages and interest
12 pursuant to a citation, or in a court action brought by the Labor
13 Commissioner, if the contracting individual or business is provided
14 preliminary notice by the Labor Commissioner of joint and several
15 liability under this section at least 30 days prior to issuance of a
16 citation, or filing of a court action, or (C) by a court in an action
17 pursuant to Section 98.2. No action for a violation or enforcement
18 of this section shall be brought under Part 13 (commencing with
19 Section 2698) of Division 2.

20 (b) The joint and several liability provided by this section shall
21 not apply to unpaid wages owed to employees covered by a bona
22 fide collective bargaining agreement, if the agreement expressly
23 provides for wages, hours of work, working conditions, a process
24 to resolve disputes concerning nonpayment of wages, and a waiver
25 of the joint and several liability provided by this section.

26 (c) An employer that contracts to provide services in the property
27 services or long-term care industries shall, prior to entering into
28 such a contract, provide written notice to the other party to the
29 prospective contract of any unsatisfied final judgments against the
30 employer for nonpayment of wages. The notice shall also provide
31 the text of this section. ~~The employer~~ *The failure of the employer*
32 *to provide notice under this subdivision shall not be a defense to*
33 *the joint and several liability provided by this section.*

34 (d) An employer that contracts to provide services in the
35 property services or long-term care industries shall provide, within
36 ~~thirty (30)~~ 30 days of the entry of the judgment, written notice of
37 any unsatisfied final judgments against the employer for
38 nonpayment of wages to any parties with which the employer is
39 presently under contract to provide services in the property services
40 or long-term care industries. The failure of the employer to provide

1 ~~such notices~~ *notice under this subdivision* shall not be a defense
2 to the joint and several liability provided by this section.

3 ~~(d)~~

4 (e) For *the* purposes of this ~~section~~: *section, the following apply:*

5 (1) “Property services” means janitorial, security guard, valet
6 parking, ~~landscaping~~ *landscaping*, and gardening services.

7 (2) “Long-term care” has the same definition as in Section 238.4.

8 (f) *This section shall not be interpreted to impose joint liability*
9 *on an individual or the owner of a home-based business, for any*
10 *property services, to the extent that the property services are*
11 *provided at the individual or home-based business owner’s primary*
12 *residence, provided that the primary residence does not have*
13 *multiple housing units.*

14 SEC. 10. Section 558.1 is added to the Labor Code, to read:

15 ~~558.1. Any person who would be liable for any violation under~~
16 ~~Section 558 may also be held liable in an action pursuant to Section~~
17 ~~98, 203, 226, 1193.6, 1194, or 2802.~~

18 558.1. (a) *Any employer or other person acting on behalf of*
19 *an employer, who violates, or causes to be violated, any provision*
20 *regulating minimum wages or hours and days of work in any order*
21 *of the Industrial Welfare Commission, or violates, or causes to be*
22 *violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be*
23 *held liable as the employer for such violation.*

24 (b) *For purposes of this section, the term “other person acting*
25 *on behalf of an employer” is limited to a natural person who is*
26 *an owner, director, officer, or managing agent of the employer,*
27 *and the term “managing agent” has the same meaning as in*
28 *subdivision (b) of Section 3294 of the Civil Code.*

29 (c) *Nothing in this section shall be construed to limit the*
30 *definition of employer under existing law.*

31 SEC. 11. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

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- 2 **CORRECTIONS:**
- 3 **Heading—Line 3.**
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