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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, 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, as defined, for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare 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, as specified, unless the employer has obtained a bond from a surety company 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, 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, 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 nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal, ~~this bill would prohibit appeal and an employer in the long-term care industry, as specified, from obtaining a license or renewing that license if the employer is found to be conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, as described above.~~ *judgment, this bill would authorize those departments to deny a new license or the renewal of an existing license. The bill would also authorize the Labor Commissioner to notify those departments of such a violation.* 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:

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

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

7 690.050. (a) Notwithstanding any other law, in the case of a
8 writ of execution issued by a court of competent jurisdiction
9 pursuant to Chapter 3 (commencing with Section 699.010) and
10 Chapter 5 (commencing with Section 706.010) of Division 2, the
11 Labor Commissioner, when collecting an unsatisfied judgment or
12 award pursuant to Section 96.8 of the Labor Code, may perform
13 the duties of the levying officer, except that the Labor
14 Commissioner need not give himself or herself the notices that the
15 levying officer is required to serve on a judgment creditor or the
16 notices that a judgment creditor is required to give to the levying
17 officer.

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

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

38 96.8. (a) Notwithstanding any other law, beginning 20 days
39 after a judgment is entered by a court of competent jurisdiction in
40 favor of the Labor Commissioner, or in favor of any employee

1 pursuant to subdivision (e) of Section 98.2, the Labor
2 Commissioner may, with the consent of any employee in whose
3 favor the judgment is entered, collect any outstanding amount of
4 the judgment by mailing a notice of levy upon all persons having
5 in their possession, or who will have in their possession or under
6 their control, any credits, money, or property belonging to the
7 judgment debtor, or who owe any debt to the judgment debtor at
8 the time they receive the notice of levy.

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

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

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

37 (e) If the levy is made on a deposit or credits, money, or property
38 in the possession or under the control of a bank, savings and loan
39 association, or other financial institution as defined by Section
40 669a(d)(1) of Title 42 of the United States Code, the notice of levy

1 may be delivered or mailed to a centralized location designated
2 by the bank, savings and loan association, or other financial
3 institution pursuant to Section 690.050 of the Code of Civil
4 Procedure.

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

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

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

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

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

26 98. (a) The Labor Commissioner is authorized to investigate
27 employee complaints. The Labor Commissioner may provide for
28 a hearing in any action to recover wages, penalties, and other
29 demands for compensation, including liquidated damages if the
30 complaint alleges payment of a wage less than the minimum wage
31 fixed by an order of the Industrial Welfare Commission or by
32 statute, properly before the division or the Labor Commissioner,
33 including orders of the Industrial Welfare Commission, and shall
34 determine all matters arising under his or her jurisdiction. The
35 Labor Commissioner may also provide for a hearing to recover
36 civil penalties due pursuant to Section 558 against any employer
37 or other person acting on behalf of an employer, including, but not
38 limited to, an individual liable pursuant to Section 558.1. It is
39 within the jurisdiction of the Labor Commissioner to accept and
40 determine claims from holders of payroll checks or payroll drafts

1 returned unpaid because of insufficient funds, if, after a diligent
2 search, the holder is unable to return the dishonored check or draft
3 to the payee and recover the sums paid out. Within 30 days of the
4 filing of the complaint, the Labor Commissioner shall notify the
5 parties as to whether a hearing will be held, whether action will
6 be taken in accordance with Section 98.3, or whether no further
7 action will be taken on the complaint. If the determination is made
8 by the Labor Commissioner to hold a hearing, the hearing shall
9 be held within 90 days of the date of that determination. However,
10 the Labor Commissioner may postpone or grant additional time
11 before setting a hearing if the Labor Commissioner finds that it
12 would lead to an equitable and just resolution of the dispute. A
13 party who has received actual notice of a claim before the Labor
14 Commissioner shall, while the matter is before the Labor
15 Commissioner, notify the Labor Commissioner in writing of any
16 change in that party's business or personal address within 10 days
17 after the change in address occurs.

18 It is the intent of the Legislature that hearings held pursuant to
19 this section be conducted in an informal setting preserving the
20 rights of the parties.

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

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

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

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

39 (f) If the defendant fails to appear or answer within the time
40 allowed under this chapter, no default shall be taken against him

1 or her, but the Labor Commissioner shall hear the evidence offered
2 and shall issue an order, decision, or award in accordance with the
3 evidence. A defendant failing to appear or answer, or subsequently
4 contending to be aggrieved in any manner by want of notice of the
5 pendency of the proceedings, may apply to the Labor
6 Commissioner for relief in accordance with Section 473 of the
7 Code of Civil Procedure. The Labor Commissioner may afford
8 this relief. No right to relief, including the claim that the findings
9 or award of the Labor Commissioner or judgment entered thereon
10 are void upon their face, shall accrue to the defendant in any court
11 unless prior application is made to the Labor Commissioner in
12 accordance with this chapter.

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

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

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

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

35 238. (a) If a final judgment against an employer arising from
36 the employer's nonpayment of wages for work performed in this
37 state remains unsatisfied after a period of 30 days after the time
38 to appeal therefrom has expired and no appeal therefrom is pending,
39 the employer shall not continue to conduct business in this state,
40 including conducting business using the labor of another business,

1 contractor, or subcontractor instead of the labor of an employee,
2 unless the employer has obtained a bond from a surety company
3 admitted to do business in this state and has filed a copy of that
4 bond with the Labor Commissioner. The bond shall be effective
5 and maintained until satisfaction of all judgments for nonpayment
6 of wages. The principal sum of the bond shall not be less than the
7 following:

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

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

13 (3) One hundred fifty thousand dollars (\$150,000) if the
14 unsatisfied portion of the judgment is more than ten thousand
15 dollars (\$10,000).

16 (b) In lieu of filing and maintaining the bond required by this
17 section, the employer may provide the Labor Commissioner with
18 a notarized copy of an accord reached with an individual holding
19 an unsatisfied final judgment. If the accord provides for the
20 judgment to be paid in installments, and an installment payment
21 is not made, the employer is no longer excused from satisfying the
22 bond requirement of this section.

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

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

33 (3) Thirty days prior to the cancellation or termination of any
34 bond required by this section, the surety shall send written notice
35 to both the employer and the Labor Commissioner, identifying the
36 bond and the date of the cancellation or termination. If the bond
37 is terminated or canceled, the employer shall obtain a new surety
38 bond and file a copy of that bond with the Labor Commissioner
39 to remain in compliance with this section.

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

5 (e) Subject to subdivision (f), an employer similar in operation
6 and ownership to an employer with an unsatisfied final judgment
7 for unpaid wages, upon receiving written notice of the unsatisfied
8 judgment, shall be deemed the same employer for purposes of this
9 section if (1) the employees of the successor employer are engaged
10 in substantially the same work in substantially the same working
11 conditions under substantially the same supervisors or (2) if the
12 new entity has substantially the same production process or
13 operations, produces substantially the same products or offers
14 substantially the same services, and has substantially the same
15 body of customers.

16 (f) Any employer, or other person acting on behalf of an
17 employer, that conducts business in violation of this section shall
18 be subject to a civil penalty of two thousand five hundred dollars
19 (\$2,500). Any employer that has previously been assessed and
20 failed to pay a penalty pursuant to this section shall be subject to
21 an additional penalty of one hundred dollars (\$100) for each
22 calendar day that the employer conducts business in violation of
23 this section; however, this additional amount shall not exceed one
24 hundred thousand dollars (\$100,000). These civil penalties may
25 be assessed under a citation issued by the Labor Commissioner
26 and the procedures for issuing, contesting, and enforcing judgments
27 shall be the same as those set forth in Section 1197.1. The Labor
28 Commissioner shall not assess these civil penalties against an entity
29 determined to be a successor employer pursuant to subdivision (e)
30 within the first 30 days after notice of the judgment.

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

32 238.1. (a) Where an employer is conducting business in
33 violation of Section 238, the Labor Commissioner may issue and
34 serve on that employer a stop order prohibiting the use of employee
35 labor by that employer until the employer's compliance with
36 Section 238, provided that the stop order would not compromise
37 or imperil public safety or the life, health, and care of vulnerable
38 individuals. The stop order shall also prohibit the employer from
39 continuing to provide services by conducting business using the
40 labor of another business, contractor, or subcontractor. The stop

1 order shall become effective immediately upon the service of the
2 order. Any employee affected by the work stoppage shall be paid
3 by the employer for such time lost, not exceeding 10 days, pending
4 compliance by the employer. The employer may protest the stop
5 order by making and filing with the Labor Commissioner a written
6 request for a hearing within 20 days after service of the stop order.
7 The hearing shall be held within five days from the date of filing
8 the request. The Labor Commissioner shall notify the employer
9 of the time and place of the hearing by mail. At the conclusion of
10 the hearing, the stop order shall be immediately affirmed or
11 dismissed, and within 24 hours thereafter, the Labor Commissioner
12 shall issue and serve on all parties to the hearing by registered or
13 certified mail a written notice of findings, accompanied by written
14 findings. A writ of mandate may be taken from the findings to the
15 appropriate superior court. The writ shall be taken within 45 days
16 after the mailing of the notice of findings accompanied by written
17 findings. The Labor Commissioner may file an action in superior
18 court for injunctive and other appropriate relief to enforce the stop
19 order and shall be entitled to recovery of costs and attorney's fees
20 if any relief is obtained by the Labor Commissioner.

21 (b) Failure of an employer, owner, director, officer, or managing
22 agent of the employer to observe a stop order issued and served
23 upon him or her pursuant to this section is guilty of a misdemeanor
24 punishable by imprisonment in county jail not exceeding 60 days
25 or by a fine not exceeding ten thousand dollars (\$10,000), or both.
26 For the purposes of this section, the term "managing agent" has
27 the same meaning as in subdivision (b) of Section 3294 of the Civil
28 Code.

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

30 238.2. (a) The Labor Commissioner may create a lien on any
31 real property in California of an employer, or a successor employer
32 pursuant to subdivision (e) of Section 238, that is conducting
33 business in violation of Section 238 for the full amount of any
34 wages, interest, and penalties claimed to be owed to any employee.
35 To the extent attorney's fees are specifically allowed to be
36 recovered by this code, such as by, but not limited to, subdivision
37 (f) of Section 2673.1 and Section 2802, during a hearing pursuant
38 to Section 98, the Labor Commissioner may include that amount
39 in the lien.

1 (b) The Labor Commissioner may create the lien provided in
2 this section by recording a certificate of lien using the same
3 procedure applicable under subdivision (g) of Section 98.2.

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

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

12 (e) Prior to using the lien procedure in this section, the Labor
13 Commissioner shall provide at least 20 days' notice to the
14 employer. The notice shall advise the employer of the Labor
15 Commissioner's authority to create a lien on the property to secure
16 payment of the claim.

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

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

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

24 238.3. (a) The Labor Commissioner may create a lien on any
25 personal property in California of an employer that conducts
26 business in violation of Section 238 for the full amount of any
27 wages, interest, and penalties claimed to be owed to any employee.
28 To the extent attorney's fees are specifically allowed to be
29 recovered by this code, such as by, but not limited to, subdivision
30 (f) of Section 2673.1 and Section 2802, during a hearing pursuant
31 to Section 98, the Labor Commissioner may include that amount
32 in the lien.

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

38 (1) The Labor Commissioner shall be identified as the secured
39 party.

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

1 (3) The description of the collateral shall include the following
2 statements:

3 (A) A statement of the Labor Commissioner’s demand for
4 payment of the wages, penalties, interest, and attorney’s fees, if
5 applicable. The statement shall specify the amount owed to the
6 employee, and if the amount is estimated, shall provide an
7 explanation for the basis of the estimate.

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

10 (c) For the purpose of the Secretary of State’s index pursuant
11 to Sections 9515, 9516, and 9522 of the Commercial Code and for
12 the purpose of the issuance of a certificate pursuant to Section
13 9519 or 9528 of the Commercial Code, the Secretary of State shall
14 treat a notice of lien pursuant to this section as a financing
15 statement.

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

20 (e) The Labor Commissioner shall file a termination statement,
21 releasing the lien created under this section, upon final satisfaction
22 of any judgment entered in favor of the employee, upon
23 adjudication of the claim in favor of the employer, upon the filing
24 of a surety bond in a form acceptable to the Labor Commissioner
25 sufficient to secure the claim.

26 (f) The notice of claim of lien to which the termination statement
27 relates ceases to be effective upon the filing of a termination
28 statement with the office of the Secretary of State. A termination
29 statement for a notice of lien may be filed in the same manner as
30 a termination statement for a financing statement filed pursuant
31 to Section 9513 of the Commercial Code.

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

34 (h) Prior to using this lien procedure in this section, the Labor
35 Commissioner shall provide at least 20 days’ preliminary notice
36 to the employer. The preliminary notice shall advise the employer
37 of the nature and amount of the employee’s claim and of the Labor
38 Commissioner’s authority to create a lien on the employer’s
39 personal property to secure payment of the claim.

1 (i) The Labor Commissioner shall serve the preliminary notice
 2 on the employer by certified mail with return receipt requested,
 3 evidenced by a certificate of mailing, postage prepaid, addressed
 4 to the employer at the employer's residence or place of business.
 5 The Labor Commissioner shall serve a copy of any notice of lien
 6 on the employer in the same manner.

7 (j) Upon entry of a final order, decision, or award issued in an
 8 appeal pursuant to Section 98.2 against the employer for unpaid
 9 wages, or entry of a final judgment against the employer for unpaid
 10 wages in an action filed in the superior court, the Labor
 11 Commissioner may bring an action to foreclose on any lien created
 12 pursuant to this section.

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

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

17 238.4. (a) ~~An~~ *If an employer in the long-term care industry*
 18 *that is also required to obtain a license from the State Department*
 19 *of Public Health or the State Department of Social Services*
 20 *pursuant to Division 2 (commencing with Section 1200) of the*
 21 *Health and Safety Code may not obtain a license or renew that*
 22 *license if the employer is conducting business Code, is found to*
 23 *be in violation of Section 238. 238, the State Department of Public*
 24 *Health or the State Department of Social Services may deny a new*
 25 *licence or the renewal of an existing license for that employer.*

26 (b) *If the Labor Commissioner finds that an employer in the*
 27 *long-term care industry is conducting business in violation of*
 28 *Section 238, the Labor Commissioner shall notify the State*
 29 *Department of Public Health or the State Department of Social*
 30 *Services.*

31 ~~(b)~~

32 (c) For purposes of this section "long-term care" means the
 33 operation of a skilled nursing facility, intermediate care facility,
 34 congregate living *health* facility, hospice facility, adult residential
 35 facility, residential care facility for persons with chronic
 36 life-threatening illness, residential care facility for the elderly,
 37 continuing care retirement community, home health agency, or
 38 home care organization, as those terms are used in Division 2
 39 (commencing with Section 1200) of the Health and Safety Code.

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

1 238.5. (a) (1) Any individual or business entity, regardless of
2 its form, that, as part of its business, contracts for services in the
3 property services or long-term care industries shall be jointly and
4 severally liable for any unpaid wages, including interest, where
5 the individual or business entity has been provided notice, by any
6 party, of any proceeding or investigation by the Labor
7 Commissioner in which the employer is found liable for those
8 unpaid wages, to the extent the amounts are for services performed
9 under that contract.

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

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

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

39 (d) An employer that contracts to provide services in the
40 property services or long-term care industries shall provide, within

1 30 days of the entry of the judgment, written notice of any
2 unsatisfied final judgments against the employer for nonpayment
3 of wages to any parties with which the employer is presently under
4 contract to provide services in the property services or long-term
5 care industries. The failure of the employer to provide notice under
6 this subdivision shall not be a defense to the joint and several
7 liability provided by this section.

8 (e) For the purposes of this section, the following apply:

9 (1) “Property services” means janitorial, security guard, valet
10 parking, landscaping, and gardening services.

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

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

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

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

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

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

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

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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