

Senate Bill No. 588

CHAPTER 803

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.

[Approved by Governor October 11, 2015. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 588, 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 and an employer in the long-term care industry, as specified, is found to be conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied 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.

The people of the State of California do enact as follows:

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

CHAPTER 10. ENFORCEMENT OF JUDGMENTS BY LABOR COMMISSIONER

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

690.030. (a) Except as otherwise provided by statute, whenever a warrant or notice of levy may properly be issued by the Labor Commissioner pursuant to Section 96.8 of the Labor Code, and the warrant may be levied

with the same effect as a levy pursuant to a writ of execution, the Labor Commissioner may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

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

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

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

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

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

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

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

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

(b) Notwithstanding subdivision (a) of Section 700.140 and Sections 700.150, 700.160, and 700.170, 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, the Labor Commissioner may deliver or mail a notice of levy to a centralized location designated by the bank or savings and loan association or, in the case of an account

receivable or other general intangible, to the agent for service of process of the account debtor. If the notice of levy is received at the designated central location for the bank or savings and loan association, the notice of levy will apply to all deposits, credits, money, and personal property held by the bank or savings and loan association regardless of the location of that property. The notice of levy may be issued directly by the Labor Commissioner, whether or not a court has issued a writ of execution, and shall contain all of the information required to be included in a writ of execution under Section 699.520 and in a notice of levy under Section 699.540.

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

96.8. (a) Notwithstanding any other law, 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 subdivision (e) of Section 98.2, the Labor Commissioner may, 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.

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

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

(d) Any person who surrenders to the Labor Commissioner pursuant to this section any credits, money, or property, or pays the debts owed to the judgment debtor, shall 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.

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

(f) Any person who is noticed with a levy pursuant to this section and who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor shall be 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 other property or in the amount of the levy, up to the amount specified in the levy.

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

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

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

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

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. The Labor Commissioner may also provide for a hearing to recover civil penalties due pursuant to Section 558 against any employer or other person acting on behalf of an employer, including, but not limited to, an individual liable pursuant to Section 558.1. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination.

However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

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

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

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

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

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

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

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

(h) (1) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person

has been licensed, registered, incorporated, or otherwise authorized to do business.

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

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

238. (a) 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 period of 30 days after the time to appeal therefrom has expired and no appeal therefrom is pending, the employer shall not continue to conduct business in this state, including conducting business using the labor of another business, contractor, or subcontractor instead of the labor of an employee, unless the employer has obtained a bond from a surety company admitted to do business in this state and has filed a copy of that bond with the Labor Commissioner. The bond shall be effective and maintained until satisfaction of all judgments for nonpayment of wages. The principal sum of the bond shall not be less than the following:

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

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

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

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

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

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

(3) Thirty days prior to the cancellation or termination of any bond required by this section, the surety shall send written notice to both the

employer and the Labor Commissioner, identifying the bond and the date of the cancellation or termination. If the bond is terminated or canceled, the employer shall obtain a new surety bond and file a copy of that bond with the Labor Commissioner to remain in compliance with this section.

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

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

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

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

238.1. (a) Where an employer is conducting business in violation of Section 238, the Labor Commissioner may issue and serve on that employer a stop order prohibiting the use of employee labor by that employer until the employer's compliance with Section 238, provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The stop order shall also prohibit the employer from continuing to provide services by conducting business using the labor of another business, contractor, or subcontractor. The stop order shall become effective immediately upon the service of the order. Any employee affected by the work stoppage shall be paid by the employer for such time lost, not exceeding 10 days, pending compliance by the employer. The employer may protest the stop order by making and filing with the Labor Commissioner a written request for a hearing within 20 days after service of the stop order. The hearing shall be held within five days from the date of filing the request. The Labor Commissioner shall notify the employer of

the time and place of the hearing by mail. At the conclusion of the hearing, the stop order shall be immediately affirmed or dismissed, and within 24 hours thereafter, the Labor Commissioner shall issue and serve on all parties to the hearing by registered or certified mail a written notice of findings, accompanied by written findings. A writ of mandate may be taken from the findings to the appropriate superior court. The writ shall be taken within 45 days after the mailing of the notice of findings accompanied by written findings. The Labor Commissioner may file an action in superior court for injunctive and other appropriate relief to enforce the stop order and shall be entitled to recovery of costs and attorney's fees if any relief is obtained by the Labor Commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Prior to using this lien procedure in this section, the Labor Commissioner shall provide at least 20 days' preliminary notice to the employer. The preliminary notice shall advise the employer of the nature and amount of the employee's claim and of the Labor Commissioner's

authority to create a lien on the employer's personal property to secure payment of the claim.

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

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

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

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

238.4. (a) If an employer in the long-term care industry that is also required to obtain a license from the State Department of Public Health or the State Department of Social Services pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, is found to be in violation of Section 238, the State Department of Public Health or the State Department of Social Services may deny a new license or the renewal of an existing license for that employer.

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

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

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

238.5. (a) (1) Any individual or business entity, regardless of its form, that, as part of its business, contracts for services in the property services or long-term care industries shall be jointly and severally liable for any unpaid wages, including interest, 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.

(2) The issue of joint and several liability under this section shall be determined (A) in a proceeding under Section 98 if the individual or contracting business is provided notice in the administrative complaint alleging such liability and named a defendant in the course of the Section

98 proceeding, (B) in an administrative proceeding brought by the Labor Commissioner to investigate, prosecute, or recover unpaid wages and interest pursuant to a citation, or in a court action brought by the Labor Commissioner, if the contracting individual or business is provided preliminary notice by the Labor Commissioner of joint and several liability under this section at least 30 days prior to issuance of a citation, or filing of a court action, or (C) by a court in an action pursuant to Section 98.2. No action for a violation or enforcement of this section shall be brought under Part 13 (commencing with Section 2698) of Division 2.

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

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

(d) An employer that contracts to provide services in the property services or long-term care industries shall provide, within 30 days of the entry of the judgment, written notice of any unsatisfied final judgments against the employer for nonpayment of wages to any parties with which the employer is presently under contract to provide services in the property services or long-term care industries. The failure of the employer to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

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

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

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

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

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

558.1. (a) Any employer or other person acting on behalf of an employer, 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, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director,

officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

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

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