100TH GENERAL ASSEMBLY
State of Illinois
2017 and 2018
HB4324

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

New Act

Creates the Wage Lien Act. Provides that a lien exists on an employer's property for the amount of unpaid wages owed to an employee. Defines terms and includes provisions concerning creation of the lien; exemptions; notice; limitations; recording of the lien; enforcement; other claims on the employer's property; successor obligations; and construction.

LRB100 16834 JLS 31975 b

FISCAL NOTE ACT
MAY APPLY
AN ACT concerning employment.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Wage Lien Act.

Section 5. Definitions. As used in this Act:

"Claimant" means an individual attempting to establish a wage lien.

"Department" means the Illinois Department of Labor.

"Director" means the Director of the Illinois Department of Labor.

"Employee" includes any individual permitted to work by an employer in an occupation, but does not include any individual:

(1) who has been and will continue to be free from control and direction over the performance of his or her work, both under his or her contract of service with his or her employer and in fact; and

(2) who performs work which is either outside the usual course of business or is performed outside all of the places of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and
(3) who is in an independently established trade, occupation, profession, or business.

"Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, and employment and labor placement agency where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed.

"Employer payments" means all earned wages by direct employees or employees working under hire of a third party working for the employer.

"Wage claim" means an employee's claim with the Illinois Department of Labor against an employer for wages, penalties, or damages provided by law to employees with a claim for unpaid wages.

"Wages" means any compensation owed an employee by an employer for:

(1) labor and services rendered by an employee; and

(2) vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay pursuant to an employment contract or agreement.

Section 10. Wage lien.

(a) An employee has a lien on all property of the employer
in this State, including after-acquired property, for the full amount of any wages, penalties, and interest owed to the employee.

(b) If the employer is a natural person, a lien under this Section applies to the employer's principal residence.

(c) The amount of the lien under this Section includes unpaid wages and other compensation required by law, penalties available under law, including liquidated damages, interest at the same rate as for prejudgment interest in this State, and the costs of filing and service of the lien. The amount of compensation that may be claimed as a lien under this Section includes all wages due to the employee either by agreement or as required by law, including wages and compensation required to be paid by an employer to third persons or entities that would qualify as employer payments.

(d) An employee's lien upon personal property is limited to property subject to a security interest under the Uniform Commercial Code pursuant to the filing of a financing statement with the Secretary of State.

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

(f) No lien described in this Section is defeated because of an error or overcharging on the part of any person claiming a lien under this Act.

(g) A lien pursuant to this Section is in addition to any other lien rights held by the employee and shall not be construed to limit those rights.

Section 15. Surety. The lien described in this Act shall not attach if the employer has obtained a surety bond or insurance that provides for payment of the wages and other compensation, penalties, and interest claimed by the employee and is in an amount that is adequate to fully satisfy the employee's claim. If the surety bond or insurance contract is inadequate to cover the entire amount of the employee's claim, the lien is limited to the amount of the claim that exceeds the bond or insurance coverage. Within 30 days of being provided with proof of a valid surety bond or insurance contract that applies to the claim, the employee shall file a release of any lien recorded or a notice reducing the lien to the amount that exceeds the bond or insurance coverage.

Section 20. Notice.

(a) At least 5 days prior to recording a notice of lien with a county recorder pursuant to Section 30 or filing a notice of lien with the Secretary of State pursuant to Section
35, the employee shall provide the owner or reputed owner of the property against which the lien is to be recorded preliminary written notice of the intent to record a notice of lien.

(b) Notice under this Section includes the following:

(1) All of the information required by subsection (b) of Section 30 in the case of a lien on real property or subsection (b) of Section 35 in the case of a lien on personal property, to the extent known to the person giving notice.

(2) The following statement in boldface type: "NOTICE TO THE EMPLOYER. If the claimant is not paid in full for work performed in your employ, a lien may be placed on your property after a period of 5 calendar days after this notice was served. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this loss by either: (i) ensuring that the claimant is paid in full for work performed in your employ; or (ii) taking any other appropriate actions to resolve the matter under the circumstances. This notice is required by law to be served by the undersigned as a statement of your legal rights."

(c) Notice is not invalid by reason of any variance from the requirements of this Section if the notice is sufficient to substantially inform the person given notice of the information required by this Section and other information required in the
(d) Service of the notice required by this Section shall be by the means described in subsection (c) of Section 30 in the case of a lien on real property or subsection (c) of Section 35 in the case of a lien on personal property and shall be deemed to have been given 3 business days after the mailing of the notice.

Section 25. Limitations.

(a) A lien described in this Act shall be permanently extinguished unless a notice of lien in accordance with Section 30 or 35 is recorded or filed and is served upon the employer within 3 years of the date that the employee ceased working for the employer or the violation occurred. A lien described in this Act shall also be permanently extinguished as to property that is transferred or sold by the employer, unless a notice of lien was recorded or filed before the transfer or sale in accordance with Section 30 or 35.

(b) The employee shall commence an action to enforce the lien and prove the amount owed within 180 days of the date of filing or recording of the notice of lien. If the employee does not commence an action to enforce the lien within that time, the lien shall be permanently extinguished and is unenforceable. The employee and the owner of the property subject to the lien may agree to extend the time for enforcing the lien in writing. An extension and its terms must be
recorded prior to the expiration of the time for commencing an
action to enforce the lien. If the employee does not commence
an action to enforce the lien within the extended time period,
the lien shall be permanently extinguished and is
unenforceable.

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

Section 30. Real property.

(a) With regard to a lien on real property under this Act,
the employee or the Department shall record a notice of lien
with the county recorder in the county where the real property
is located. The employee or the Department is responsible for
paying any fees associated with the recording of a notice of
lien. The cost of recording a notice of lien shall be added to
the amount of the lien.

(b) The notice of lien shall be certified as provided in
Section 1-109 of the Code of Civil Procedure and include all of
the following:

(1) A statement of the employee's demand for payment of
the wages and other compensation, penalties, and interest. 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.

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

(3) The name of the person or entity by whom the employee was employed.

(4) The employee's mailing address.

(c) The employee or Department shall serve the notice of lien on the employer owner of the real property subject to the lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the employer at the employer's residence or place of business.

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

Section 35. Personal property.

(a) With regard to a lien on personal property under this Act, the employee or the Department shall file a notice of lien with the Secretary of State. Except as otherwise provided in this Act, the manner, form, and place of filing shall be as
described in the Uniform Commercial Code. The notice of the
lien shall be placed in the same file as financing statements
pursuant to Section 9-522 of the Uniform Commercial Code. The
employee or the Department is responsible for paying any fees
associated with the recording of a notice of lien. The cost of
recording a notice of lien shall be added to the amount of the
lien.

(b) This notice shall be certified as provided in Section
1-109 of the Code of Civil Procedure and shall state the
following:

(1) A statement of the employee's demand for payment of
the wages and other compensation, penalties, and interest.
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.

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

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

(4) The employee's mailing address.

(5) To the extent known, a description of the property
on which the lien exists.

(c) The employee or Department shall serve the notice of
lien on the employer of the property subject to the lien by
registered mail, certified mail or first-class mail, as
evidenced by a certificate of mailing, postage prepaid,
addressed to the employer at the employer's residence or place of business.

(d) Regardless of whether the property is specifically described in the notice, 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 Uniform Commercial Code.

Section 40. Enforcement of lien.

(a) In order to enforce a lien under this Act, the employee shall demonstrate in a civil action, in an administrative proceeding under Section 12 of the Minimum Wage Law, Section 11 of the Illinois Wage Payment and Collection Act, Section 11 of the Prevailing Wage Act, Section 55 of the Day and Temporary Labor Services Act, or Section 25 of the Employee Classification Act, or as otherwise provided by law, that he or she is owed wages or other compensation and any related penalties and interest.

(b) If the employee chooses to pursue the wage claim in a civil action, if a notice of lien is recorded or filed under Section 30 or 35 prior to an administrative hearing, the action shall also be deemed an action to enforce the lien and foreclose upon any property subject to the recorded lien. The employee is entitled to court costs and reasonable attorney's fees for filing a successful action to enforce a lien pursuant
to this Section. In the judgment resulting from the action, the
court may order the sale at a sheriff's auction or the transfer
to the plaintiff of title or possession of any property subject
to the lien. Regardless of whether the court makes an order as
part of the judgment, any property subject to the lien may be
foreclosed upon at any point after a judgment for wages is
issued.

(c) If the employee chooses to pursue the wage claim in an
administrative proceeding before the Department of Labor
pursuant to Section 12 of the Minimum Wage Law, Section 11 of
the Illinois Wage Payment and Collection Act, Section 11 of the
Prevailing Wage Act, Section 55 of the Day and Temporary Labor
Services Act, or Section 25 of the Employee Classification Act,
if no lien has been recorded at the time the administrative
claim is filed, the Director may provide the notice and record
the lien on behalf of the employee. If a notice of lien is
recorded or filed under Section 30 or 35 prior to an
administrative hearing, the action shall also be deemed an
action to enforce the lien.

(d) An administrative decision under Section 12 of the
Minimum Wage Law, Section 11 of the Illinois Wage Payment and
Collection Act, Section 11 of the Prevailing Wage Act, Section
55 of the Day and Temporary Labor Services Act, or Section 25
of the Employee Classification Act is a binding and final
decision as to the underlying wage claim. The decision is also
binding and final as to the enforcement of the lien and any
property subject to the lien may be foreclosed upon in court, either by the employee or the Director, at any point after an administrative decision for wages is issued.

(e) If judgment is entered against the employee in the action to enforce the lien or if the case is dismissed with prejudice, the lien shall be extinguished. The judgment shall include the date the notice of lien was recorded and, to the extent applicable, the county in which it was recorded, the book and page or series number of the place in the legal records in which the lien was recorded, and a legal description of the property to which the lien is attached. The judgment may be appealed by filing a notice of appeal on or before 30 days after the entry of judgment. If an appeal is filed, the lien shall continue in force until all issues on the appeal have been decided. If the period for appeal runs without an appeal having being filed, or if the appeal fails, the judgment entered under this Section shall be equivalent to cancellation of the lien and its removal from the record. A judgment entered pursuant to this subsection is a recordable instrument. Upon recordation of a certified copy of the judgment, the property described in the judgment is released from the lien. Alternatively, if the lien is extinguished, upon demand and 15 days' notice by the property owner, the employee shall file a release of the lien. If an employee refuses to file a release of the lien after proper notice, an employer or property owner may petition the court for an order to file a release of the
lien.

(g) Any number of claims to enforce employee liens against the same employer may be joined in a single proceeding. If the proceeds of the sale of the property subject to the lien are insufficient to pay all the claimants, regardless of whether the claims have been joined together, the court shall order the claimants to be paid in proportion to the amount due each claimant.

Section 45. Other claims; exceptions.

(a) After an employee has filed a civil action, the employee shall have a lien upon all property of the employer, real or personal, including after-acquired property, located in this State for the full amount of any wage claim. The employee also has a lien upon the real property of the individual employer or employers.

(b) After an employee has filed a wage claim with the Department, the employee or the Department shall have a lien upon all property of the employer, real or personal, including after-acquired property, located in this State for the full amount of any wage claim. The employee or the Department shall also have a lien upon the real property of the individual employer.

Section 50. Other claims. A lien under this Act as to the first $30,000 of unpaid wages covered under the lien takes
precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, regardless of whether those other debts, judgments, decrees, liens, or mortgages originate before or after the lien under takes effect.

Section 55. Successor obligations.Whenever any employer quits, sells, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any recorded or filed notice of lien under this Act if, at the time of the conveyance of the business, the successor has: (1) actual knowledge of the fact and amount of the recorded or filed notice of lien, or (2) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the recorded or filed notice of lien. If the amount of the recorded or filed notice of lien is not paid in full by the employer within 10 days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the lien.

Section 60. Exemptions. No employer may by special contract with employees or by any other means secure exemption from this Section. Each employee shall have a right of action against any employer for the full amount of the employee's wages due in any court of competent jurisdiction.
Section 65. Construction. This Act is and shall be liberally construed as a remedial Act.