



2005 ASSEMBLY BILL 613

August 16, 2005 - Introduced by Representatives GUNDRUM, ALBERS, HAHN, LOTHIAN and OTT. Referred to Committee on Labor.

1 **AN ACT to amend** 109.01 (1r), 109.09 (2) (c) 1m. and 109.09 (2) (c) 3.; and **to**
2 **create** 109.09 (2) (c) 1. am. of the statutes; **relating to:** coverage of managerial
3 and commissioned sales employees under the wage claim law.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Workforce Development (DWD) must investigate and attempt to adjust any employee's claim that his or her employer has not paid the employee any wages that are owed to the employee (wage claim). Currently, DWD or an employee who brings a wage claim action has a lien upon all property of the employer, real and personal, located in this state for the full amount of any wages owed to the employee. Also, under current law, subject to certain exceptions, a wage claim lien takes precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, regardless of whether the other debt, judgment, decree, lien, or mortgage arises before or after the wage claim lien takes effect. One of those exceptions provides that a wage claim lien takes precedence over a prior lien of a commercial lending institution only as to the first \$3,000 of unpaid wages covered under the lien that were earned by an employee in the six months preceding the date on which the employee filed the wage claim.

Currently, certain types of employees, including persons employed in a managerial or commissioned sales capacity, are not covered under the wage claim lien law. This bill permits a managerial or commissioned sales employee to file a wage claim with DWD and grants to DWD or such an employee a lien over the employer's property, but does not give a lien precedence over any prior debts, judgments, decrees, liens, or mortgages against the employer.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 109.01 (1r) of the statutes is amended to read:

2 109.01 (1r) ~~“Employee”~~ Except as provided in s. 109.09 (2) (c) 1. am., “employee”
3 means any person employed by an employer, except that “employee” does not include
4 an officer or director of a corporation, a member or manager of a limited liability
5 company, a partner of a partnership or a joint venture, the owner of a sole
6 proprietorship, an independent contractor, or a person employed in a managerial,
7 executive, or commissioned sales an executive capacity or in a capacity in which the
8 person is privy to confidential matters involving the employer–employee
9 relationship.

10 **SECTION 2.** 109.09 (2) (c) 1. am. of the statutes is created to read:

11 109.09 (2) (c) 1. am. “Employee” has the meaning given in s. 109.01 (1r), except
12 that, in addition to the persons not included under that definition, “employee” does
13 not include a person employed in a managerial or commissioned sales capacity.

14 **SECTION 3.** 109.09 (2) (c) 1m. of the statutes is amended to read:

15 109.09 (2) (c) 1m. A lien under par. (a) of an employee takes precedence over
16 all other debts, judgments, decrees, liens, or mortgages against the employer, except
17 a lien of a commercial lending institution as provided in subd. 2. and 3. or a lien under
18 s. 292.31 (8) (i) or 292.81, regardless of whether those other debts, judgments,
19 decrees, liens, or mortgages originate before or after the lien under par. (a) takes
20 effect. Subject to subd. 3., a lien under par. (a) of a person employed in a managerial
21 or commissioned sales capacity takes precedence over all other debts, judgments,

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1 decrees, liens, or mortgages against the employer that originate after the lien under
2 par. (a) takes effect, except a lien under s. 292.31 (8) (i) or 292.81, but does not take
3 precedence over any debt, judgment, decree, lien, or mortgage against the employer
4 that originates before the lien under par. (a) takes effect. A lien under par. (a) may
5 be enforced in the manner provided in ss. 779.09 to 779.12, 779.20, and 779.21,
6 insofar as those provisions are applicable. The lien ceases to exist if the department
7 of workforce development or the employee does not bring an action to enforce the lien
8 within the period prescribed in s. 893.44 for the underlying wage claim.

9 **SECTION 4.** 109.09 (2) (c) 3. of the statutes is amended to read:

10 109.09 (2) (c) 3. Notwithstanding ~~subd. subds. 1m. and 2.~~, a lien of a financial
11 institution that exists on November 30, 2003, and that originates before a lien under
12 par. (a) takes effect takes precedence over the lien under par. (a), and a lien of a
13 financial institution for any amount advanced by the financial institution after a lien
14 under par. (a) takes effect under a contract entered into before December 1, 2003,
15 including any extension or renewal of such a contract, takes precedence over the lien
16 under par. (a). Notwithstanding ~~subd. subds. 1m. and 2.~~, a lien under par. (a) that
17 exists on November 30, 2003, takes precedence over a lien of a commercial lending
18 institution that is not a financial institution, regardless of whether the lien of the
19 commercial lending institution originates before or after the lien under par. (a) takes
20 effect.

21 **SECTION 5. Initial applicability.**

22 (1) WAGE CLAIM LIENS OF MANAGERIAL AND COMMISSIONED SALES EMPLOYEES.

23 (a) *Coverage.* The treatment of section 109.01 (1r) of the statutes first applies
24 to wages, as defined in section 109.01 (3) of the statutes, earned by a managerial or
25 commissioned sales employee on the effective date of this paragraph.

