



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

Engrossed 2009 Senate Bill 2

**Assembly Substitute
Amendment 1**

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Current Law

Under current law, the Department of Workforce Development (DWD) must investigate and attempt to adjust any controversy between employers and employees as to alleged wage claims. DWD or an employee who brings a wage claim action has a lien upon all property of the employer, real or personal, located in this state for the full amount of any wages owed to the employee. A wage claim lien generally takes precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, except for a lien of a commercial lending institution against the employer that originates before the wage claim lien takes effect. However, current law provides that a wage claim lien takes precedence over a lien of a commercial lending institution against the employer that originates before the wage claim lien takes effect only as to the first \$3,000 of unpaid wages covered under the wage claim lien that are earned within the six months preceding the filing of the wage claim with DWD or the commencement of an action by the employee to recover the wages that are due.

Engrossed 2009 Senate Bill 2

Engrossed 2009 Senate Bill 2 provides that a wage claim lien takes precedence over a lien of a commercial lending institution against the employer that is perfected before the wage claim lien is perfected only as to the first \$10,950 of unpaid wages covered under the lien. The engrossed bill does not contain a time limit. Beginning on January 1, 2011, the \$10,950 limit must be adjusted annually by DWD by calculating changes in the consumer price index (CPI).

The engrossed bill provides that a wage claim lien takes precedence over a lien of a commercial lending institution against the employer that is perfected as of the day before the effective date of the bill and that is perfected before the wage claim lien is perfected, only as to the first \$3,000 of unpaid wages covered under the wage claim lien that are earned within the six months preceding the filing of a wage claim with DWD or the commencement of an action by the employee to recover the wages that are due.

The engrossed bill also provides that a wage claim lien takes precedence over the rights of any purchaser of any property of the employer after the lien is created, including any bona fide purchaser. This provision reverses the holding of *In re Globe Building Materials, Inc.*, 463 F. 3d 631 (7th Cir. 2006), which held that the trustee in bankruptcy could avoid a wage claim lien because under the current wage claim lien law, a wage claim does not expressly take precedence over the rights of a bona fide purchaser under federal bankruptcy law. Further, the engrossed bill allows a recognized or certified collective bargaining representative of an employee to file a wage claim with DWD or to bring a wage claim action in court on behalf of an employee, and the engrossed bill grants a wage claim lien to a collective bargaining representative that brings a wage claim action.

Lastly, the engrossed bill changes the term “originates” to “creates” and the term “takes effect” to “is perfected” and makes other changes to clarify current law regarding wage claim liens.

Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 makes the following changes to the engrossed bill:

- Provides that a wage claim lien takes precedence over the ***aggregate of all liens of commercial lending institutions*** against the employer that are perfected before the wage claim lien is perfected only as to the first ***\$4,500*** of unpaid wages covered under the lien.
- Provides that a wage claim lien takes precedence over the ***aggregate of all liens of commercial lending institutions*** against the employer that are perfected as of the day before the effective date of the bill and that are perfected before the wage claim lien is perfected, only as to the first \$3,000 of unpaid wages covered under the wage claim lien that are earned within the six months preceding the filing of a wage claim with DWD or the commencement of an action by the employee to recover the wages that are due.
- Removes the CPI adjustment to the \$10,950 limit in the engrossed bill.
- Provides that at least once every five years, or more frequently if upon investigation DWD finds that there is reasonable cause to believe that the \$4,500 limit should be adjusted, the DWD secretary must appoint a wage claim lien review committee to study the need for an adjustment to the \$4,500 limit and to make recommendations to the Legislature for any adjustments to that amount. The wage claim lien review committee may consider changes in the CPI and the effect that an adjustment to the limit might have on the economy of the state.

Legislative History

Assembly Substitute Amendment 1 was offered by the Assembly Committee on Labor. On April 20, 2010, the Assembly Committee on Labor recommended adoption of the substitute amendment and concurrence in Engrossed 2009 Senate Bill 2, as amended, on votes of Ayes, 5; Noes, 3.

JKR:ksm