

2009 ASSEMBLY BILL 40

February 12, 2009 – Introduced by Representatives GARTHWAITE, SINICKI, BERCEAU, BLACK, CULLEN, GRIGSBY, HILGENBERG, JORGENSEN, KESSLER, MASON, PARISI, RICHARDS, SOLETSKI, STASKUNAS, STEINBRINK, TOLES, TURNER, VAN AKKEREN, ZEPNICK and BERNARD SCHABER, cosponsored by Senators LEHMAN, ROBSON, HANSEN, CARPENTER, COGGS, DECKER, ERPENBACH, HOLPERIN, KREITLOW, MILLER, PLALE, TAYLOR and WIRCH. Referred to Committee on Labor.

1 **AN ACT to repeal** 109.09 (2) (c) 1., 109.09 (2) (c) 2. and 109.09 (2) (c) 3.; **to**
2 **renumber and amend** 109.09 (2) (c) 1m.; and **to amend** 109.03 (5), 109.03 (6),
3 109.09 (1), 109.09 (2) (a), 109.09 (2) (b) 1., 109.09 (2) (b) 2., 109.09 (2) (b) 3. and
4 109.11 (2) (a) of the statutes; **relating to:** the filing of a wage claim or the
5 bringing of a wage claim action by a collective bargaining representative on
6 behalf of an employee and the priority of a wage claim lien over a prior lien of
7 a commercial lending institution and over the rights of a purchaser of any
8 property of the employer.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Workforce Development (DWD) must investigate and attempt to adjust any claim by an employee 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 (wage claim lien). Currently, a wage claim lien takes precedence over all other debts, judgments, decrees, liens, or mortgages against an employer, except for a lien of a commercial lending institution that originates before the wage claim lien takes effect (prior lien), regardless of whether

ASSEMBLY BILL 40

those other debts, judgments, decrees, liens, or mortgages originated before or after the wage claim lien takes effect. Current law provides, however, that a wage claim lien takes precedence over a prior lien of a commercial lending institution 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 due.

This bill eliminates that \$3,000 cap and six-month time limit so that under the bill a wage claim lien covering any amount of wages earned at any time takes precedence over a lien of a commercial lending institution, regardless of whether the lien of the commercial lending institution originated before or after the wage claim lien takes effect.

The bill also provides that a wage claim lien takes precedence over the rights of any purchaser of any property of the employer, including any bona fide purchaser that purchases the property of the employer at the time of commencement of a bankruptcy proceeding, that is, the trustee in bankruptcy. This change reverses *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 the federal bankruptcy law.

Finally, the bill permits 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 grants a wage claim lien to a collective bargaining representative that brings a wage claim action.

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.** 109.03 (5) of the statutes is amended to read:

2 109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by

3 special contract with employees or by any other means secure exemption from this

4 section. Each employee shall have a right of action against any employer for the full

5 amount of the employee's wages due on each regular pay day as provided in this

6 section and for increased wages as provided in s. 109.11 (2), in any court of competent

7 jurisdiction. An employee may bring a wage claim under this subsection on his or

8 her own behalf or the recognized or certified collective bargaining representative of

ASSEMBLY BILL 40

1 the employee may bring an action against an employer under this subsection on
2 behalf of the employee. An employee or collective bargaining representative may
3 bring an action against an employer under this subsection without first filing a wage
4 claim with the department under s. 109.09 (1). An employee who or collective
5 bargaining representative that brings an action against an employer under this
6 subsection shall have a lien upon all property of the employer, real or personal,
7 located in this state as described in s. 109.09 (2).

8 **SECTION 2.** 109.03 (6) of the statutes is amended to read:

9 109.03 **(6)** WAGE CLAIM. In an action by an employee, a collective bargaining
10 representative, or the department against the employer on a wage claim, no security
11 for payment of costs is required. In any such proceeding the court may allow the
12 prevailing party, in addition to all other costs, a reasonable sum for expenses. No
13 person other than an employee, a collective bargaining representative, or the
14 department shall be benefited or otherwise affected by this subsection.

15 **SECTION 3.** 109.09 (1) of the statutes is amended to read:

16 109.09 **(1)** The department shall investigate and attempt equitably to adjust
17 controversies between employers and employees as to alleged wage claims. An
18 employee may file a wage claim under this subsection on his or her own behalf or the
19 recognized or certified collective bargaining representative of the employee may file
20 a wage claim under this subsection on behalf of the employee. The department may
21 receive and investigate any wage claim which is filed with the department, or
22 received by the department under s. 109.10 (4), no later than 2 years after the date
23 the wages are due. The department may, after receiving a wage claim, investigate
24 any wages due from the employer against whom the claim is filed to any employee
25 during the period commencing 2 years before the date the claim is filed. The

ASSEMBLY BILL 40

1 department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12
2 and 229.8275. In pursuance of this duty, the department may sue the employer on
3 behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6)
4 and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10,
5 the department may refer such an action to the district attorney of the county in
6 which the violation occurs for prosecution and collection and the district attorney
7 shall commence an action in the circuit court having appropriate jurisdiction. Any
8 number of wage claims or wage deficiencies against the same employer may be joined
9 in a single proceeding, but the court may order separate trials or hearings. In actions
10 that are referred to a district attorney under this subsection, any taxable costs
11 recovered by the district attorney shall be paid into the general fund of the county
12 in which the violation occurs and used by that county to meet its financial
13 responsibility under s. 978.13 (2) (b) for the operation of the office of the district
14 attorney who prosecuted the action.

15 **SECTION 4.** 109.09 (2) (a) of the statutes is amended to read:

16 109.09 (2) (a) The department of workforce development, under its authority
17 under sub. (1) to maintain actions for the benefit of employees, ~~or~~ an employee who
18 brings an action under s. 109.03 (5), or the recognized or certified collective
19 bargaining representative of an employee, under its authority under s. 109.03 (5) to
20 maintain actions for the benefit of employees, shall have a lien upon all property of
21 the employer, real or personal, located in this state for the full amount of any wage
22 claim or wage deficiency.

23 **SECTION 5.** 109.09 (2) (b) 1. of the statutes is amended to read:

24 109.09 (2) (b) 1. A lien under par. (a) upon real property takes effect when the
25 department of workforce development ~~or,~~ employee, or collective bargaining

ASSEMBLY BILL 40

1 representative files a notice of the lien with the clerk of the circuit court of the county
2 in which the services or some part of the services were performed, pays the fee
3 specified in s. 814.61 (5) to that clerk of circuit court, and serves a copy of that petition
4 on the employer by personal service in the same manner as a summons is served
5 under s. 801.11 or by certified mail with a return receipt requested. The clerk of
6 circuit court shall enter the notice of the lien on the judgment and lien docket kept
7 under s. 779.07.

8 **SECTION 6.** 109.09 (2) (b) 2. of the statutes is amended to read:

9 109.09 (2) (b) 2. A lien under par. (a) upon personal property takes effect when
10 the department of workforce development or employee, or collective bargaining
11 representative files notice of the lien in the same manner, form, and place as
12 financing statements are filed under subch. V of ch. 409 regarding debtors who are
13 located in this state, pays the same fee provided in s. 409.525 for filing financing
14 statements, and serves a copy of the notice on the employer by personal service in the
15 same manner as a summons is served under s. 801.11 or by certified mail with a
16 return receipt requested. The department of financial institutions shall place the
17 notice of the lien in the same file as financing statements are filed under subch. V
18 of ch. 409.

19 **SECTION 7.** 109.09 (2) (b) 3. of the statutes is amended to read:

20 109.09 (2) (b) 3. The department of workforce development or employee, or
21 collective bargaining representative must file the notice under subd. 1. or 2. within
22 2 years after the date on which the wages were due. The notice shall specify the
23 nature of the claim and the amount claimed, describe the property upon which the
24 claim is made, and state that the person filing the notice claims a lien on that
25 property.

ASSEMBLY BILL 40

1 **SECTION 8.** 109.09 (2) (c) 1. of the statutes is repealed.

2 **SECTION 9.** 109.09 (2) (c) 1m. of the statutes is renumbered 109.09 (2) (c) and
3 amended to read:

4 109.09 (2) (c) A lien under par. (a) takes precedence over the rights of any
5 purchaser of any property of the employer, including any bona fide purchaser under
6 11 USC 545 (2), and over all other debts, judgments, decrees, liens, or mortgages
7 against the employer, except ~~a lien of a commercial lending institution as provided~~
8 ~~in subd. 2. and 3. or~~ a lien under s. 292.31 (8) (i) or 292.81, regardless of whether those
9 other debts, judgments, decrees, liens, or mortgages originate before or after the lien
10 under par. (a) takes effect. A lien under par. (a) may be enforced in the manner
11 provided in ss. 779.09 to 779.12, 779.20, and 779.21, insofar as those provisions are
12 applicable. The lien ceases to exist if the department of workforce development ~~or~~
13 ~~the~~ employee, or collective bargaining representative does not bring an action to
14 enforce the lien within the period prescribed in s. 893.44 for the underlying wage
15 claim.

16 **SECTION 10.** 109.09 (2) (c) 2. of the statutes is repealed.

17 **SECTION 11.** 109.09 (2) (c) 3. of the statutes is repealed.

18 **SECTION 12.** 109.11 (2) (a) of the statutes is amended to read:

19 109.11 (2) (a) In a wage claim action that is commenced ~~by an employee~~ before
20 the department has completed its investigation under s. 109.09 (1) and its attempts
21 to compromise and settle the wage claim under sub. (1), a circuit court may order the
22 employer to pay to the employee, in addition to the amount of wages due and unpaid
23 and in addition to or in lieu of the criminal penalties specified in sub. (3), increased
24 wages of not more than 50% of the amount of wages due and unpaid.

25 **SECTION 13. Nonstatutory provisions.**

ASSEMBLY BILL 40

1 (1) WAGE CLAIM LIENS. Notwithstanding section 109.09 (2) (c), 2007 stats., a lien
2 that exists under section 109.09 (2) (a) of the statutes on the day before the effective
3 date of this subsection takes precedence over a lien of a commercial lending
4 institution, as defined in section 109.09 (2) (c) 1., 2007 stats., that originated before
5 the lien under section 109.09 (2) (a) of the statutes took effect.

6

(END)