



State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa0137/1
GMM:kjf:jf

**ASSEMBLY AMENDMENT 1,
TO 2009 ASSEMBLY BILL 40**

March 19, 2009 – Offered by Representative NASS.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 15: delete lines 15 to 25.

3 **2.** Page 5, line 1: delete lines 1 to 18 and substitute:

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

5 109.09 (2) (a) The department of workforce development, under its authority
6 under sub. (1) to maintain actions for the benefit of employees, ~~or an employee who~~
7 brings an action under s. 109.03 (5), or the recognized or certified collective
8 bargaining representative of an employee, under its authority under s. 109.03 (5) to
9 maintain actions for the benefit of employees, shall have a lien upon all property of
10 the employer, real or personal, located in this state for the full amount of any wage
11 claim or wage deficiency. A lien under this paragraph is created when the services
12 for which the wages are due are performed.

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

1 109.09 (2) (b) 1. A lien under par. (a) upon real property ~~takes effect~~ is perfected
2 when the department of workforce development ~~or~~, employee, or collective
3 bargaining representative files a notice of the lien with the clerk of the circuit court
4 of the county in which the services or some part of the services were performed, pays
5 the fee specified in s. 814.61 (5) to that clerk of circuit court, and serves a copy of ~~that~~
6 ~~petition~~ the notice on the employer by personal service in the same manner as a
7 summons is served under s. 801.11 or by certified mail with a return receipt
8 requested. The clerk of circuit court shall enter the notice of the lien on the judgment
9 and lien docket kept under s. 779.07.

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

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

21 **3.** Page 6, line 1: delete lines 1 to 17 and substitute:

22 **“SECTION 8d.** 109.09 (2) (c) 1. ag. of the statutes is created to read:

1 109.09 (2) (c) 1. ag. “Consumer price index” means the average of the consumer
2 price index over each 12–month period for all urban consumers, U.S. city average,
3 as determined by the bureau of labor statistics of the U.S. department of labor.

4 **SECTION 9d.** 109.09 (2) (c) 1m. of the statutes is amended to read:

5 109.09 (2) (c) 1m. A lien under par. (a) takes precedence over all other debts,
6 judgments, decrees, liens, interests, or mortgages against the employer, except a lien
7 of a commercial lending institution as provided in ~~subd. subds. 1r. and 2. and 3., a~~
8 lien of a financial institution as provided in subd. 3., or a lien under s. 292.31 (8) (i)
9 or 292.81, regardless of whether those other debts, judgments, decrees, liens,
10 interests, or mortgages originate before or after the lien under par. (a) ~~takes effect~~
11 is perfected. A lien under par. (a) also takes precedence over the rights of any person
12 that purchases any property of the employer after the lien is created, including any
13 bona fide purchaser. A lien under par. (a) may be enforced in the manner provided
14 in ss. 779.09 to 779.12, 779.20, and 779.21, insofar as those provisions are applicable.
15 The lien ceases to exist if the department of workforce development ~~or the~~ employee,
16 or collective bargaining representative does not bring an action to enforce the lien
17 within the period prescribed in s. 893.44 for the underlying wage claim.

18 **SECTION 9m.** 109.09 (2) (c) 1r. of the statutes is created to read:

19 109.09 (2) (c) 1r. Except as provided in this subdivision, a lien under par. (a)
20 does not take precedence over a lien of a commercial lending institution against the
21 employer that is perfected before the lien under par. (a) is perfected. Subject to subds.
22 2. and 3., a lien under par. (a) takes precedence over a lien of a commercial lending
23 institution against the employer that is perfected before the lien under par. (a) is
24 perfected only as to the first \$5,000 or an amount determined by the department
25 under subd. 4. of unpaid wages covered under the lien that are earned by an employee

1 within the 12 months preceding the date on which the employee or collective
2 bargaining representative files the wage claim under sub. (1) or brings the action
3 under s. 109.03 (5) or the date on which the department receives the wage claim
4 under s. 109.10 (4) (a), whichever is applicable.

5 **SECTION 10d.** 109.09 (2) (c) 2. of the statutes is amended to read:

6 109.09 (2) (c) 2. Except as provided in this subdivision, a lien under par. (a) does
7 not take precedence over a lien of a commercial lending institution against the
8 employer that is perfected as of the day before the effective date of this subdivision
9 [LRB inserts date], and that originates is perfected before the lien under par. (a)
10 takes effect is perfected or over a lien of a commercial lending institution against the
11 employer for any amount advanced by the commercial lending institution after a lien
12 under par. (a) is perfected under a contract entered into before the effective date of
13 this subdivision [LRB inserts date], including any renewal or time extension of
14 such a contract. Subject to subd. 3., a lien under par. (a) takes precedence over a lien
15 of a commercial lending institution against the employer that is perfected as of the
16 day before the effective date of this subdivision [LRB inserts date], and that
17 originates is perfected before the lien under par. (a) takes effect is perfected, or over
18 a lien of a commercial lending institution against the employer for any amount
19 advanced by the commercial lending institution after a lien under par. (a) is perfected
20 under a contract entered into before the effective date of this subdivision [LRB
21 inserts date], including any renewal or time extension of such a contract, only as to
22 the first \$3,000 of unpaid wages covered under the lien that are earned by an
23 employee within the 6 months preceding the date on which the employee or collective
24 bargaining representative files the wage claim under sub. (1) or brings the action

1 under s. 109.03 (5) or the date on which the department receives the wage claim
2 under s. 109.10 (4) (a), whichever is applicable.

3 **SECTION 11d.** 109.09 (2) (c) 3. of the statutes is amended to read:

4 109.09 (2) (c) 3. Notwithstanding ~~subd. subds. 1r. and 2.~~, a lien of a financial
5 institution that ~~exists on~~ is perfected as of November 30, 2003, and that ~~originates~~
6 is perfected before a lien under par. (a) ~~takes effect~~ is perfected takes precedence over
7 the lien under par. (a), and a lien of a financial institution for any amount advanced
8 by the financial institution after a lien under par. (a) ~~takes effect~~ is perfected under
9 a contract entered into before December 1, 2003, including any ~~extension or renewal~~
10 or time extension of such a contract, takes precedence over the lien under par. (a).
11 Notwithstanding ~~subd. subds. 1r. and 2.~~, a lien under par. (a) that ~~exists on~~ is
12 perfected as of November 30, 2003, takes precedence over a lien of a commercial
13 lending institution that is not a financial institution, regardless of whether the lien
14 of the commercial lending institution ~~originates~~ is perfected before or after the lien
15 under par. (a) ~~takes effect~~ is perfected.

16 **SECTION 11m.** 109.09 (2) (c) 4. of the statutes is created to read:

17 109.09 (2) (c) 4. Beginning on January 1, 2011, the department shall annually
18 adjust the amount specified in subd. 1r. by calculating the percentage difference
19 between the consumer price index for the 12-month period ending on June 30 of the
20 preceding year and the consumer price index for the 12-month period ending on June
21 30, 2009, and adjusting that amount by that percentage difference. Notwithstanding
22 s. 227.10 (1), the department need not promulgate those annual adjustments as rules
23 under ch. 227. An adjusted amount under this subdivision shall first apply to a lien
24 under par. (a) that is perfected on January 1 of the year in which the adjustment is
25 made. This subdivision does not apply if the consumer price index for the 12-month

1 period ending on June 30 of the current year has not increased over the consumer
2 price index for the 12-month period ending on June 30 of the preceding year.”.

3 **4.** Page 6, line 25: delete that line.

4 **5.** Page 7, line 1: delete lines 1 to 5 and substitute:

5 **“SECTION 13m. Initial applicability.**

6 (1) WAGE CLAIM LIEN PRIORITY. The treatment of section 109.09 (2) (c) 1m. of the
7 statutes first applies to a lien under section 109.09 (2) (a) of the statutes that is
8 created on the effective date of this subsection.”.

9 **(END)**