



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2009 Assembly Bill 40**

**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.

### 2009 Assembly Bill 40

Assembly Bill 40 eliminates the \$3,000 limit 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 against the employer, regardless of whether the lien of the commercial lending institution originates 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. 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 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 bill grants a wage claim lien to a collective bargaining representative that brings a wage claim action.

### **Assembly Substitute Amendment 1**

Assembly Substitute Amendment 1 makes the following changes to the 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. The substitute amendment does not contain a time limit.
- 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.
- Provides that at least once every 5 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 consumer price index and the effect that an adjustment to the limit might have on the economy of the state.
- 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.

### **Legislative History**

Assembly Substitute Amendment 1 was offered by Representative Garthwaite. On April 20, 2010, the Assembly Committee on Labor recommended adoption of the substitute amendment and passage of Assembly Bill 40, as amended, on votes of Ayes, 5; Noes, 3.

JKR:ksm