

Chapter 541

(House Bill 1130)

AN ACT concerning

Labor and Employment – Lien for Unpaid Wages – Establishment

FOR the purpose of requiring an employee to provide certain written notice to a certain employer first in order to establish a lien for unpaid wages; authorizing a certain employer to dispute a lien for unpaid wages by filing a certain complaint in a certain circuit court in a certain manner; authorizing the employer or employee to request an evidentiary hearing; requiring a circuit court to make a determination on a claim to establish a lien for unpaid wages in a certain manner; authorizing a circuit court to take certain actions; providing for certain court costs and attorney's fees under certain circumstances; specifying the manner in which a lien for unpaid wages may be established; specifying the manner in which an employee may record a lien for unpaid wages; requiring a lien for unpaid wages to be extinguished without prejudice if it is not recorded within a certain period of time; requiring a lien for unpaid wages to be released if certain payment is made or a certain bond is filed; establishing the date by which a lien for unpaid wages takes priority over other claims; providing that certain purchasers of certain property are deemed to have constructive notice of a lien for unpaid wages under certain circumstances; specifying the manner in which an order for a lien for unpaid wages shall be enforced; requiring an action to enforce a certain order to be brought within a certain period of time; prohibiting certain contracts from waiving or requiring an employee to waive a certain right; specifying that a provision of a contract that violates a certain provision of this Act is void; providing for the construction of this Act; authorizing the Commissioner of Labor and Industry to seek to establish a lien for unpaid wages on behalf of an employee; requiring the Commissioner to adopt certain regulations; defining certain terms; and generally relating to liens for unpaid wages.

BY adding to

Article – Labor and Employment

Section 3–1101 through 3–1110 to be under the new subtitle “Subtitle 11. Lien for Unpaid Wages”

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

SUBTITLE 11. LIEN FOR UNPAID WAGES.**3-1101.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

(C) “LIEN FOR UNPAID WAGES” MEANS A LIEN FOR THE AMOUNT OF WAGES OWED TO AN EMPLOYEE AND PENALTIES AUTHORIZED UNDER THIS TITLE OR OTHER PROVISIONS OF LAW AGAINST REAL OR PERSONAL PROPERTY OWNED BY AN EMPLOYER AND LOCATED IN THE STATE.

(D) “WAGES” DOES NOT INCLUDE COMMISSIONS.

3-1102.

TO ESTABLISH A LIEN FOR UNPAID WAGES UNDER § 3-1104 OF THIS SUBTITLE, AN EMPLOYEE SHALL FIRST PROVIDE WRITTEN NOTICE TO AN EMPLOYER THAT:

(1) IS SERVED ON THE EMPLOYER WITHIN THE STATUTE OF LIMITATIONS PERIOD UNDER § 5-101 OF THE COURTS ARTICLE;

(2) IS PERSONALLY SERVED IN ACCORDANCE WITH MARYLAND RULE 2-121; AND

(3) CONTAINS THE INFORMATION REQUIRED BY THE COMMISSIONER UNDER § 3-1110 OF THIS SUBTITLE TO PROVIDE THE EMPLOYER WITH ADEQUATE NOTICE OF THE WAGES CLAIMED AND THE PROPERTY AGAINST WHICH THE LIEN FOR UNPAID WAGES IS SOUGHT.

3-1103.

(A) AN EMPLOYER MAY DISPUTE A LIEN FOR UNPAID WAGES BY FILING A COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY WHERE PROPERTY OF AN EMPLOYER IS LOCATED.

(B) A COMPLAINT FILED UNDER THIS SECTION SHALL:

(1) BE FILED WITHIN 30 DAYS AFTER NOTICE IS SERVED ON THE EMPLOYER; AND

(2) INCLUDE:

(I) THE NAME OF THE EMPLOYER THAT OWES THE EMPLOYEE THE WAGES AND THE NAME OF THE EMPLOYEE TO WHOM THE WAGES ARE OWED;

(II) A COPY OF THE NOTICE TO ESTABLISH A LIEN FOR UNPAID WAGES SERVED ON THE EMPLOYER UNDER § 3-1102 OF THIS SUBTITLE;

(III) A STATEMENT OF ANY DEFENSE TO THE LIEN FOR UNPAID WAGES; AND

(IV) AN AFFIDAVIT CONTAINING A STATEMENT OF FACTS THAT SUPPORT ANY DEFENSES RAISED.

(C) THE EMPLOYER OR EMPLOYEE MAY REQUEST AN EVIDENTIARY HEARING.

(D) IF AN EMPLOYER FILES A COMPLAINT, THE CIRCUIT COURT SHALL DETERMINE WHETHER TO ISSUE AN ORDER ESTABLISHING A LIEN FOR UNPAID WAGES:

(1) WITHIN 45 DAYS AFTER THE DATE ON WHICH THE COMPLAINT WAS FILED; AND

(2) BASED ON A PREPONDERANCE OF THE EVIDENCE IN WHICH THE EMPLOYEE HAS THE BURDEN OF PROOF TO ESTABLISH THE LIEN FOR UNPAID WAGES.

(E) (1) IF A CIRCUIT COURT ISSUES AN ORDER TO ESTABLISH A LIEN FOR UNPAID WAGES, THE EMPLOYEE IS ENTITLED TO COURT COSTS AND REASONABLE ATTORNEY'S FEES.

(2) IF A CIRCUIT COURT DETERMINES THE EFFORT TO ESTABLISH A LIEN FOR UNPAID WAGES TO HAVE BEEN FRIVOLOUS OR MADE IN BAD FAITH, THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY'S FEES TO AN EMPLOYER.

3-1104.

A LIEN FOR UNPAID WAGES IS ESTABLISHED:

(1) AFTER A CIRCUIT COURT ISSUES AN ORDER TO ESTABLISH A LIEN FOR UNPAID WAGES; OR

(2) IF NO COMPLAINT DISPUTING THE LIEN FOR UNPAID WAGES IS FILED, WITHIN 30 DAYS AFTER A NOTICE IS SERVED UNDER § 3-1102 OF THIS SUBTITLE.

3-1105.

(A) IF A CIRCUIT COURT ORDERS THE ESTABLISHMENT OF A LIEN FOR UNPAID WAGES, THE EMPLOYEE MAY RECORD THE LIEN FOR UNPAID WAGES BY FILING A WAGE LIEN STATEMENT UNDER SUBSECTION (C) OF THIS SECTION.

(B) IF THE EMPLOYER FAILS TO FILE A TIMELY COMPLAINT DISPUTING THE NOTICE OF WAGE LIEN, THE EMPLOYEE MAY RECORD THE LIEN FOR UNPAID WAGES BY FILING A WAGE LIEN STATEMENT UNDER SUBSECTION (C) OF THIS SECTION ALONG WITH PROOF OF SERVICE IN ACCORDANCE WITH MARYLAND RULE 2-126.

(C) A WAGE LIEN STATEMENT MAY BE RECORDED:

(1) FOR A LIEN AGAINST REAL PROPERTY, BY FILING A WAGE LIEN STATEMENT, IN A FORM PRESCRIBED BY THE COMMISSIONER, WITH THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY WHERE ANY PORTION OF THE PROPERTY IS LOCATED; AND

(2) FOR A LIEN AGAINST PERSONAL PROPERTY, BY FILING A WAGE LIEN STATEMENT IN THE SAME MANNER, FORM, AND PLACE AS A FINANCING STATEMENT UNDER TITLE 9, SUBTITLE 5 OF THE COMMERCIAL LAW ARTICLE.

(D) (1) IF AN EMPLOYEE DOES NOT RECORD A WAGE LIEN STATEMENT WITHIN 180 DAYS AFTER THE LIEN FOR UNPAID WAGES IS ESTABLISHED, A LIEN FOR UNPAID WAGES SHALL BE EXTINGUISHED WITHOUT PREJUDICE.

(2) IF PAYMENT IS MADE OR A BOND IS FILED FOR THE AMOUNT OF WAGES AND DAMAGES STATED IN THE WAGE LIEN STATEMENT, THE RECORDED LIEN FOR UNPAID WAGES SHALL BE RELEASED.

(E) A LIEN FOR UNPAID WAGES RECORDED UNDER THIS SECTION SHALL BE CONSIDERED A SECURED CLAIM THAT HAS PRIORITY:

(1) FROM THE DATE OF THE COURT ORDER ESTABLISHING THE LIEN FOR UNPAID WAGES; OR

(2) IF NO COMPLAINT DISPUTING THE LIEN FOR UNPAID WAGES IS FILED, FROM THE DATE THAT THE EMPLOYEE FILED THE WAGE LIEN STATEMENT.

(F) SUBSEQUENT BONA FIDE PURCHASERS OF ANY PROPERTY SUBJECT TO A RECORDED LIEN FOR UNPAID WAGES ARE DEEMED TO HAVE CONSTRUCTIVE NOTICE OF THE LIEN FOR UNPAID WAGES FROM DATE OF RECORDATION OF A WAGE LIEN STATEMENT.

3-1106.

(A) AN ORDER FOR A LIEN FOR UNPAID WAGES SHALL BE ENFORCED IN THE SAME MANNER AS ANY OTHER JUDGMENT UNDER STATE LAW.

(B) AN ACTION TO ENFORCE AN ORDER FOR A LIEN FOR UNPAID WAGES SHALL BE BROUGHT WITHIN 12 YEARS OF THE DATE OF RECORDATION OF A LIEN FOR UNPAID WAGES.

3-1107.

(A) A CONTRACT BETWEEN AN EMPLOYEE AND AN EMPLOYER MAY NOT WAIVE OR REQUIRE THE EMPLOYEE TO WAIVE THE RIGHT TO SEEK THE ESTABLISHMENT OF A LIEN FOR UNPAID WAGES UNDER THIS SUBTITLE.

(B) A PROVISION IN AN EXECUTORY CONTRACT BETWEEN AN EMPLOYER AND AN EMPLOYEE THAT CONDITIONS PAYMENT OF WAGES TO THE EMPLOYEE ON RECEIPT BY THE EMPLOYER OF A PAYMENT FROM A PROPERTY OWNER OR A THIRD PARTY MAY NOT ABROGATE OR WAIVE THE RIGHT OF AN EMPLOYEE TO SEEK THE ESTABLISHMENT OF A LIEN FOR UNPAID WAGES UNDER THIS SUBTITLE.

(C) A PROVISION OF A CONTRACT THAT VIOLATES THIS SECTION IS VOID AS AGAINST THE PUBLIC POLICY OF THE STATE.

3-1108.

THIS SUBTITLE MAY NOT BE CONSTRUED TO PREVENT AN EMPLOYEE FROM EXERCISING ANY RIGHT OR SEEKING ANY REMEDY TO WHICH THE EMPLOYEE MAY BE OTHERWISE ENTITLED.

3-1109.

THE COMMISSIONER MAY SEEK TO ESTABLISH A LIEN FOR UNPAID WAGES ON BEHALF OF AN EMPLOYEE.

3-1110.

THE COMMISSIONER SHALL ADOPT REGULATIONS TO:

(1) ESTABLISH THE CONTENT OF THE NOTICE, COMPLAINT, AND WAGE LIEN STATEMENT UNDER THIS SUBTITLE; AND

(2) IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 16, 2013.

Draft of Proposed Wage Lien Law:

(Version 8 – Non-State Specific, March 17, 2011)

(1) Wage Claims; Collections

[note: depending on existing state law, it may make sense to insert a definitions section covering, e.g., definition of “employer” and “employee”]

(a) An employee shall be entitled to a lien upon

(i) all property of the employer, real or personal, located in this state; and

(ii) all property upon which the employee has performed work or furnished materials at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise,

for the full amount of the wages and any statutory penalties owed, including but not limited to those under *[add reference to state and/or federal statutory penalties, such as penalties for non-payment of wages at the time of discharge, or double/treble damages provisions]*.

(b) Both a wage claim and an action to enforce a lien under this section may be brought by the employee individually, or the *[State Department of Labor or Labor Commissioner]* or any representative(s) of the employee on behalf of the employee, including collective bargaining representatives or class action representatives in an action under *[add reference to state or federal class action statute]* or by any representative or public officer under *[add reference to any other state law authorizing representative or government actions for wage restitution (e.g., the California unfair competition law authorizes city attorneys and the state attorney general to pursue actions for restitution of wages)]*.

1 *[The following sections (B)(i)-(B)(iii)are designed to mandate that the state department of*
2 *labor record a wage lien whenever it is involved in investigating or adjudicating a wage*
3 *claim. Moreover if the state department of labor has the power to adjudicate the merits of*
4 *wage claim (as it does in California), this section makes the department of labor's decision*
5 *on the wage claim a binding determination of the lien amount and validity. Sections (i) will*
6 *not be applicable to states that do not have an administrative process for adjudication wage*
7 *claims, and thus, should be deleted]*

8 (i) If the employee chooses to pursue the wage claim in an administrative proceeding
9 before the *[state department of labor or other applicable agency]* the *[state*
10 *department of labor or other applicable agency]* shall have the authority to establish
11 the amount of lien if a lien has been recorded pursuant to paragraphs (2)(a) and/or
12 (2)(b);

13 (ii) If no lien has been recorded at the time *[an administrative claim is filed with the state*
14 *department of labor and/or the state department of labor begins an investigation]*, the
15 *[state department of labor or other applicable agency]* shall record and provide
16 notice of the lien on behalf of the employee.

17 (iii) *[Note: this section is applicable if state law has a statute authorizing additional*
18 *penalties for failing to pay wages that have been found to be due by a state*
19 *department of labor investigation or administrative hearing; if no additional*
20 *penalties exist under state law, it should not be used in the state law]* When additional
21 damages are owed pursuant to *[insert reference to state law mandating additional*
22 *penalties for failure to pay wages after a finding that wages are owed by the state*
23 *department of labor]* the *[state department of labor]* shall record a lien for such

1 damages, which will be separate and apart from any other lien under this section.

2 Failure to record or perfect any lien for such damages shall have no effect on the

3 enforceability or perfection of any other lien under this section.

4 (c) Any number of wage claims or wage deficiencies against the same employer may be joined in
5 a single proceeding, but the court may order separate trials or hearings.

6 **(2) Conditions to Enforce a Lien**

7 (a) In order to enforce a lien under paragraph (1) upon real property, a notice of lien must be
8 recorded with the county recorder in the county where the property is located.

9 (i) The notice shall include all of the information set forth under *[add reference to state*
10 *mechanic's lien statute that describes the notice that must be recorded for a valid*
11 *mechanic's lien]* including the nature and amount of the claim, a description of the
12 property on which the lien is made, and a statement that the person filing the notice
13 claims a lien on that property.

14 (ii) The notice of lien shall be served on the property owner in the manner prescribed by
15 *[add reference to state mechanic's lien statute service provisions]*

16 (b) In order to enforce a lien under paragraph (1) upon personal property, a notice of lien must
17 be filed in the same manner, form, and place as financing statements pursuant to *[add*
18 *reference to state law provisions incorporating Uniform Commercial Code liens on personal*
19 *property and/or any other state law authorizing financing statement liens against businesses*
20 *and personal property]*. The *[state department of labor]*, employee representative, or
21 employee shall file the notice of the lien in the office of the Secretary of State, pay the
22 specified fee for filing a financing statement in the amount specified by *[add reference to*
23 *state law provisions regarding cost for filing a Uniform Commercial Code lien or similar*

1 *other financing statement]* and serve a copy of the notice by personal service to the employer
2 in the same manner as a summons, or by mail. The office of the Secretary of State shall place
3 the notice of the lien in the same file as the financing statements pursuant to *[add reference*
4 *to applicable state statute regarding Uniform Commercial Code lien or other financing*
5 *statement]* *[Note: UCC liens/financing statements are typically recorded with the state*
6 *secretary of state's office. However, where a different procedure exists for recording UCC*
7 *liens/financing statements this procedure should be used for a wage lien]*. The notice shall
8 specify the nature and amount of the claim, describe the property on which the lien is made,
9 and state that the person filing the notice claims a lien on that property.

10 (c) The lien may be filed at any time prior to the expiration of the statute of limitations for a
11 wage claim on the same wages pursuant to *[insert reference to state law provision regarding*
12 *statute of limitations for wage claims.]*

13 (d) Mistakes or errors in the claimed amount owed shall not invalidate the lien unless made with
14 the intent to defraud.

15 (e) A lien under this section is perfected as soon as notice is provided as required by paragraphs
16 2(a) and/or 2(b).

17 **(3) Enforcement of lien**

18 (a) If a lien is recorded pursuant to paragraphs (2)(a) and/or (2)(b) and an action to recover
19 unpaid wages has been filed, then that action shall also be deemed an action to foreclose
20 upon any property subject to the recorded lien. In the judgment resulting from such an
21 action, the court may order the sale at sheriff's auction or the transfer to the plaintiff of title
22 or possession of any property subject to the lien. Whether or not the Court makes such an

1 order as part of the judgment, a writ of sale may be issued for any property subject to the lien
2 at any point after a judgment for unpaid wages is issued.

3 (b) If a lien is recorded pursuant to paragraphs (2)(a) and/or (2)(b) prior to the commencement
4 of an action for unpaid wages, any action to foreclose on the lien must be filed within one
5 year of the filing or recording of the lien.

6 (c) If judgment is entered in favor of the employer in an action for unpaid wages or if the case is
7 dismissed with prejudice, the lien shall be extinguished upon expiration of the applicable
8 appeals period if no appeal is filed. If an appeal is filed, the lien shall continue in force until
9 all issues on appeal have been decided. If the lien is extinguished, upon demand and fifteen
10 days' notice by the property owner, the employee or Labor Commissioner shall file a release
11 of the lien in the manner prescribed by *[add reference to state law regarding release of*
12 *judgment liens]*.

13 (4) Extinguishment of lien

14 If an action to recover the wages is not brought within one year of the filing of the lien, the lien
15 created by this section shall be extinguished. Upon written demand and fifteen days' notice by
16 any affected party, the employee or the person who originally recorded the lien, if the lien was
17 recorded by the employee's representative or *[the state department of labor]*, shall file a release
18 of the lien in the manner prescribed by *[add reference to state law regarding release of judgment*
19 *liens]*.

20 (5) Priority

21 A lien recorded pursuant to paragraphs (2)(a) and/or (2)(b) takes precedence over all other debts,
22 judgments, decrees, liens, or mortgages against the employer, regardless as to whether these
23 debts, judgments, decrees, liens, or mortgages originate before or after the wage lien, and

1 regardless of whether these debts, judgments, decrees, liens, or mortgages were perfected prior to
2 the wage lien. An employee's lien is effective against the employer, the estate of the employer,
3 or a subsequent bona fide purchaser of the property subject to the employee's lien.

4 **(6) Costs**

5 The employee, the *[state department of labor]*, or employee representative, as assignee of the
6 employee, is entitled to court costs and reasonable attorneys' fees for filing a successful action to
7 foreclose a lien pursuant to this section.

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 24, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1164

**Introduced by Assembly Member Lowenthal
(Coauthor: Assembly Member Roger Hernández)**

February 22, 2013

An act to add Chapter 3 (commencing with Section 3000) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 1164, as amended, Lowenthal. Liens: employees and workers.

Existing law grants specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement the right to record a mechanic's lien upon the property so improved.

This bill would, with certain exceptions, authorize an employee to record and enforce a wage lien upon ~~specified~~ real and personal property *of an employer, or a property owner, as specified*, for wages, other compensation, and related penalties and damages owed the employee. The bill would prescribe requirements relating to the recording and enforcement of the wage lien. The bill would require a notice of lien on real property to be executed under penalty of perjury.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 3000) is added to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3. WAGE LIENS

3000. (a) An employee shall have a lien for the full amount of any wages, other compensation, and related penalties and damages owed to the employee on the following property:

(1) All property of the employer, including any after-acquired property, except that if the employer is a natural person, a lien shall apply to the employer's principal residence only to the extent that the employee provided labor to the benefit of that household or residence.

~~(2) Property, other than the employer's principal residence described in paragraph (1), upon which the employee bestowed labor, except for the principal residence of an owner who is not the employer, provided that the amount of the lien on this property shall be equal to the amount of wages, compensation, and related penalties and damages accrued during the time the employee bestowed labor on that specific property.~~

(2) The property upon which the employee bestowed labor for the benefit of the property owner and with the owner's consent or knowledge that such labor was being provided. The amount of the lien on such property shall be limited to the amount of wages, compensation, and related penalties and damages accrued during the time the employee bestowed labor on that specific property.

(b) The amount of this lien shall include unpaid wages, all other compensation required under California law, penalties and damages available under the Labor Code, interest at the same rate as for prejudgment interest in this state, and the costs of filing and service of the lien. The amount of compensation that may be claimed as a lien under this section includes all wages agreed to be paid to the employee, but no less than the amount required by law,

1 including direct wages and compensation required to be paid to
2 other persons or entities, that would qualify as “employer
3 payments” described in Section 1773.1 of the Labor Code.

4 (c) ~~An~~ *The lien shall be subject to the following limits:*

5 (1) *An employee’s lien upon personal property shall be limited*
6 *to property subject to a security interest under the Commercial*
7 *Code pursuant to the filing of a financing statement with the*
8 *Secretary of State.*

9 (2) *The lien described in paragraph (2) of subdivision (a) shall*
10 *not apply to property bought or services furnished primarily for*
11 *personal, family, or household purposes, including any real*
12 *property that is the principal residence of the owner.*

13 (d) Any act authorized or required under this chapter with regard
14 to an employee may also be undertaken by any person or entity,
15 including any governmental agency, to which a portion of an
16 employer’s compensation is payable or that has standing under
17 applicable law to maintain a direct legal action on behalf of the
18 employee to collect any portion of compensation owed to the
19 employee.

20 (e) A lien pursuant to this chapter shall not be claimed by an
21 employee who is exempt from the protections of Industrial Welfare
22 Commission wage orders. However, in any action involving such
23 a lien, the employer or property owner shall plead and prove
24 exempt status as an affirmative defense.

25 (f) A lien pursuant to this chapter is in addition to any other lien
26 rights held by the employee and shall not be construed to limit
27 these rights.

28 3001. (a) The lien described in Section 3000 shall be
29 permanently extinguished unless a notice of lien in accordance
30 with Section 3002 or 3003 is recorded and served within one year
31 of the date that the employee ceased working for the employer.

32 (b) The employee shall commence an action to enforce the lien
33 and prove the amount owed within 180 days of the date of filing
34 or recording of the notice of lien. If the employee does not
35 commence an action to enforce the lien within that time, the lien
36 shall be permanently extinguished and is unenforceable.

37 (c) (1) Subdivision (b) does not apply if the employee and the
38 owner of the property subject to the lien agree to extend the time
39 for enforcing the lien in writing and record or file notice of the

1 fact and terms of the extension within either of the following
2 periods:

3 (A) 180 days after recordation or filing of the notice of lien.

4 (B) More than 180 days after recordation or filing of the notice
5 of lien but before a purchaser or encumbrancer acquires rights in
6 the property for value and in good faith.

7 (2) In the event of an extension, the employee shall commence
8 an action to enforce the lien within 180 days after the expiration
9 of the extension. If the employee does not commence an action to
10 enforce the lien within that time, the lien shall be permanently
11 extinguished and is unenforceable.

12 (d) If the lien has been extinguished pursuant to subdivision (b)
13 or (c), upon demand and 15 days' notice by any affected party, the
14 employee shall record or file a release of the lien.

15 3002. (a) With regard to a lien on real property, the employee
16 shall record a notice of lien with the county recorder in the county
17 where the real property is located.

18 (b) The notice of lien shall be executed under penalty of perjury
19 and shall include all of the following:

20 (1) A statement of the employee's demand for unpaid wages,
21 other compensation, related penalties, and damages. The statement
22 shall specify the amount owed to the employee, and if the amount
23 is estimated, shall provide an explanation for the basis of the
24 estimate.

25 (2) A general statement of the kind of work furnished by the
26 employee and the dates of employment.

27 (3) The name of the person by whom the employee was
28 employed.

29 (4) The employee's mailing address.

30 (5) For property described in paragraph (2) of subdivision (a)
31 of Section 3000, both of the following:

32 (A) A description of the site upon which the work was
33 performed sufficient for identification.

34 (B) The name of the owner or reputed owner, if known.

35 (c) The employee or employee representative shall serve the
36 notice of lien on the employer and the owner or reputed owner of
37 the real property subject to the lien, as follows:

38 (1) For an employer, notice of lien shall be served by registered
39 mail, certified mail, or first-class mail, evidenced by a certificate

1 of mailing, postage prepaid, addressed to the employer at the
2 employer's residence or place of business.

3 (2) For an owner or reputed owner who is not the employer,
4 notice of lien shall be served by registered mail, certified mail, or
5 first-class mail, evidenced by a certificate of mailing, postage
6 prepaid, addressed to the address of the property subject to the lien
7 or to the residence or place of business of the owner or reputed
8 owner.

9 (d) For property described in paragraph (1) of subdivision (a)
10 of Section 3000, the lien attaches to all real property owned by the
11 employer at the time of the filing of the notice of lien, or that is
12 subsequently acquired by the employer, that is located in any
13 county in which the notice of lien is recorded, regardless of whether
14 the property is identified in the notice of lien. For property
15 described in paragraph (2) of subdivision (a) of Section 3000, the
16 lien attaches only to the property that is specifically identified in
17 the notice of lien.

18 3003. (a) With regard to a lien on personal property, the
19 employee shall file a notice of lien with the Secretary of State.
20 Except as otherwise provided in this chapter, the manner, form,
21 and place of filing shall be as described in Chapter 5 (commencing
22 with Section 9501) of Division 9 of the Commercial Code. The
23 notice of the lien shall be placed in the same file as financing
24 statements pursuant to Section 9522 of the Commercial Code.

25 (b) The notice shall be executed under penalty of perjury and
26 shall state the following:

27 (1) The amount of the claim for unpaid wages, other
28 compensation, related penalties, and damage, and if the amount is
29 estimated, shall provide an explanation for the basis of the
30 estimation.

31 (2) A general statement of the kind of work furnished by the
32 employee and the dates of employment.

33 (3) The name of the person by whom the employee was
34 employed.

35 (4) The employee's mailing address.

36 (5) To the extent known, a description of the property on which
37 the lien is made. Regardless of whether the property is specifically
38 described in the notice, the lien attaches to all personal property
39 owned by the employer or subsequently acquired by the employer

1 that can be made subject to a security interest under the
2 Commercial Code.

3 (c) The employee or employee representative shall serve the
4 notice of lien on the employer and the owner or reputed owner of
5 the property subject to the lien, as follows:

6 (1) For an employer, notice of lien shall be served by registered
7 mail, certified mail, or first-class mail, evidenced by a certificate
8 of mailing, postage prepaid, addressed to the employer at the
9 employer's residence or place of business.

10 (2) For an owner or reputed owner who is not the employer,
11 notice of lien shall be served by registered mail, certified mail, or
12 first-class mail, evidenced by a certificate of mailing, postage
13 prepaid, addressed to the residence or place of business of the
14 owner or reputed owner.

15 (d) For property described in paragraph (1) of subdivision (a)
16 of Section 3000, the lien attaches to all personal property that can
17 be made subject to a security interest under the Commercial Code
18 that is owned by the employer at the time of filing of the notice of
19 lien or that is subsequently acquired by the employer, regardless
20 of whether the property is identified in the notice of lien. For
21 property described in paragraph (2) of subdivision (a) of Section
22 3000, the lien attaches only to the property that is identified in the
23 notice of lien.

24 3004. (a) In order to enforce a lien under Section 3000, the
25 employee shall demonstrate in a civil action, or in a proceeding
26 under Section 98 of the Labor Code, that he or she is owed wages
27 or other compensation and any related penalties and damages. In
28 addition, if the owner or reputed owner of the property is not the
29 employer, the employee shall demonstrate that the property was
30 property subject to the lien under paragraph (2) of subdivision (a)
31 of Section 3000.

32 (b) If the employee chooses to pursue the wage claim in an
33 administrative proceeding before the Labor Commissioner pursuant
34 to Section 98 of the Labor Code, the Labor Commissioner may
35 establish the amount of lien if a lien has been recorded. If no lien
36 has been recorded at the time the administrative claim is filed, the
37 Labor Commissioner may record the lien on behalf of the
38 employee.

39 (c) If a notice of lien is recorded or filed pursuant to Sections
40 3002 or 3003 and an action to recover unpaid wages has been filed

1 by the employee or employee representative, that action shall also
2 be deemed an action to enforce the lien and foreclose upon any
3 property subject to the recorded lien. In the judgment resulting
4 from an action, the court may order the sale at a sheriff's auction
5 or the transfer to the plaintiff of title or possession of any property
6 subject to the lien. Whether or not the court makes an order as part
7 of the judgment, any property subject to the lien may be foreclosed
8 upon at any point after a judgment for unpaid wages is issued.

9 (d) The employee or employee representative is entitled to court
10 costs and reasonable attorneys' fees for filing a successful action
11 to enforce a lien pursuant to this section.

12 (e) If judgment is entered against the employee or employee
13 representative in the action to enforce the lien or if the case is
14 dismissed with prejudice, the lien shall be extinguished upon
15 expiration of the applicable appeals period if no appeal is filed. If
16 an appeal is filed, the lien shall continue in force until all issues
17 on the appeal have been decided. If the lien is extinguished, upon
18 demand and 15 days' notice by the property owner, the employee
19 or employee representative shall file a release of the lien.

20 (f) Any number of claims to enforce employee liens against the
21 same employer may be joined in a single proceeding, but the court
22 may order separate trials or hearings. If the proceeds of the sale
23 of the property subject to a lien are insufficient to pay all the
24 claimants, whether or not claims have been joined together, the
25 court shall order the claimants to be paid in proportion to the
26 amount due each claimant.

27 ~~3005. (a) A lien established pursuant to this chapter takes~~
28 ~~precedence over all other liens, claims, or encumbrances perfected~~
29 ~~after the date that the notice of lien is filed or recorded, and is~~
30 ~~effective against the estate of the employer, or any subsequent~~
31 ~~purchaser of the property subject to the lien.~~

32 ~~(b) In addition, as to the first fifty thousand dollars (\$50,000)~~
33 ~~of the amount claimed, a lien established pursuant to this chapter~~
34 ~~takes precedence over all other liens, claims, or encumbrances~~
35 ~~perfected prior to the date of filing or recording of the notice of~~
36 ~~lien, except for the following:~~

37 ~~(1) A tax lien or other government lien.~~

38 ~~(2) A purchase money mortgage.~~

1 ~~(3) Other liens that also arise from the performance of labor,~~
2 ~~including, but not limited to, mechanics liens arising under Section~~
3 ~~8400.~~

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

S T A T E O F N E W Y O R K

8045

2013-2014 Regular Sessions

I N A S S E M B L Y

June 17, 2013

Introduced by M. of A. ROSENTHAL -- read once and referred to the
Committee on Judiciary

AN ACT to amend the lien law, in relation to securing payment of wages
for work already performed; to amend the civil practice law and rules,
in relation to grounds for attachment; to amend the business corpo-
ration law, in relation to streamlining procedures where employees may
hold shareholders of non-publicly traded corporations personally
liable for wage theft; and to amend the limited liability company law,
in relation to creating a right for victims of wage theft to hold the
ten members with the largest ownership interests in a company
personally liable for wage theft

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 2 of the lien law is amended by adding four new
2 subdivisions 21, 22, 23, and 24 to read as follows:

3 21. WAGE CLAIMS. THE TERM "WAGE CLAIMS," WHEN USED IN THIS CHAPTER,
4 SHALL INCLUDE ANY CLAIMS OF VIOLATIONS UNDER ARTICLES FIVE, SIX, AND
5 NINETEEN OF THE LABOR LAW, AND THE RELATED REGULATIONS OR WAGE ORDERS
6 PROMULGATED BY THE COMMISSIONER OF LABOR, INCLUDING BUT NOT LIMITED TO
7 ANY CLAIMS OF UNPAID, MINIMUM, OVERTIME, AND SPREAD-OF-HOURS PAY, UNLAW-
8 FULLY RETAINED GRATUITIES, UNLAWFUL DEDUCTIONS FROM WAGES, UNPAID
9 COMMISSIONS, AND UNPAID BENEFITS AND WAGE SUPPLEMENTS, AND ANY CLAIMS
10 PURSUANT TO 18 U.S.C. S 1595, 29 U.S.C. S 206, 29 U.S.C. S 207, AND/OR
11 ANY EMPLOYMENT CONTRACT, AS WELL AS THE CONCOMITANT LIQUIDATED DAMAGES
12 AND PENALTIES AUTHORIZED PURSUANT TO THE LABOR LAW, THE FAIR LABOR STAN-
13 DARDS ACT, OR ANY EMPLOYMENT CONTRACT.

14 22. EMPLOYER. THE TERM "EMPLOYER," WHEN USED IN ARTICLE TWO-A OF THIS
15 CHAPTER, SHALL HAVE THE SAME MEANING AS "EMPLOYER" PURSUANT TO THE LABOR
16 LAW OR THE FAIR LABOR STANDARDS ACT, AS APPLICABLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 23. EMPLOYEE. THE TERM "EMPLOYEE," WHEN USED IN ARTICLE TWO-A OF THIS
2 CHAPTER, SHALL HAVE THE SAME MEANING AS "EMPLOYEE" PURSUANT TO THE LABOR
3 LAW OR THE FAIR LABOR STANDARDS ACT, AS APPLICABLE.

4 24. PERSONAL PROPERTY. THE TERM "PERSONAL PROPERTY," WHEN USED IN
5 ARTICLE TWO-A OF THIS CHAPTER, SHALL HAVE THE SAME MEANING AS "PERSONAL
6 PROPERTY" PURSUANT TO SECTION THIRTY-NINE OF THE GENERAL CONSTRUCTION
7 LAW, EXCEPT WHERE EXEMPT BY FEDERAL LAW.

8 S 2. The lien law is amended by adding a new article 2-A to read as
9 follows:

ARTICLE 2-A

WAGE LIEN

12 SECTION 39-AA. WAGE LIEN.

13 39-BB. ESTABLISHING A LIEN FOR WAGE CLAIMS.

14 39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY.

15 39-DD. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON PERSONAL PROPER-
16 TY.

17 39-EE. REGULATIONS.

18 39-FF. RIGHTS.

19 39-GG. FORCE AND EFFECT.

20 39-HH. OPERATION.

21 S 39-AA. WAGE LIEN. AN EMPLOYEE OR THE COMMISSIONER OF LABOR SHALL BE

22 ENTITLED TO A LIEN UPON ALL PROPERTY OF THE EMPLOYER, REAL OR PERSONAL,
23 LOCATED IN THIS STATE FOR THE FULL AMOUNT OF THE WAGE CLAIMS, INCLUDING
24 THE PENALTIES AUTHORIZED PURSUANT TO THE LABOR LAW, THE FAIR LABOR STANDARDS
25 ACT, OR THE CONTRACT IN ISSUE. SUCH LIEN SHALL EXTEND TO THE
26 EMPLOYER-OWNER'S RIGHT, TITLE OR INTEREST IN THE REAL AND PERSONAL PROPERTY,
27 EXISTING AT THE TIME OF FILING THE NOTICE OF LIEN, OR THEREAFTER
28 ACQUIRED, AND SHALL HAVE THE SAME PRIORITY AS A MECHANIC'S LIEN PURSUANT
29 TO SECTION THIRTEEN OF THIS CHAPTER.

30 S 39-BB. ESTABLISHING A LIEN FOR WAGE CLAIMS. 1. TO ESTABLISH A LIEN
31 FOR WAGE CLAIMS UNDER THIS ARTICLE, AN EMPLOYEE SHALL:

32 (A) PROVIDE AND SERVE WRITTEN NOTICE TO AN EMPLOYER IN ACCORDANCE WITH
33 THE REQUIREMENTS SET FORTH IN SECTIONS NINE AND ELEVEN OF THIS CHAPTER
34 TO PROVIDE THE EMPLOYER WITH ADEQUATE NOTICE OF THE WAGES CLAIMED AND
35 THE PROPERTY AGAINST WHICH THE LIEN FOR WAGE CLAIMS IS SOUGHT;

36 (B) SERVE WRITTEN NOTICE TO AN EMPLOYER AT ANY TIME DURING THE
37 PROGRESS OF THE WORK, OR WITHIN SIX YEARS AFTER THE FINAL PERFORMANCE OF
38 THE WORK, AND OTHERWISE IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN
39 SECTION TEN OF THIS CHAPTER.

40 2. IF PAYMENT IS MADE FOR THE AMOUNT OF WAGE CLAIMS STATED IN THE
41 NOTICE OF WAGE LIEN, THE RECORDED LIEN FOR THE WAGE CLAIMS SHALL BE
42 RELEASED AS SET FORTH IN ARTICLE TWO OF THIS CHAPTER.

43 3. A LIEN FOR WAGE CLAIMS SHALL BE A LIEN FOR A PERIOD OF TEN YEARS
44 AFTER THE EMPLOYEE HAS FILED THE NOTICE OF LIEN, UNLESS WITHIN THAT TIME
45 AN ACTION IS COMMENCED TO FORECLOSE THE LIEN, AND A NOTICE OF THE
46 PENDENCY OF SUCH ACTION IS FILED. NOTWITHSTANDING THIS PROVISION, A LIEN
47 FOR WAGE CLAIMS SHALL HAVE THE SAME FORCE AND EFFECT OF A LIEN PURSUANT
48 TO ARTICLE TWO OF THIS CHAPTER.

49 S 39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY. 1. A
50 LIEN FOR WAGE CLAIMS ON REAL PROPERTY MAY BE ENFORCED IN NEW YORK
51 SUPREME COURT, COUNTY COURT, OR IN A COURT WITH JURISDICTION IN AN
52 ACTION FOUNDED ON A CONTRACT FOR A SUM OF MONEY EQUIVALENT TO THE AMOUNT
53 OF SUCH DEBT, IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTION
54 FORTY-ONE OF THIS CHAPTER. IF THE CONTRACT BETWEEN EMPLOYER AND EMPLOYEE
55 VIOLATES THE MINIMUM PROTECTIONS OF THE LABOR LAW, THE NOTICE OF LIEN
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1 MAY STATE THE LEGAL VALUE OF THE LABOR PERFORMED, AND A COURT MAY LATER
2 DETERMINE UPON TRIAL A HIGHER VALUE THAN THAT STATED BY CLAIMANT.

3 2. THE EMPLOYEE OR PERSON WHO FILES A WAGE LIEN WHO RECOVERS ANY
4 WAGES, DAMAGES, AND PENALTIES PURSUANT TO SUCH LIEN SHALL BE ENTITLED TO
5 ALSO RECOVER REASONABLE ATTORNEY'S FEES AND COSTS EXPENDED IN ANY ACTION
6 OR PROCEEDING TO FILE AND ENFORCE THE WAGE LIEN.

7 3. WHERE IN ANY ACTION OR PROCEEDING TO ENFORCE A WAGE LIEN THE COURT
8 SHALL HAVE DECLARED SAID LIEN TO BE VOID ON ACCOUNT OF WILLFUL EXAGGERATION
9 BY THE PERSON FILING SUCH NOTICE OF LIEN, THE COURT MAY AWARD
10 COURT COSTS AND REASONABLE ATTORNEY'S FEES TO THE EMPLOYER.

11 4. ANY NUMBER OF ACTIONS OR PROCEEDINGS TO ENFORCE WAGE LIENS AGAINST
12 THE SAME EMPLOYER MAY BE JOINED IN A SINGLE PROCEEDING UPON THE COURT'S
13 OWN MOTION OR UPON THE APPLICATION OF ANY PARTY.

14 S 39-DD. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON PERSONAL PROPERTY. A
15 LIEN FOR WAGE CLAIMS ON PERSONAL PROPERTY MAY BE ENFORCED IN THE SAME
16 MANNER AS IS REQUIRED TO PERFECT A SECURITY INTEREST UNDER PARAGRAPH TWO
17 OF SUBSECTION (A) OF SECTION 9-501 ET SEQ. OF THE UNIFORM COMMERCIAL
18 CODE. SUCH NOTICE OF LIEN SHALL BE MADE TO THE SECRETARY OF STATE IN
19 WRITING, SPECIFYING THE PERSON AGAINST WHOM THE CLAIM IS MADE, THE
20 AMOUNT OF THE SAME AND A DESCRIPTION OF THE PROPERTY UPON WHICH THE LIEN
21 IS CLAIMED. THE SALE OF THE PROPERTY MAY BE ENFORCED UNDER SECTION TWO
22 HUNDRED OF THIS CHAPTER. SUCH INTEREST SHALL TERMINATE IN FIVE YEARS IN
23 ACCORDANCE WITH SECTION 9-515 OF THE UNIFORM COMMERCIAL CODE.

24 S 39-EE. REGULATIONS. THE COMMISSIONER OF THE DEPARTMENT OF LABOR MAY
25 SEEK TO ESTABLISH A LIEN FOR WAGE CLAIMS ON BEHALF OF AN EMPLOYEE AND
26 ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

27 S 39-FF. RIGHTS. THIS ARTICLE MAY NOT BE CONSTRUED TO PREVENT AN

28 EMPLOYEE FROM EXERCISING ANY RIGHT OR SEEKING ANY REMEDY TO WHICH THE
29 EMPLOYEE MAY OTHERWISE BE ENTITLED.

30 S 39-GG. FORCE AND EFFECT. A WAGE LIEN SHALL HAVE THE SAME FORCE AND
31 EFFECT AS A MECHANIC'S LIEN PURSUANT TO SUBDIVISION ONE OF SECTION THIR-
32 TEEN OF THIS CHAPTER, AND SHALL HAVE PRIORITY OVER A CONVEYANCE, MORT-
33 GAGE, JUDGMENT, OR OTHER CLAIM AGAINST SUCH PROPERTY NOT RECORDED, DOCK-
34 ETED, OR FILED AT THE TIME OF THE FILING OF THE NOTICE OF THE LIEN.

35 S 39-HH. OPERATION. WHERE APPLICABLE, THE OPERATION OF THIS ARTICLE
36 MAY BE CONSTRUED WITH REFERENCE TO THE REQUIREMENTS SET FORTH IN ARTICLE
37 TWO OF THIS CHAPTER.

38 S 3. Subdivision 5 of section 6201 of the civil practice law and
39 rules, as amended by chapter 860 of the laws of 1977 and as renumbered
40 by chapter 618 of the laws of 1992, is amended and a new subdivision 6
41 is added to read as follows:

42 5. the cause of action is based on a judgment, decree or order of a
43 court of the United States or of any other court which is entitled to
44 full faith and credit in this state, or on a judgment which qualifies
45 for recognition under the provisions of article 53[.] OF THIS CHAPTER;
46 OR

47 6. THE CAUSE OF ACTION IS BASED ON WAGE CLAIMS. "WAGE CLAIMS," WHEN
48 USED IN THIS CHAPTER, SHALL INCLUDE ANY CLAIMS OF VIOLATIONS OF ARTICLES
49 FIVE, SIX, AND NINETEEN OF THE LABOR LAW, SECTION TWO HUNDRED FIFTEEN OF
50 THE LABOR LAW, AND THE RELATED REGULATIONS OR WAGE ORDERS PROMULGATED BY
51 THE COMMISSIONER OF LABOR, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OF
52 UNPAID, MINIMUM, OVERTIME, AND SPREAD-OF-HOURS PAY, UNLAWFULLY RETAINED
53 GRATUITIES, UNLAWFUL DEDUCTIONS FROM WAGES, UNPAID COMMISSIONS, UNPAID
54 BENEFITS AND WAGE SUPPLEMENTS, AND RETALIATION, AND ANY CLAIMS PURSUANT
55 TO 18 U.S.C. S 1595, 29 U.S.C. S 201 ET SEQ., AND/OR EMPLOYMENT CONTRACT
56 AS WELL AS THE CONCOMITANT LIQUIDATED DAMAGES AND PENALTIES AUTHORIZED
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1 PURSUANT TO THE LABOR LAW, THE FAIR LABOR STANDARDS ACT, OR ANY EMPLOY-
2 MENT CONTRACT.

3 S 4. Section 6210 of the civil practice law and rules, as added by
4 chapter 860 of the laws of 1977, is amended to read as follows:

5 S 6210. Order of attachment on notice; temporary restraining order;
6 contents. Upon a motion on notice for an order of attachment, the court
7 may, without notice to the defendant, grant a temporary restraining
8 order prohibiting the transfer of assets by a garnishee as provided in
9 subdivision (b) of section 6214. WHEN ATTACHMENT IS SOUGHT PURSUANT TO
10 SUBDIVISION SIX OF SECTION 6201, AND IF THE EMPLOYER CONTESTS THE
11 MOTION, THE COURT SHALL HOLD A HEARING WITHIN TEN DAYS OF WHEN THE
12 EMPLOYER'S RESPONSE TO PLAINTIFFS' MOTION FOR ATTACHMENT IS DUE. The
13 contents of the order of attachment granted pursuant to this section
14 shall be as provided in subdivision (a) of section 6211.

15 S 5. Subdivision (b) of section 6211 of the civil practice law and
16 rules, as amended by chapter 566 of the laws of 1985, is amended to read
17 as follows:

18 (b) Confirmation of order. Except where an order of attachment is
19 granted on the ground specified in [subdivision] SUBDIVISIONS one AND
20 SIX of section 6201, an order of attachment granted without notice shall
21 provide that within a period not to exceed five days after levy, the
22 plaintiff shall move, on such notice as the court shall direct to the
23 defendant, the garnishee, if any, and the sheriff, for an order confirm-
24 ing the order of attachment. Where an order of attachment without notice
25 is granted on the ground specified in [subdivision] SUBDIVISIONS one AND
26 SIX of section 6201, the court shall direct that the statement required
27 by section 6219 be served within five days, that a copy thereof be
28 served upon the plaintiff, and the plaintiff shall move within ten days
29 after levy for an order confirming the order of attachment. If the
30 plaintiff upon such motion shall show that the statement has not been
31 served and that the plaintiff will be unable to satisfy the requirement
32 of subdivision (b) of section 6223 until the statement has been served,

33 the court may grant one extension of the time to move for confirmation
34 for a period not to exceed ten days. If plaintiff fails to make such
35 motion within the required period, the order of attachment and any levy
36 thereunder shall have no further effect and shall be vacated upon
37 motion. Upon the motion to confirm, the provisions of subdivision (b) of
38 section 6223 shall apply. An order of attachment granted without notice
39 may provide that the sheriff refrain from taking any property levied
40 upon into his actual custody, pending further order of the court.

41 S 6. Rule 6212 of the civil practice law and rules, as amended by
42 chapter 860 of the laws of 1977, subdivision (b) as separately amended
43 by chapters 15 and 860 of the laws of 1977, is amended to read as
44 follows:

45 Rule 6212. Motion papers; undertaking; filing; demand; damages. (a)
46 Affidavit; other papers. On a motion for an order of attachment, or for
47 an order to confirm an order of attachment, the plaintiff shall show, by
48 affidavit and such other written evidence as may be submitted, that
49 there is a cause of action, that it is probable that the plaintiff will
50 succeed on the merits, that one or more grounds for attachment provided
51 in section 6201 exist, and that the amount demanded from the defendant
52 exceeds all counterclaims known to the plaintiff. WHEN ATTACHMENT IS
53 SOUGHT PURSUANT TO SUBDIVISION SIX OF SECTION 6201, ONCE THE PLAINTIFF
54 HAS MADE THE INITIAL SHOWING, THE COURT SHALL GRANT AN ATTACHMENT UNLESS
55 THE DEFENDANT CAN SHOW THAT AN ATTACHMENT WOULD BE UNJUST.

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1 (b) Undertaking. [On] 1. EXCEPT WHERE AN ORDER OF ATTACHMENT IS SOUGHT
2 ON THE GROUND SPECIFIED IN SUBDIVISION SIX OF SECTION 6201, ON a motion
3 for an order of attachment, the plaintiff shall give an undertaking, in
4 a total amount fixed by the court, but not less than five hundred
5 dollars, a specified part thereof conditioned that the plaintiff shall
6 pay to the defendant all costs and damages, including reasonable attor-
7 ney's fees, which may be sustained by reason of the attachment if the
8 defendant recovers judgment or if it is finally decided that the plain-
9 tiff was not entitled to an attachment of the defendant's property, and
10 the balance conditioned that the plaintiff shall pay to the sheriff all
11 of his allowable fees.

12 2. ON A MOTION FOR AN ATTACHMENT PURSUANT TO SUBDIVISION SIX OF
13 SECTION 6201, THE COURT SHALL ORDER THAT THE PLAINTIFF GIVE AN ACCESSI-
14 BLE UNDERTAKING OF NO MORE THAN FIVE HUNDRED DOLLARS, OR IN THE ALTERNA-
15 TIVE, MAY WAIVE THE UNDERTAKING ALTOGETHER. The attorney for the plain-
16 tiff shall not be liable to the sheriff for such fees. The surety on the
17 undertaking shall not be discharged except upon notice to the sheriff.

18 (c) Filing. Within ten days after the granting of an order of attach-
19 ment, the plaintiff shall file it and the affidavit and other papers
20 upon which it was based and the summons and complaint in the action.
21 Unless the time for filing has been extended, the order shall be invalid
22 if not so filed, except that a person upon whom it is served shall not
23 be liable for acting upon it as if it were valid without knowledge of
24 the invalidity.

25 (d) Demand for papers. At any time after property has been levied
26 upon, the defendant may serve upon the plaintiff a written demand that
27 the papers upon which the order of attachment was granted and the levy
28 made be served upon him. Not more than one day after service of the
29 demand, the plaintiff shall cause the papers demanded to be served at
30 the address specified in the demand. A demand under this subdivision
31 shall not of itself constitute an appearance in the action.

32 (e) Damages. [The] EXCEPT WHERE AN ORDER OF ATTACHMENT IS SOUGHT ON
33 THE GROUND SPECIFIED IN SUBDIVISION SIX OF SECTION 6201, THE plaintiff
34 shall be liable to the defendant for all costs and damages, including
35 reasonable attorney's fees, which may be sustained by reason of the
36 attachment if the defendant recovers judgment, or if it is finally
37 decided that the plaintiff was not entitled to an attachment of the
38 defendant's property. Plaintiff's liability shall not be limited by the

39 amount of the undertaking.

40 S 7. Section 6223 of the civil practice law and rules, as amended by
41 chapter 860 of the laws of 1977, is amended to read as follows:

42 S 6223. Vacating or modifying attachment. (a) Motion to vacate or
43 modify. Prior to the application of property or debt to the satisfac-
44 tion of a judgment, the defendant, the garnishee or any person having an
45 interest in the property or debt may move, on notice to each party and
46 the sheriff, for an order vacating or modifying the order of attachment.
47 Upon the motion, the court may give the plaintiff a reasonable opportu-
48 nity to correct any defect. [If] EXCEPT AS PROVIDED UNDER SUBDIVISION
49 (B), IF, after the defendant has appeared in the action, the court
50 determines that the attachment is unnecessary to the security of the
51 plaintiff, it shall vacate the order of attachment. Such a motion shall
52 not of itself constitute an appearance in the action.

53 (b) Burden of proof. [Upon] EXCEPT WHERE AN ORDER OF ATTACHMENT IS
54 GRANTED PURSUANT TO SUBDIVISION SIX OF SECTION 6201, UPON a motion to
55 vacate or modify an order of attachment the plaintiff shall have the
56 burden of establishing the grounds for the attachment, the need for

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1 continuing the levy and the probability that he will succeed on the
2 merits. UPON A MOTION TO VACATE OR MODIFY AN ORDER OF ATTACHMENT GRANTED
3 PURSUANT TO SUBDIVISION SIX OF SECTION 6201, THE DEFENDANT SHALL HAVE
4 THE BURDEN TO DEMONSTRATE EXTRAORDINARY CIRCUMSTANCES IN ORDER TO VACATE
5 OR MODIFY THE ATTACHMENT ORDER.

6 S 8. Paragraph (b) of section 624 of the business corporation law, as
7 amended by chapter 449 of the laws of 1997, is amended to read as
8 follows:

9 (b) Any person who shall have been a shareholder of record of a corpo-
10 ration, OR WHO IS OR SHALL HAVE BEEN A LABORER, SERVANT OR EMPLOYEE
11 OTHER THAN A CONTRACTOR, upon at least five days' written demand shall
12 have the right to examine in person or by agent or attorney, during
13 usual business hours, its minutes of the proceedings of its shareholders
14 and record of shareholders and to make extracts therefrom for any
15 purpose reasonably related to such person's interest as a shareholder,
16 LABORER, SERVANT OR EMPLOYEE. Holders of voting trust certificates
17 representing shares of the corporation shall be regarded as shareholders
18 for the purpose of this section. Any such agent or attorney shall be
19 authorized in a writing that satisfies the requirements of a writing
20 under paragraph (b) of section 609 OF THIS ARTICLE (Proxies). A corpo-
21 ration requested to provide information pursuant to this paragraph shall
22 make available such information in written form and in any other format
23 in which such information is maintained by the corporation and shall not
24 be required to provide such information in any other format. If a
25 request made pursuant to this paragraph includes a request to furnish
26 information regarding beneficial owners, the corporation shall make
27 available such information in its possession regarding beneficial owners
28 as is provided to the corporation by a registered broker or dealer or a
29 bank, association or other entity that exercises fiduciary powers in
30 connection with the forwarding of information to such owners. The corpo-
31 ration shall not be required to obtain information about beneficial
32 owners not in its possession.

33 S 9. Section 630 of the business corporation law, paragraph (a) as
34 amended by chapter 212 of the laws of 1984, paragraph (c) as amended by
35 chapter 746 of the laws of 1963, is amended to read as follows:

36 S 630. Liability of shareholders for wages due to laborers, servants or
37 employees.

38 (a) The ten largest shareholders, as determined by the fair value of
39 their beneficial interest as of the beginning of the period during which
40 the unpaid services referred to in this section are performed, of every
41 corporation (other than an investment company registered as such under
42 an act of congress entitled "Investment Company Act of 1940"), no shares
43 of which are listed on a national securities exchange or regularly quot-

44 ed in an over-the-counter market by one or more members of a national or
45 an affiliated securities association, shall jointly and severally be
46 personally liable for all debts, wages or salaries due and owing to any
47 of its laborers, servants or employees other than contractors, for
48 services performed by them for such corporation. [Before such laborer,
49 servant or employee shall charge such shareholder for such services, he
50 shall give notice in writing to such shareholder that he intends to hold
51 him liable under this section. Such notice shall be given within one
52 hundred and eighty days after termination of such services, except that
53 if, within such period, the laborer, servant or employee demands an
54 examination of the record of shareholders under paragraph (b) of section
55 624 (Books and records; right of inspection, prima facie evidence), such
56 notice may be given within sixty days after he has been given the oppor-
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1 tunity to examine the record of shareholders. An action to enforce such
2 liability shall be commenced within ninety days after the return of an
3 execution unsatisfied against the corporation upon a judgment recovered
4 against it for such services.]

5 (b) For the purposes of this section, wages or salaries shall mean all
6 compensation and benefits payable by an employer to or for the account
7 of the employee for personal services rendered by such employee INCLUD-
8 ING ANY CONCOMITANT LIQUIDATED DAMAGES, PENALTIES, INTEREST, ATTORNEY'S
9 FEES OR COSTS. These shall specifically include but not be limited to
10 salaries, overtime, vacation, holiday and severance pay; employer
11 contributions to or payments of insurance or welfare benefits; employer
12 contributions to pension or annuity funds; and any other moneys properly
13 due or payable for services rendered by such employee.

14 (c) A shareholder who has paid more than his pro rata share under this
15 section shall be entitled to contribution pro rata from the other share-
16 holders liable under this section with respect to the excess so paid,
17 over and above his pro rata share, and may sue them jointly or severally
18 or any number of them to recover the amount due from them. Such recov-
19 ery may be had in a separate action. As used in this paragraph, "pro
20 rata" means in proportion to beneficial share interest. Before a share-
21 holder may claim contribution from other shareholders under this para-
22 graph, he shall[, unless they have been given notice by a laborer, serv-
23 ant or employee under paragraph (a),] give them notice in writing that
24 he intends to hold them so liable to him. [Such notice shall be given by
25 him within twenty days after the date that notice was given to him by a
26 laborer, servant or employee under paragraph (a).]

27 S 10. Section 609 of the limited liability company law is amended by
28 adding two new subdivisions (c) and (d) to read as follows:

29 (C) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION,
30 THE TEN MEMBERS WITH THE LARGEST PERCENTAGE OWNERSHIP INTEREST, AS
31 DETERMINED DURING THE TIME WHICH THE UNPAID SERVICES REFERRED TO IN THIS
32 SECTION ARE PERFORMED, OF EVERY LIMITED LIABILITY COMPANY, SHALL JOINTLY
33 AND SEVERALLY BE PERSONALLY LIABLE FOR ALL DEBTS, WAGES OR SALARIES DUE
34 AND OWING TO ANY OF ITS LABORERS, SERVANTS OR EMPLOYEES OTHER THAN
35 CONTRACTORS, FOR SERVICES PERFORMED BY THEM FOR SUCH COMPANY. A MEMBER
36 WHO HAS PAID MORE THAN HIS PRO RATA SHARE UNDER THIS SECTION SHALL BE
37 ENTITLED TO CONTRIBUTION PRO RATA FROM THE OTHER MEMBERS LIABLE UNDER
38 THIS SECTION WITH RESPECT TO THE EXCESS SO PAID, OVER AND ABOVE HIS PRO
39 RATA SHARE, AND MAY SUE THEM JOINTLY OR SEVERALLY OR ANY NUMBER OF THEM
40 TO RECOVER THE AMOUNT DUE FROM THEM. SUCH RECOVERY MAY BE HAD IN A SEPA-
41 RATE ACTION. AS USED IN THIS PARAGRAPH, "PRO RATA" MEANS IN PROPORTION
42 TO PERCENTAGE OWNERSHIP INTEREST. BEFORE A MEMBER MAY CLAIM CONTRIBUTION
43 FROM OTHER MEMBERS UNDER THIS SECTION, HE SHALL GIVE THEM NOTICE IN
44 WRITING THAT HE INTENDS TO HOLD THEM SO LIABLE TO HIM.

45 (D) FOR THE PURPOSES OF THIS SECTION, WAGES OR SALARIES SHALL MEAN ALL
46 COMPENSATION AND BENEFITS PAYABLE BY AN EMPLOYER TO OR FOR THE ACCOUNT
47 OF THE EMPLOYEE FOR PERSONAL SERVICES RENDERED BY SUCH EMPLOYEE. THESE
48 SHALL SPECIFICALLY INCLUDE BUT NOT BE LIMITED TO SALARIES, OVERTIME,

49 VACATION, HOLIDAY AND SEVERANCE PAY; EMPLOYER CONTRIBUTIONS TO OR
50 PAYMENTS OF INSURANCE OR WELFARE BENEFITS; EMPLOYER CONTRIBUTIONS TO
51 PENSION OR ANNUITY FUNDS; AND ANY OTHER MONEYS PROPERLY DUE OR PAYABLE
52 FOR SERVICES RENDERED BY SUCH EMPLOYEE, INCLUDING ANY CONCOMITANT LIQUI-
53 DATED DAMAGES, PENALTIES, INTEREST, ATTORNEYS' FEES OR COSTS.

54 S 11. Section 1102 of the limited liability company law is amended by
55 adding a new subdivision (e) to read as follows:

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8

1 (E) ANY PERSON WHO IS OR SHALL HAVE BEEN A LABORER, SERVANT OR EMPLOY-
2 EE OF A LIMITED LIABILITY COMPANY OTHER THAN A CONTRACTOR, UPON AT LEAST
3 FIVE DAYS' WRITTEN DEMAND SHALL HAVE THE RIGHT TO EXAMINE IN PERSON OR
4 BY AGENT OR ATTORNEY, DURING USUAL BUSINESS HOURS, RECORDS DESCRIBED IN
5 PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION THROUGHOUT THE PERIOD
6 OF TIME DURING WHICH SUCH LABORER, SERVANT OR EMPLOYEE PROVIDED SERVICES
7 TO SUCH COMPANY. A COMPANY REQUESTED TO PROVIDE INFORMATION PURSUANT TO
8 THIS PARAGRAPH SHALL MAKE AVAILABLE SUCH RECORDS IN WRITTEN FORM AND IN
9 ANY OTHER FORMAT IN WHICH SUCH INFORMATION IS MAINTAINED BY THE COMPANY
10 AND SHALL NOT BE REQUIRED TO PROVIDE SUCH INFORMATION IN ANY OTHER
11 FORMAT. UPON REFUSAL BY THE COMPANY OR BY AN OFFICER OR AGENT OF THE
12 COMPANY TO PERMIT AN INSPECTION OF THE RECORDS DESCRIBED IN THIS PARA-
13 GRAPH, THE PERSON MAKING THE DEMAND FOR INSPECTION MAY APPLY TO THE
14 SUPREME COURT IN THE JUDICIAL DISTRICT WHERE THE OFFICE OF THE COMPANY
15 IS LOCATED, UPON SUCH NOTICE AS THE COURT MAY DIRECT, FOR AN ORDER
16 DIRECTING THE COMPANY, ITS MEMBERS OR MANAGERS TO SHOW CAUSE WHY AN
17 ORDER SHOULD NOT BE GRANTED PERMITTING SUCH INSPECTION BY THE APPLICANT.
18 UPON THE RETURN DAY OF THE ORDER TO SHOW CAUSE, THE COURT SHALL HEAR THE
19 PARTIES SUMMARILY, BY AFFIDAVIT OR OTHERWISE, AND IF IT APPEARS THAT THE
20 APPLICANT IS QUALIFIED AND ENTITLED TO SUCH INSPECTION, THE COURT SHALL
21 GRANT AN ORDER COMPELLING SUCH INSPECTION AND AWARDED SUCH FURTHER
22 RELIEF AS TO THE COURT MAY SEEM JUST AND PROPER. IF THE APPLICANT IS
23 FOUND TO BE QUALIFIED AND ENTITLED TO SUCH INSPECTION, THE COMPANY SHALL
24 PAY ALL REASONABLE ATTORNEY'S FEES AND COSTS OF SAID APPLICANT RELATED
25 TO THE DEMAND FOR INSPECTION OF THE RECORDS.

26 S 12. This act shall take effect on the thirtieth day after it shall
27 have become a law.

Senate Bill 573

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes right of employee for civil action based on unpaid wages. Authorizes creation of lien on employer's real and personal property for unpaid wages under certain circumstances. Establishes priority of lien for amounts of unpaid wages up to specified amount. Creates exception.

A BILL FOR AN ACT

Relating to establishing a lien on employer property based on an unpaid wage claim.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 652.310 to 652.414.

SECTION 2. (1)(a) An employee has a right of civil action for a claim for unpaid wages against the employer in the full amount of the employee's unpaid wages due as provided under ORS 652.110, 652.120, 652.130, 652.140, 652.145, 652.150, 652.160, 652.170, 652.190, 652.200, 652.220, 652.230, 652.240, 652.250, 652.260 and 653.055.

(b) An employee who has a claim against the employer under this subsection or the assignee of an employee who has filed a wage claim under this subsection has a lien upon all property of the employer, real and personal, located in this state for the amount of the unpaid wages to which the employee is entitled.

(2)(a) A lien under subsection (1) of this section upon real property takes effect on the date on which the employee or the assignee of the employee:

(A) Files a notice of claim of lien with the county clerk of the county in which the real property is located;

(B) Pays any required filing fees; and

(C) Serves a copy of the notice filed under this subsection on the employer by certified mail with return receipt requested.

(b) The county clerk shall enter notice of the lien in the County Clerk Lien Record.

(3)(a) A lien under subsection (1) of this section upon personal property takes effect on the date on which the employee or the assignee of the employee:

(A) Files a notice of claim of lien with the Secretary of State;

(B) Pays any required filing fees; and

(C) Serves a copy of the notice filed under this subsection on the employer by certified mail with return receipt requested.

(b) The Secretary of State shall include notice of the lien that is filed under this subsection in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.

(4) A notice of claim of lien must be a written statement that:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) Is filed under subsection (2) or (3) of this section within two years after the date on
2 which wages for the final pay period were due; and

3 (b) Specifies:

4 (A) The nature of the claim;

5 (B) The amount claimed;

6 (C) All property, real and personal, upon which the claim is made, in a manner sufficient
7 for identification; and

8 (D) That the person filing the notice has a claim of lien on the property.

9 (5) A lien established under subsection (1) of this section has priority over the rights of
10 any purchaser of property of the employer, including any bona fide purchaser under 11 U.S.C.
11 545 (2), and over all other debts, judgments, decrees, liens or mortgages against the em-
12 ployer, except:

13 (a) A lien established by a commercial lending institution as provided in subsection (6)
14 of this section, regardless of whether those debts, judgments, decrees, liens or mortgages
15 originated before or after the lien established under subsection (1) of this section takes ef-
16 fect; or

17 (b) A lien held by a public body for unpaid taxes.

18 (6)(a) A lien established under subsection (1) of this section does not take priority over
19 a lien of a commercial lending institution against the employer that was originated before
20 the lien established under subsection (1) of this section takes effect.

21 (b) Notwithstanding paragraph (a) of this subsection, a lien established under subsection
22 (1) of this section has priority for the first \$3,000 of the lien amount over a lien of a com-
23 mercial lending institution that was originated before the lien established under subsection
24 (1) of this section takes effect.

25 (7) A lien established under subsection (1) of this section expires if the employee or the
26 assignee of the employee does not bring an action to enforce the lien within 120 days after
27 the claim is filed.

28 (8) An employee may bring an action against an employer under subsection (1) of this
29 section without first filing a claim for unpaid wages with the Bureau of Labor and Industries
30 under ORS 652.310 to 652.414.

31 (9)(a) The employer against whose property a lien is made under subsection (1) of this
32 section, or an interested person, may file with the recording officer of the county in which
33 the claim of lien on real property is filed, or of the county in which the services for unpaid
34 wages that are claimed were performed, a bond executed by a corporation authorized to issue
35 surety bonds in this state, to the effect that the principal or principals on the bond shall pay
36 the amount of the claim and all costs and attorney fees awarded against the property on
37 account of the lien. The bond must be in an amount that is not less than \$1,000 or 150 per-
38 cent of the amount claimed under the lien, whichever is greater.

39 (b) In lieu of the surety bond provided for in paragraph (a) of this subsection, the em-
40 ployer against whose property a lien is made under subsection (1) of this section, or an in-
41 terested person, may deposit with the treasurer of the county in which the claim of lien is
42 filed an amount equal to \$1,000 or 150 percent of the amount claimed under the lien, which-
43 ever is greater.

44 (c) A person entitled to file a bond under paragraph (a) of this subsection or to deposit
45 an amount under paragraph (b) of this subsection may deliver to the lien claimant a written

1 notice:

2 (A) Of the filing of the bond or of the deposit; and

3 (B) That includes a demand that the lien be released or foreclosed, and that states that
4 if the lien is not released or foreclosed, the person may recover the amount of \$500 or the
5 actual costs the person incurred in complying with this subsection, whichever is greater.

6 (d) The written notice and demand required under paragraph (c) of this subsection must
7 be delivered to the lien claimant by certified mail with return receipt requested. A lien
8 claimant who fails to release or foreclose a lien is liable to the person who filed the bond or
9 made the deposit for the greater of \$500 or the actual costs the person incurred in complying
10 with this subsection if:

11 (A) The person making the demand has complied with the requirements of this sub-
12 section;

13 (B) The lien has not been released or foreclosed within 20 days after the written notice
14 and demand is delivered; and

15 (C) The lien claimant does not bring an action to release or foreclose the lien within the
16 time specified in subsection (7) of this section.

17 (e) If a lien claimant is served with a written notice and demand under paragraph (c) of
18 this subsection and is a prevailing party in the action to release or foreclose the lien, then
19 in addition to other costs and attorney fees to which the lien claimant is entitled, the court
20 shall allow the lien claimant \$500 or the actual costs incurred in addressing the demand,
21 whichever is greater.

22 (f) If the lien claimant establishes the validity of the lien claim in an action to enforce
23 the lien, the lien claimant is entitled to judgment against the sureties upon the bond or
24 against the money deposited.

SECOND SUBSTITUTE HOUSE BILL 1440

State of Washington**63rd Legislature****2013 Regular Session**

By House Finance (originally sponsored by Representatives McCoy, Sullivan, Ryu, Sells, Green, Cody, Moscoso, Goodman, Bergquist, Riccelli, Hunt, Fitzgibbon, Pollet, Seaquist, Roberts, Ormsby, Stonier, Pettigrew, Van De Wege, Hudgins, Reykdal, Blake, Freeman, Moeller, Jenkins, Appleton, and Kagi)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to ensuring fairness to employers by protecting
2 employees; amending RCW 39.12.010, 39.12.050, 49.52.070, 49.48.084,
3 50.12.070, 50.12.072, 50.24.070, 50.04.100, 50.04.298, 51.08.070, and
4 51.08.180; reenacting and amending RCW 49.48.082, 49.48.060, and
5 49.46.010; adding new sections to chapter 39.12 RCW; adding new
6 sections to chapter 49.52 RCW; adding new sections to chapter 49.48
7 RCW; adding new sections to chapter 49.46 RCW; adding a new section to
8 chapter 50.04 RCW; adding a new chapter to Title 49 RCW; adding a new
9 chapter to Title 60 RCW; creating new sections; repealing RCW
10 39.12.100, 49.46.100, 50.04.140, 50.04.145, 51.08.181, and 51.08.195;
11 and prescribing penalties.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 NEW SECTION. **Sec. 1.** The legislature finds that underground
14 economy activity in this state results in millions of dollars of lost
15 revenue to the state and is unfair to workers and law abiding
16 businesses. Theft of wages by employers, whether through
17 misclassification, illegal deductions, or failure to pay wages owed, is
18 a significant problem, particularly in low-wage industries. The

1 legislature finds that improving compliance with wage-related laws will
2 help address the problems of the underground economy, level the playing
3 field for honest employers and contractors, and protect workers.

4 **Employee Fair Classification Act**

5 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the
6 employee fair classification act.

7 NEW SECTION. **Sec. 3.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Department" means the department of labor and industries.

10 (2) "Director" means the director of the department of labor and
11 industries.

12 (3) "Employ" means to suffer or permit to work.

13 (4) (a) "Employee" means a person who performs services for an
14 employer. A person or entity may be an employee of two or more
15 employers at the same time.

16 (b) "Employee" does not include: (i) A bona fide independent
17 contractor; (ii) an individual employed in the capacity of an outside
18 salesperson paid solely by way of commission, as defined and delimited
19 by rules of the director; or (iii) an individual employed on a casual
20 and sporadic basis.

21 (5) "Employer" means any of the following that employ a person:
22 (a) An individual; (b) any form of business entity, or the receiver,
23 trustee, or successor of a business entity; (c) an administrator or
24 executor of an estate; and (d) the state or any agency,
25 instrumentality, or political subdivision of the state. "Employer"
26 includes an individual or entity that acts directly or indirectly in
27 the interest of an employer in relation to employing a person.
28 "Employer" does not include agencies, authorities, or instrumentalities
29 of the United States, its possessions and territories, the commonwealth
30 of Puerto Rico, or the District of Columbia.

31 (6) "Front pay" means the compensation the employee would earn if
32 reinstated to his or her former position.

33 (7) "Interested party" means: A contractor or subcontractor or an
34 employee of a contractor or subcontractor; the director or the
35 director's designee; an organization whose members' wages, benefits,

1 and conditions of employment are affected by this chapter, including a
2 labor union; or any other organization of workers that exists for the
3 purpose, in whole or in part, of interacting with employers.

4 (8) "Misclassification" means willfully designating an employee as
5 not an employee of the employer.

6 (9) (a) "Pattern or practice" means that, in addition to the current
7 violation, within the previous ten years the employer was:

8 (i) Convicted of a criminal violation of a state or local law
9 concerning nonpayment of wages;

10 (ii) Subject to a court order entering final judgment for a
11 violation of this chapter or chapter 49.46, 49.48, 49.52, or 39.12 RCW,
12 and the judgment was not satisfied or current within thirty days of the
13 later of: (A) The expiration of the time for appealing the order; or
14 (B) if a timely appeal was made, the date of the final resolution of
15 the appeal; or

16 (iii) Subject to a final and binding citation and notice of
17 assessment from the department for a violation of this chapter or
18 chapter 49.46, 49.48, 49.52, or 39.12 RCW, and the citation and penalty
19 were not satisfied or current within thirty days of the date the
20 citation became final and binding.

21 (b) For purposes of this subsection (9), an employer includes a
22 successor employer, as defined in RCW 49.48.082.

23 (10) "Willful" means a knowing and intentional action that is
24 neither accidental nor the result of a bona fide dispute.

25 NEW SECTION. **Sec. 4.** (1) An employer-employee relationship is
26 presumed to exist when an individual performs services for an employer.
27 The party asserting that an individual is not an employee must
28 establish by a preponderance of the evidence that the individual is an
29 independent contractor.

30 (2) An individual is an independent contractor if he or she
31 performs services for an employer and:

32 (a) The individual is and will continue to be free from control or
33 direction over the performance of the services by the party for whom
34 the services are performed, both under the contract of service and in
35 fact. An individual is an employee if the party for whom the services
36 are performed exercises or has the right to exercise general control
37 over the individual's physical activities;

1 (b) The service is either outside the usual course of business for
2 which the service is performed, or the service is performed outside of
3 all the places of business of the enterprise for which the service is
4 performed; and

5 (c) The individual is customarily engaged in an independently
6 established trade, occupation, business, or profession of the same
7 nature as that involved in the contract of service.

8 (3) The withholding of federal income taxes with respect to the
9 individual may not be considered in determining whether an individual
10 is an independent contractor within the meaning of this section.

11 NEW SECTION. **Sec. 5.** (1) An employer shall not misclassify an
12 employee as an independent contractor.

13 (2) An employer shall not charge an employee who has been
14 misclassified as an independent contractor a fee, or make any
15 deductions from compensation for any purpose, including for goods,
16 materials, space rental, services, government licenses, repairs,
17 equipment maintenance, or fines arising from the employment where any
18 of the acts described in this subsection (2) would have violated the
19 law if the individual had not been misclassified.

20 (3) No person may require or request an employee to enter into an
21 agreement or sign a document that results in the misclassification of
22 the employee as an independent contractor or otherwise does not
23 accurately reflect the employee's relationship with the employer.

24 (4) No person may perform the following acts for the purpose of
25 facilitating or evading detection of a violation of this section:

26 (a) Form, assist in, or induce the formation of a corporation,
27 partnership, limited liability company, or other business entity; or

28 (b) Pay or collect a fee for use of a foreign or domestic
29 corporation, partnership, limited liability company, or other business
30 entity.

31 (5) A person may not conspire with, aid and abet, assist, or advise
32 an employer with the intent of violating this chapter.

33 NEW SECTION. **Sec. 6.** (1) An employer may not discharge, threaten,
34 penalize, or otherwise discriminate or retaliate against an employee
35 because:

1 (a) The employee made a complaint, or the employer believes the
2 employee made a complaint, to the employer, the department, the
3 attorney general, or any other person that the employer engaged in
4 conduct that the employee reasonably believes violates this chapter;

5 (b) The employee has caused to be instituted, or is about to cause
6 to be instituted, a proceeding under or related to this chapter;

7 (c) The employee has testified or is about to testify in a
8 proceeding under or related to this chapter;

9 (d) The employee has, or the employer believes the employee has,
10 otherwise exercised rights protected by this chapter; or

11 (e) The department has determined that the employer violated this
12 chapter.

13 (2) If an employer takes adverse action against an employee within
14 ninety days of the employee having engaged in an activity described in
15 subsection (1) of this section, the employer is presumed to have acted
16 in retaliation. The employer may rebut this presumption with clear and
17 convincing evidence that the adverse action was taken for a permissible
18 purpose. For purposes of this subsection, "adverse action" includes
19 discharging, threatening, penalizing, or otherwise discriminating
20 against an employee.

21 (3) A complaint or other communication by an employee triggers the
22 protections of this section regardless of whether the complaint or
23 communication is in writing or makes explicit reference to this
24 chapter.

25 (4) A violation of this section is a gross misdemeanor.

26 NEW SECTION. **Sec. 7.** (1) The department may conduct an
27 investigation if it obtains information indicating an employer may have
28 violated this chapter, but the department may not investigate a
29 violation of this chapter that occurred more than three years before
30 the date the department obtained the information.

31 (2) If the department determines that an employer violated this
32 chapter, it may:

33 (a) For a violation of section 9 of this act, order the employer to
34 pay a civil penalty of not less than one thousand dollars and not more
35 than ten thousand dollars;

36 (b) For a violation of section 5 or 6 of this act, order the
37 employer to pay a civil penalty of: (i) Not less than one thousand

1 dollars and not more than ten thousand dollars per employee; or (ii) if
2 the employer has engaged in a pattern or practice of violations, not
3 less than ten thousand dollars and not more than twenty-five thousand
4 dollars per employee;

5 (c) Order the employer to pay any employee aggrieved by a violation
6 of section 5 or 6 of this act the greater of: (i) Ten thousand
7 dollars; or (ii) three times the amount of any wages, salary,
8 employment benefits, or other compensation unlawfully denied or
9 withheld;

10 (d) Order the employer to reinstate the employee to his or her
11 former position at not less than the most recent rate of compensation
12 received by the employee, including the value of any benefits; and

13 (e) Determine whether to initiate collection procedures pursuant to
14 RCW 51.16.150 through 51.16.190, and send a copy of its determination,
15 including any supporting documentation, to the employment security
16 department.

17 (3) An employer may appeal the department's determination pursuant
18 to RCW 49.48.084.

19 (4) The department shall deposit civil penalties paid under this
20 chapter into the employee fair classification act account created in
21 section 10 of this act.

22 (5) The director shall accept referrals based on a court finding of
23 a violation of section 5 of this act and may initiate proceedings as
24 provided in this section.

25 NEW SECTION. **Sec. 8.** (1) An interested party or an individual
26 aggrieved by a violation of section 5 or 6 of this act may bring suit
27 on behalf of himself or herself or on behalf of any other individual
28 who is similarly situated.

29 (2) If a court determines that an employer violated section 5 or 6
30 of this act, it:

31 (a) Shall award the greater of:

32 (i) Three times the amount of any wages, salary, employment
33 benefits, or other compensation unlawfully denied or withheld; or

34 (ii) Statutory damages for each employee aggrieved by the
35 violation. Statutory damages may not exceed ten thousand dollars per
36 employee, unless the employer engaged in a pattern or practice of

1 violations, in which case the statutory damages must be not less than
2 ten thousand dollars and not more than twenty-five thousand dollars per
3 employee;

4 (b) May award injunctive or other equitable relief, including
5 reinstatement of the employee to his or her former position at not less
6 than the most recent rate of compensation received by the employee,
7 including the value of any benefits, or front pay in lieu of
8 reinstatement; and

9 (c) Shall award attorneys' fees and costs.

10 (3) A civil action under this section must be brought no later than
11 three years after the violation occurred. This period is tolled during
12 any period of time that the employer deters an individual from bringing
13 an action under this section.

14 NEW SECTION. **Sec. 9.** (1) If an employer engages an individual to
15 perform services and does not consider the individual to be an
16 employee, the employer shall post and keep posted the following notice:

17 "Every worker has the right to be properly classified as an
18 employee rather than an independent contractor if the individual does
19 not meet the requirements of an independent contractor under the law
20 known as the employee fair classification act.

21 If you believe you or someone else has been improperly classified
22 as an independent contractor under the employee fair classification
23 act, you have the right to challenge this classification by filing a
24 complaint with the department of labor and industries or by bringing an
25 action in state court."

26 (2) The notice required by this section must be in English and
27 Spanish and must be posted in a conspicuous place in each of the
28 employer's offices in the state and at each job site where a worker
29 classified as an individual contractor performs services.

30 NEW SECTION. **Sec. 10.** The employee fair classification act
31 account is created in the state treasury. All receipts from civil
32 penalties issued under section 7 of this act must be deposited in the
33 account. Moneys in the account may be spent only after appropriation.
34 Expenditures from the account may be used for enforcement of this
35 chapter.

NEW SECTION. **Sec. 11.** The department may adopt rules to implement this chapter. In addition, the department shall develop a plan for strategic enforcement of this chapter, prioritizing industries and workplaces with a high concentration of violations.

Prevailing Wage

Sec. 12. RCW 39.12.010 and 1989 c 12 s 6 are each amended to read as follows:

(1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance,

1 for vacation and holiday pay, for defraying costs of apprenticeship or
2 other similar programs, or for other bona fide fringe benefits, but
3 only where the contractor or subcontractor is not required by other
4 federal, state, or local law to provide any of such benefits.

5 ~~(4) ((An "interested party" for the purposes of this chapter shall~~
6 ~~include a contractor, subcontractor, an employee of a contractor or~~
7 ~~subcontractor, an organization whose members' wages, benefits, and~~
8 ~~conditions of employment are affected by this chapter, and the director~~
9 ~~of labor and industries or the director's designee.))~~ "Employee" means
10 a person who performs services for an employer, but does not include a
11 bona fide independent contractor. A person or entity may be an
12 employee of two or more employers at the same time.

13 (5) "Department," "employ," "employer," "front pay," "interested
14 party," and "pattern or practice" mean the same as defined in section
15 3 of this act.

16 NEW SECTION. Sec. 13. A new section is added to chapter 39.12 RCW
17 to read as follows:

18 Section 4 of this act governs the determination of independent
19 contractor status for purposes of this chapter.

20 **Sec. 14.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to read
21 as follows:

22 (1) Any contractor or subcontractor who files a false statement or
23 fails to file any statement or record required to be filed under this
24 chapter and the rules adopted under this chapter, shall, after a
25 determination to that effect has been issued by the director after
26 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of
27 five hundred dollars for each false filing or failure to file, and
28 shall not be permitted to bid, or have a bid considered, on any public
29 works contract until the penalty has been paid in full to the director.
30 The civil penalty under this subsection shall not apply to a violation
31 determined by the director to be an inadvertent filing or reporting
32 error. Civil penalties shall be deposited in the public works
33 administration account.

34 To the extent that a contractor or subcontractor has not paid wages
35 at the rate due pursuant to RCW 39.12.020, and a finding to that effect

1 has been made as provided by this subsection, such unpaid wages shall
2 constitute a lien against the bonds and retainage as provided in RCW
3 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

4 (2) If a contractor or subcontractor is found to have violated the
5 provisions of subsection (1) of this section, or of chapter 49.-- RCW
6 (the new chapter created in section 61 of this act), or both, for a
7 second time within a five year period, the contractor or subcontractor
8 shall be subject to the sanctions prescribed in subsection (1) of this
9 section and shall not be allowed to bid on any public works contract
10 for one year. The one year period shall run from the date of notice by
11 the director of the determination of noncompliance. When an appeal is
12 taken from the director's determination, the one year period shall
13 commence from the date of the final determination of the appeal.

14 The director shall issue his or her findings that a contractor or
15 subcontractor has violated the provisions of this subsection after a
16 hearing held subject to the provisions of chapter 34.05 RCW.

17 NEW SECTION. **Sec. 15.** A new section is added to chapter 39.12 RCW
18 to read as follows:

19 (1) An employer may not discharge, threaten, penalize, or otherwise
20 discriminate or retaliate against an employee because:

21 (a) The employee made a complaint, or the employer believes the
22 employee made a complaint, to the employer, the department, the
23 attorney general, or any other person that the employer engaged in
24 conduct that the employee reasonably believes violates this chapter;

25 (b) The employee has caused to be instituted, or is about to cause
26 to be instituted, a proceeding under or related to this chapter;

27 (c) The employee has testified or is about to testify in a
28 proceeding under or related to this chapter;

29 (d) The employee has, or the employer believes the employee has,
30 otherwise exercised rights protected by this chapter; or

31 (e) The department has determined that the employer violated this
32 chapter.

33 (2) If an employer takes adverse action against an employee within
34 ninety days of the employee having engaged in an activity described in
35 subsection (1) of this section, the employer is presumed to have acted
36 in retaliation. The employer may rebut this presumption with clear and
37 convincing evidence that the adverse action was taken for a permissible

1 purpose. For purposes of this subsection, "adverse action" includes
2 discharging, threatening, penalizing, or otherwise discriminating
3 against an employee.

4 (3) A complaint or other communication by an employee triggers the
5 protections of this section regardless of whether the complaint or
6 communication is in writing or makes explicit reference to this
7 chapter.

8 (4) A violation of this section is a gross misdemeanor.

9 NEW SECTION. Sec. 16. A new section is added to chapter 39.12 RCW
10 to read as follows:

11 (1) If, following an investigation, the department determines that
12 an employer violated section 15 of this act, it may order the employer
13 to:

14 (a) Pay a civil penalty of not less than one thousand dollars and
15 not more than ten thousand dollars per employee;

16 (b) Pay any aggrieved employee the greater of: (i) Ten thousand
17 dollars; or (ii) three times the amount of any wages, salary,
18 employment benefits, or other compensation unlawfully denied or
19 withheld; or

20 (c) Reinstate the employee to his or her former position at not
21 less than the most recent rate of compensation received by the
22 employee, including the value of any benefits.

23 (2) A judicial appeal from the department's determination may be
24 taken in accordance with chapter 34.05 RCW, with the prevailing party
25 entitled to recover reasonable costs and attorneys' fees.

26 NEW SECTION. Sec. 17. A new section is added to chapter 39.12 RCW
27 to read as follows:

28 (1) An interested party or an individual aggrieved by a violation
29 of section 15 of this act may bring suit on behalf of himself or
30 herself or on behalf of any other individual who is similarly situated.

31 (2) If a court determines that an employer violated section 15 of
32 this act, it:

33 (a) Shall award the greater of:

34 (i) Three times the amount of any wages, salary, employment
35 benefits, or other compensation unlawfully denied or withheld; or

(ii) Statutory damages for each employee aggrieved by the violation. Statutory damages may not exceed ten thousand dollars per employee, unless the employer engaged in a pattern or practice of violations, in which case the statutory damages must be not less than ten thousand dollars and not more than twenty-five thousand dollars per employee;

(b) May award injunctive or other equitable relief, including reinstatement of the employee to his or her former position at not less than the most recent rate of compensation received by the employee, including the value of any benefits, or front pay in lieu of reinstatement; and

(c) Shall award attorneys' fees and costs.

(3) A civil action under this section must be brought no later than three years after the violation occurred. This period is tolled during any period of time that the employer deters an individual from bringing an action under this section.

NEW SECTION. **Sec. 18.** RCW 39.12.100 (Independent contractors--Criteria) and 2009 c 63 s 1 are each repealed.

Wage Deductions

NEW SECTION. **Sec. 19.** A new section is added to chapter 49.52 RCW to read as follows:

(1) "Department," "employ," "employer," "front pay," "interested party," and "pattern or practice" mean the same as defined in section 3 of this act.

(2) "Employee" means a person who performs services for an employer, but does not include a bona fide independent contractor. A person or entity may be an employee of two or more employers at the same time.

NEW SECTION. **Sec. 20.** A new section is added to chapter 49.52 RCW to read as follows:

Section 4 of this act governs the determination of independent contractor status for purposes of this chapter.

1 **Sec. 21.** RCW 49.52.070 and 2010 c 8 s 12056 are each amended to
2 read as follows:

3 Any employer and any officer, vice principal or agent of any
4 employer who shall violate any of the provisions of RCW 49.52.050 (1)
5 and (2) shall be liable in a civil action by the aggrieved employee or
6 his or her assignee to judgment for ~~((twice))~~ plus twice that amount by way of
7 unlawfully rebated or withheld plus twice that amount by way of
8 exemplary damages, together with costs of suit and a reasonable sum for
9 attorney's fees ~~((:— PROVIDED, HOWEVER, That the benefits of this~~
10 ~~section shall not be available to any employee who has knowingly~~
11 ~~submitted to such violations))~~).

12 NEW SECTION. **Sec. 22.** A new section is added to chapter 49.52 RCW
13 to read as follows:

14 (1) An employer may not discharge, threaten, penalize, or otherwise
15 discriminate or retaliate against an employee because:

16 (a) The employee made a complaint, or the employer believes the
17 employee made a complaint, to the employer, the department, the
18 attorney general, or any other person that the employer engaged in
19 conduct that the employee reasonably believes violates this chapter;

20 (b) The employee has caused to be instituted, or is about to cause
21 to be instituted, a proceeding under or related to this chapter;

22 (c) The employee has testified or is about to testify in a
23 proceeding under or related to this chapter;

24 (d) The employee has, or the employer believes the employee has,
25 otherwise exercised rights protected by this chapter; or

26 (e) The department has determined that the employer violated this
27 chapter.

28 (2) If an employer takes adverse action against an employee within
29 ninety days of the employee having engaged in an activity described in
30 subsection (1) of this section, the employer is presumed to have acted
31 in retaliation. The employer may rebut this presumption with clear and
32 convincing evidence that the adverse action was taken for a permissible
33 purpose. For purposes of this subsection, "adverse action" includes
34 discharging, threatening, penalizing, or otherwise discriminating
35 against an employee.

36 (3) A complaint or other communication by an employee triggers the

1 protections of this section regardless of whether the complaint or
2 communication is in writing or makes explicit reference to this
3 chapter.

4 (4) A violation of this section is a gross misdemeanor.

5 NEW SECTION. Sec. 23. A new section is added to chapter 49.52 RCW
6 to read as follows:

7 (1) If, following an investigation, the department determines that
8 an employer violated section 22 of this act, it may order the employer
9 to:

10 (a) Pay a civil penalty of not less than one thousand dollars and
11 not more than ten thousand dollars per employee;

12 (b) Pay any aggrieved employee the greater of: (i) Ten thousand
13 dollars; or (ii) three times the amount of any wages, salary,
14 employment benefits, or other compensation unlawfully denied or
15 withheld; or

16 (c) Reinstate the employee to his or her former position at not
17 less than the most recent rate of compensation received by the
18 employee, including the value of any benefits.

19 (2) An employer may appeal an order issued under this section
20 pursuant to RCW 49.48.084.

21 NEW SECTION. Sec. 24. A new section is added to chapter 49.52 RCW
22 to read as follows:

23 (1) An interested party or an individual aggrieved by a violation
24 of section 22 of this act may bring suit on behalf of himself or
25 herself or on behalf of any other individual who is similarly situated.

26 (2) If a court determines that an employer violated section 22 of
27 this act, it:

28 (a) Shall award the greater of:

29 (i) Three times the amount of any wages, salary, employment
30 benefits, or other compensation unlawfully denied or withheld; or

31 (ii) Statutory damages for each employee aggrieved by the
32 violation. Statutory damages may not exceed ten thousand dollars per
33 employee, unless the employer engaged in a pattern or practice of
34 violations, in which case the statutory damages must be not less than
35 ten thousand dollars and not more than twenty-five thousand dollars per
36 employee;

1 (b) May award injunctive or other equitable relief, including
2 reinstatement of the employee to his or her former position at not less
3 than the most recent rate of compensation received by the employee,
4 including the value of any benefits, or front pay in lieu of
5 reinstatement; and

6 (c) Shall award attorneys' fees and costs.

7 (3) A civil action under this section must be brought no later than
8 three years after the violation occurred. This period is tolled during
9 any period of time that the employer deters an individual from bringing
10 an action under this section.

11 Wage Payment Act

12 **Sec. 25.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and
13 amended to read as follows:

14 The definitions in this section apply throughout this section and
15 RCW 49.48.083 through 49.48.086:

16 (1) "Citation" means a written determination by the department that
17 a wage payment requirement has been violated.

18 (2) "Department" means the department of labor and industries.

19 (3) "Determination of compliance" means a written determination by
20 the department that wage payment requirements have not been violated.

21 (4) "Director" means the director of the department of labor and
22 industries, or the director's authorized representative.

23 (5) "Employee" (~~has the meaning provided in: (a) RCW 49.46.010~~
24 ~~for purposes of a wage payment requirement set forth in RCW 49.46.020~~
25 ~~or 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment~~
26 ~~requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.~~

27 ~~(6) "Employer" has the meaning provided in RCW 49.46.010 for~~
28 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~
29 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060)) means a person who~~
30 performs services for an employer, but does not include a bona fide
31 independent contractor. A person or entity may be an employee of two
32 or more employers at the same time.

33 (6) "Employ," "employer," "front pay," "interested party," and
34 "pattern or practice" mean the same as defined in section 3 of this
35 act.

1 (7) "Notice of assessment" means a written notice by the department
2 that, based on a citation, the employer shall pay the amounts assessed
3 under RCW 49.48.083.

4 (8) "Repeat willful violator" means any employer that has been the
5 subject of a final and binding citation and notice of assessment for a
6 willful violation of a wage payment requirement within three years of
7 the date of issue of the most recent citation and notice of assessment
8 for a willful violation of a wage payment requirement.

9 (9) "Successor" means any person to whom an employer quitting,
10 selling out, exchanging, or disposing of a business sells or otherwise
11 conveys in bulk and not in the ordinary course of the employer's
12 business, more than fifty percent of the property, whether real or
13 personal, tangible or intangible, of the employer's business.

14 (10) "Wage" has the meaning provided in RCW 49.46.010.

15 (11) "Wage complaint" means a complaint from an employee to the
16 department that asserts that an employer has violated one or more wage
17 payment requirements and that is reduced to writing.

18 (12) "Wage payment requirement" means a wage payment requirement
19 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
20 49.52.060, and any related rules adopted by the department.

21 (13) "Willful" means a knowing and intentional action that is
22 neither accidental nor the result of a bona fide dispute, as evaluated
23 under the standards applicable to wage payment violations under RCW
24 49.52.050(2).

25 **Sec. 26.** RCW 49.48.084 and 2010 c 42 s 3 are each amended to read
26 as follows:

27 (1) A person, firm, or corporation aggrieved by a citation and
28 notice of assessment or a determination of compliance issued by the
29 department under RCW 49.48.083 or sections 7, 16, 23, 30, or 36 of this
30 act, or the assessment of civil penalty due to a determination of
31 status as a repeat willful violator may appeal the citation and notice
32 of assessment, the determination of compliance, or the assessment of
33 civil penalty to the director by filing a notice of appeal with the
34 director within thirty days of the department's issuance of the
35 citation and notice of assessment, the determination of compliance, or
36 the assessment of civil penalty. A citation and notice of assessment,

1 a determination of compliance, or an assessment of a civil penalty not
2 appealed within thirty days is final and binding, and not subject to
3 further appeal.

4 (2) A notice of appeal filed with the director under this section
5 shall stay the effectiveness of the citation and notice of assessment,
6 the determination of compliance, or the assessment of civil penalty
7 pending final review of the appeal by the director as provided for in
8 chapter 34.05 RCW.

9 (3) Upon receipt of a notice of appeal, the director shall assign
10 the hearing to an administrative law judge of the office of
11 administrative hearings to conduct the hearing and issue an initial
12 order. The hearing and review procedures shall be conducted in
13 accordance with chapter 34.05 RCW, and the standard of review by the
14 administrative law judge of an appealed citation and notice of
15 assessment, an appealed determination of compliance, or an appealed
16 assessment of civil penalty shall be de novo. Any party who seeks to
17 challenge an initial order shall file a petition for administrative
18 review with the director within thirty days after service of the
19 initial order. The director shall conduct administrative review in
20 accordance with chapter 34.05 RCW.

21 (4) The director shall issue all final orders after appeal of the
22 initial order. The final order of the director is subject to judicial
23 review in accordance with chapter 34.05 RCW.

24 (5) Orders that are not appealed within the time period specified
25 in this section and chapter 34.05 RCW are final and binding, and not
26 subject to further appeal.

27 (6) An employer who fails to allow adequate inspection of records
28 in an investigation by the department under this chapter within a
29 reasonable time period may not use such records in any appeal under
30 this section to challenge the correctness of any determination by the
31 department of wages owed or penalty assessed.

32 NEW SECTION. **Sec. 27.** A new section is added to chapter 49.48 RCW
33 to read as follows:

34 Section 4 of this act governs the determination of independent
35 contractor status for purposes of this chapter.

1 **Sec. 28.** RCW 49.48.060 and 2010 c 42 s 5 and 2010 c 8 s 12050 are
2 each reenacted and amended to read as follows:

3 (1) If upon investigation by the director(~~((, after taking~~
4 ~~assignments of any wage claim under RCW 49.48.040 or after receiving a~~
5 ~~wage complaint as defined in RCW 49.48.082 from an employee))~~, it
6 appears to the director that (~~((the employer is representing to his or~~
7 ~~her employees that he or she is able to pay wages for their services~~
8 ~~and that the employees are not being paid for their services))~~ one or
9 more employees was not paid for his or her services and that the
10 employer continues to employ one or more employees, the director may
11 require the employer to give a bond in such sum as the director deems
12 reasonable and adequate in the circumstances, with sufficient surety,
13 conditioned that the employer will for a definite future period not
14 exceeding (~~((six months))~~ one year conduct his or her business and pay
15 his or her employees in accordance with the laws of the state of
16 Washington.

17 (2) If within ten days after demand for such bond the employer
18 fails to provide the same, the director (~~((may commence a suit against~~
19 ~~the employer in the superior court of appropriate jurisdiction to~~
20 ~~compel him or her to furnish such bond or cease doing business until he~~
21 ~~or she has done so. The employer shall have the burden of proving the~~
22 ~~amount thereof to be excessive.~~

23 ~~(3) If the court finds that there is just cause for requiring such~~
24 ~~bond and that the same is reasonable, necessary, or appropriate to~~
25 ~~secure the prompt payment of the wages of the employees of such~~
26 ~~employer and his or her compliance with one or more wage payment~~
27 ~~requirements as defined in RCW 49.48.082, the court shall enjoin such~~
28 ~~employer from doing business in this state until the requirement is~~
29 ~~met, or shall make other, and may make further, orders appropriate to~~
30 ~~compel compliance with the requirement.~~

31 ~~(4) Upon being informed of a wage claim against an employer or~~
32 ~~former employer, the director shall, if such claim appears to be just,~~
33 ~~immediately notify the employer or former employer, of such claim by~~
34 ~~mail. If the employer or former employer fails to pay the claim or~~
35 ~~make satisfactory explanation to the director of his or her failure to~~
36 ~~do so, within thirty days thereafter, the employer or former employer~~
37 ~~shall be liable to a penalty of ten percent of that portion of the~~
38 ~~claim found to be justly due. The director shall have a cause of~~

~~action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action. This subsection does not apply to wage complaints made under RCW 49.48.083.)) shall, by order issued under official seal, revoke the industrial insurance certificate of coverage of the employer from whom the bond was required. The employer shall post a copy of the order revoking its industrial insurance certificate of coverage in a conspicuous place at the main entrance to the employer's place of business. A copy of the order must remain posted until the bond has been paid. A certificate of coverage revoked under this section may not be reinstated and a new certificate of coverage may not be issued to the employer until the bond has been posted.~~

(3) An employer may appeal an order issued under this section pursuant to RCW 49.48.084.

NEW SECTION. Sec. 29. A new section is added to chapter 49.48 RCW to read as follows:

(1) An employer may not discharge, threaten, penalize, or otherwise discriminate or retaliate against an employee because:

(a) The employee made a complaint, or the employer believes the employee made a complaint, to the employer, the department, the attorney general, or any other person that the employer engaged in conduct that the employee reasonably believes violates this chapter;

(b) The employee has caused to be instituted, or is about to cause to be instituted, a proceeding under or related to this chapter;

(c) The employee has testified or is about to testify in a proceeding under or related to this chapter;

(d) The employee has, or the employer believes the employee has, otherwise exercised rights protected by this chapter; or

(e) The department has determined that the employer violated this chapter.

(2) If an employer takes adverse action against an employee within ninety days of the employee having engaged in an activity described in subsection (1) of this section, the employer is presumed to have acted in retaliation. The employer may rebut this presumption with clear and convincing evidence that the adverse action was taken for a permissible

1 purpose. For purposes of this subsection, "adverse action" includes
2 discharging, threatening, penalizing, or otherwise discriminating
3 against an employee.

4 (3) A complaint or other communication by an employee triggers the
5 protections of this section regardless of whether the complaint or
6 communication is in writing or makes explicit reference to this
7 chapter.

8 (4) A violation of this section is a gross misdemeanor.

9 NEW SECTION. Sec. 30. A new section is added to chapter 49.48 RCW
10 to read as follows:

11 (1) If, following an investigation, the department determines that
12 an employer violated section 29 of this act, it may order the employer
13 to:

14 (a) Pay a civil penalty of not less than one thousand dollars and
15 not more than ten thousand dollars per employee; or

16 (b) Pay any aggrieved employee the greater of:

17 (i) Ten thousand dollars; or (ii) three times the amount of any
18 wages, salary, employment benefits, or other compensation unlawfully
19 denied or withheld; or

20 (c) Reinstate the employee to his or her former position at not
21 less than the most recent rate of compensation received by the
22 employee, including the value of any benefits.

23 (2) An employer may appeal an order issued under this section
24 pursuant to RCW 49.48.084.

25 NEW SECTION. Sec. 31. A new section is added to chapter 49.48 RCW
26 to read as follows:

27 (1) An interested party or an individual aggrieved by a violation
28 of section 29 of this act may bring suit on behalf of himself or
29 herself or on behalf of any other individual who is similarly situated.

30 (2) If a court determines that an employer violated section 29 of
31 this act, it:

32 (a) Shall award the greater of:

33 (i) Three times the amount of any wages, salary, employment
34 benefits, or other compensation unlawfully denied or withheld; or

35 (ii) Statutory damages for each employee aggrieved by the
36 violation. Statutory damages may not exceed ten thousand dollars per

1 employee, unless the employer engaged in a pattern or practice of
2 violations, in which case the statutory damages must be not less than
3 ten thousand dollars and not more than twenty-five thousand dollars per
4 employee;

5 (b) May award injunctive or other equitable relief, including
6 reinstatement of the employee to his or her former position at not less
7 than the most recent rate of compensation received by the employee,
8 including the value of any benefits, or front pay in lieu of
9 reinstatement; and

10 (c) Shall award attorneys' fees and costs.

11 (3) A civil action under this section must be brought no later than
12 three years after the violation occurred. This period is tolled during
13 any period of time that the employer deters an individual from bringing
14 an action under this section.

15 NEW SECTION. Sec. 32. A new section is added to chapter 49.48 RCW
16 to read as follows:

17 An interested party may bring complaints under this chapter.

18 **Minimum Wage Act**

19 **Sec. 33.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each
20 reenacted and amended to read as follows:

21 As used in this chapter:

22 (1) "Director" means the director of labor and industries;

23 (2) (~~("Employ" includes to permit to work)~~) "Department," "employ,"
24 "employer," "front pay," "interested party," and "pattern or practice"
25 mean the same as defined in section 3 of this act;

26 (3) "Employee" ((includes any individual employed by an employer
27 but shall not include)) means any person or entity that an employer
28 hires or suffers or permits to work. A person or entity may be an
29 employee of two or more employers at the same time. "Employee" does
30 not include a bona fide independent contractor or;

31 (a) Any individual (i) employed as a hand harvest laborer and paid
32 on a piece rate basis in an operation which has been, and is generally
33 and customarily recognized as having been, paid on a piece rate basis
34 in the region of employment; (ii) who commutes daily from his or her

1 permanent residence to the farm on which he or she is employed; and
2 (iii) who has been employed in agriculture less than thirteen weeks
3 during the preceding calendar year;

4 (b) Any individual employed in casual labor in or about a private
5 home, unless performed in the course of the employer's trade, business,
6 or profession;

7 (c) Any individual employed in a bona fide executive,
8 administrative, or professional capacity or in the capacity of outside
9 salesperson as those terms are defined and delimited by rules of the
10 director. However, those terms shall be defined and delimited by the
11 human resources director pursuant to chapter 41.06 RCW for employees
12 employed under the director of personnel's jurisdiction;

13 (d) Any individual engaged in the activities of an educational,
14 charitable, religious, state or local governmental body or agency, or
15 nonprofit organization where the employer-employee relationship does
16 not in fact exist or where the services are rendered to such
17 organizations gratuitously. If the individual receives reimbursement
18 in lieu of compensation for normally incurred out-of-pocket expenses or
19 receives a nominal amount of compensation per unit of voluntary service
20 rendered, an employer-employee relationship is deemed not to exist for
21 the purpose of this section or for purposes of membership or
22 qualification in any state, local government, or publicly supported
23 retirement system other than that provided under chapter 41.24 RCW;

24 (e) Any individual employed full time by any state or local
25 governmental body or agency who provides voluntary services but only
26 with regard to the provision of the voluntary services. The voluntary
27 services and any compensation therefor shall not affect or add to
28 qualification, entitlement, or benefit rights under any state, local
29 government, or publicly supported retirement system other than that
30 provided under chapter 41.24 RCW;

31 (f) Any newspaper vendor or carrier;

32 (g) Any carrier subject to regulation by Part 1 of the Interstate
33 Commerce Act;

34 (h) Any individual engaged in forest protection and fire prevention
35 activities;

36 (i) Any individual employed by any charitable institution charged
37 with child care responsibilities engaged primarily in the development

1 of character or citizenship or promoting health or physical fitness or
2 providing or sponsoring recreational opportunities or facilities for
3 young people or members of the armed forces of the United States;

4 (j) Any individual whose duties require that he or she reside or
5 sleep at the place of his or her employment or who otherwise spends a
6 substantial portion of his or her work time subject to call, and not
7 engaged in the performance of active duties;

8 (k) Any resident, inmate, or patient of a state, county, or
9 municipal correctional, detention, treatment or rehabilitative
10 institution;

11 (l) Any individual who holds a public elective or appointive office
12 of the state, any county, city, town, municipal corporation or quasi
13 municipal corporation, political subdivision, or any instrumentality
14 thereof, or any employee of the state legislature;

15 (m) All vessel operating crews of the Washington state ferries
16 operated by the department of transportation;

17 (n) Any individual employed as a seaman on a vessel other than an
18 American vessel;

19 ~~(4) ("Employer" includes any individual, partnership, association,~~
20 ~~corporation, business trust, or any person or group of persons acting~~
21 ~~directly or indirectly in the interest of an employer in relation to an~~
22 ~~employee;~~

23 ~~(5))~~ "Occupation" means any occupation, service, trade, business,
24 industry, or branch or group of industries or employment or class of
25 employment in which employees are gainfully employed;

26 ~~((6))~~ (5) "Retail or service establishment" means an
27 establishment seventy-five percent of whose annual dollar volume of
28 sales of goods or services, or both, is not for resale and is
29 recognized as retail sales or services in the particular industry;

30 ~~((7))~~ (6) "Wage" means compensation due to an employee by reason
31 of employment, payable in legal tender of the United States or checks
32 on banks convertible into cash on demand at full face value, subject to
33 such deductions, charges, or allowances as may be permitted by rules of
34 the director.

35 NEW SECTION. **Sec. 34.** A new section is added to chapter 49.46 RCW
36 to read as follows:

1 Section 4 of this act governs the determination of independent
2 contractor status for purposes of this chapter.

3 NEW SECTION. **Sec. 35.** A new section is added to chapter 49.46 RCW
4 to read as follows:

5 (1) An employer may not discharge, threaten, penalize, or otherwise
6 discriminate or retaliate against an employee because:

7 (a) The employee made a complaint, or the employer believes the
8 employee made a complaint, to the employer, the department, the
9 attorney general, or any other person that the employer engaged in
10 conduct that the employee reasonably believes violates this chapter;

11 (b) The employee has caused to be instituted, or is about to cause
12 to be instituted, a proceeding under or related to this chapter;

13 (c) The employee has testified or is about to testify in a
14 proceeding under or related to this chapter;

15 (d) The employee has, or the employer believes the employee has,
16 otherwise exercised rights protected by this chapter; or

17 (e) The department has determined that the employer violated this
18 chapter.

19 (2) If an employer takes adverse action against an employee within
20 ninety days of the employee having engaged in an activity described in
21 subsection (1) of this section, the employer is presumed to have acted
22 in retaliation. The employer may rebut this presumption with clear and
23 convincing evidence that the adverse action was taken for a permissible
24 purpose. For purposes of this subsection, "adverse action" includes
25 discharging, threatening, penalizing, or otherwise discriminating
26 against an employee.

27 (3) A complaint or other communication by an employee triggers the
28 protections of this section regardless of whether the complaint or
29 communication is in writing or makes explicit reference to this
30 chapter.

31 (4) A violation of this section is a gross misdemeanor.

32 NEW SECTION. **Sec. 36.** A new section is added to chapter 49.46 RCW
33 to read as follows:

34 (1) If, following an investigation, the department determines that
35 an employer violated section 35 of this act, it may order the employer
36 to:

1 (a) Pay a civil penalty of not less than one thousand dollars and
2 not more than ten thousand dollars per employee;

3 (b) Pay any aggrieved employee the greater of: (i) Ten thousand
4 dollars; or (ii) three times the amount of any wages, salary,
5 employment benefits, or other compensation unlawfully denied or
6 withheld; or

7 (c) Reinstate the employee to his or her former position at not
8 less than the most recent rate of compensation received by the
9 employee, including the value of any benefits.

10 (2) An employer may appeal an order issued under this section
11 pursuant to RCW 49.48.084.

12 NEW SECTION. **Sec. 37.** A new section is added to chapter 49.46 RCW
13 to read as follows:

14 (1) An interested party or an individual aggrieved by a violation
15 of section 35 of this act may bring suit on behalf of himself or
16 herself or on behalf of any other individual who is similarly situated.

17 (2) If a court determines that an employer violated section 35 of
18 this act, it:

19 (a) Shall award the greater of:

20 (i) Three times the amount of any wages, salary, employment
21 benefits, or other compensation unlawfully denied or withheld; or

22 (ii) Statutory damages for each employee aggrieved by the
23 violation. Statutory damages may not exceed ten thousand dollars per
24 employee, unless the employer engaged in a pattern or practice of
25 violations, in which case the statutory damages must be not less than
26 ten thousand dollars and not more than twenty-five thousand dollars per
27 employee;

28 (b) May award injunctive or other equitable relief, including
29 reinstatement of the employee to his or her former position at not less
30 than the most recent rate of compensation received by the employee,
31 including the value of any benefits, or front pay in lieu of
32 reinstatement; and

33 (c) Shall award attorneys' fees and costs.

34 (3) A civil action under this section must be brought no later than
35 three years after the violation occurred. This period is tolled during
36 any period of time that the employer deters an individual from bringing
37 an action under this section.

NEW SECTION. **Sec. 38.** RCW 49.46.100 (Prohibited acts of employer--Penalty) and 2010 c 8 s 12044 & 1959 c 294 s 10 are each repealed.

Unemployment Compensation

NEW SECTION. **Sec. 39.** A new section is added to chapter 50.04 RCW to read as follows:

Section 4 of this act governs the determination of independent contractor status for purposes of this chapter. The services of an independent contractor are not services in employment subject to this title.

Sec. 40. RCW 50.12.070 and 2009 c 432 s 11 are each amended to read as follows:

(1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Registration must include the names and social security numbers of the owners, partners, members, or corporate officers of the business, as well as their mailing addresses and telephone numbers and other information the commissioner may by rule prescribe. Registration of corporations must also include the percentage of stock ownership for each corporate officer, delineated by zero percent, less than ten percent, or ten percent or more. Any changes in the owners, partners, members, or corporate officers of the

1 business, and changes in percentage of ownership of the outstanding
2 shares of stock of the corporation, must be reported to the department
3 at intervals prescribed by the commissioner under (b) of this
4 subsection.

5 (b) Each employer shall make periodic reports at such intervals as
6 the commissioner may by regulation prescribe, setting forth the
7 remuneration paid for employment to workers in its employ, the full
8 names and social security numbers of all such workers, and the total
9 hours worked by each worker and such other information as the
10 commissioner may by regulation prescribe.

11 (c) If the employing unit fails or has failed to report the number
12 of hours in a reporting period for which a worker worked, such number
13 will be computed by the commissioner and given the same force and
14 effect as if it had been reported by the employing unit. In computing
15 the number of such hours worked, the total wages for the reporting
16 period, as reported by the employing unit, shall be divided by the
17 dollar amount of the state's minimum wage in effect for such reporting
18 period and the quotient, disregarding any remainder, shall be credited
19 to the worker: PROVIDED, That although the computation so made will
20 not be subject to appeal by the employing unit, monetary entitlement
21 may be redetermined upon request if the department is provided with
22 credible evidence of the actual hours worked. Benefits paid using
23 computed hours are not considered an overpayment and are not subject to
24 collections when the correction of computed hours results in an invalid
25 or reduced claim; however:

26 (i) A contribution paying employer who fails to report the number
27 of hours worked will have its experience rating account charged for all
28 benefits paid that are based on hours computed under this subsection;
29 and

30 (ii) An employer who reimburses the trust fund for benefits paid to
31 workers and fails to report the number of hours worked shall reimburse
32 the trust fund for all benefits paid that are based on hours computed
33 under this subsection.

34 (3) Any employer who fails to keep and preserve records required by
35 this section shall be subject to a penalty determined by the
36 commissioner but not to exceed two hundred fifty dollars or two hundred
37 percent of the quarterly tax for each offense, whichever is greater.

1 (4) Upon referral from the department of labor and industries
2 pursuant to section 7 of this act, the employment security department
3 may initiate procedures for improper recordkeeping and the recovery of
4 contributions, interest, and penalties.

5 **Sec. 41.** RCW 50.12.072 and 2010 c 72 s 2 are each amended to read
6 as follows:

7 (1) An employer that knowingly fails to register with the
8 department and obtain an employment security account number, as
9 required under RCW 50.12.070(2), is subject to a penalty not to exceed
10 one thousand dollars per quarter or two times the taxes due per
11 quarter, whichever is greater. This penalty is in addition to all
12 other penalties and is in addition to higher rates for employers that
13 do not meet the definition of "qualified employer" under RCW 50.29.010.
14 This penalty does not apply if the employer can prove that it had good
15 cause to believe that it was not required to register with the
16 department.

17 (2) Upon referral from the department of labor and industries
18 pursuant to section 7 of this act, the employment security department
19 may initiate procedures for improper recordkeeping and the recovery of
20 contributions, interest, and penalties.

21 **Sec. 42.** RCW 50.24.070 and 2011 c 301 s 18 are each amended to
22 read as follows:

23 (1) At any time after the commissioner shall find that any
24 contributions, interest, or penalties have become delinquent, the
25 commissioner may issue an order and notice of assessment specifying the
26 amount due, which order and notice of assessment shall be served upon
27 the delinquent employer in the manner prescribed for the service of a
28 summons in a civil action, or using a method by which the mailing can
29 be tracked or the delivery can be confirmed. Failure of the employer
30 to receive such notice or order whether served or mailed shall not
31 release the employer from any tax, or any interest or penalties
32 thereon.

33 (2) The commissioner shall accept referrals based on a court
34 finding of a violation of section 5 of this act and may pursue a claim
35 for contributions.

1 **Sec. 43.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each
2 amended to read as follows:

3 "Employment", subject only to the other provisions of this title,
4 means personal service, of whatever nature, unlimited by the
5 relationship of master and servant as known to the common law or any
6 other legal relationship, including service in interstate commerce,
7 performed for wages or under any contract calling for the performance
8 of personal services, written or oral, express or implied.

9 (~~Except as provided by RCW 50.04.145,~~) Personal services
10 performed for an employing unit by one or more contractors or
11 subcontractors acting individually or as a partnership, which do not
12 meet the provisions of (~~RCW 50.04.140~~) section 39 of this act, shall
13 be considered employment of the employing unit: PROVIDED, HOWEVER,
14 That such contractor or subcontractor shall be an employer under the
15 provisions of this title in respect to personal services performed by
16 individuals for such contractor or subcontractor.

17 **Sec. 44.** RCW 50.04.298 and 2007 c 146 s 8 are each amended to read
18 as follows:

19 For the purposes of this title:

20 (1) "Professional employer organization" means a person or entity
21 that enters into an agreement with one or more client employers to
22 provide professional employer services. "Professional employer
23 organization" includes entities that use the term "staff leasing
24 company," "permanent leasing company," "registered staff leasing
25 company," "employee leasing company," "administrative employer," or any
26 other name, when they provide professional employer services to client
27 employers. The following are not classified as professional employer
28 organizations: Independent contractors in (~~RCW 50.04.140~~) section 39
29 of this act; temporary staffing services companies and services
30 referral agencies as defined in RCW 50.04.245; third-party payers as
31 defined in RCW 50.04.248; or labor organizations.

32 (2) "Client employer" means any employer who enters into a
33 professional employer agreement with a professional employer
34 organization.

35 (3) "Coemployer" means either a professional employer organization
36 or a client employer that has entered into a professional employer
37 agreement.

1 (4) "Covered employee" means an individual performing services for
2 a client employer that constitutes employment under this title.

3 (5) "Professional employer services" means services provided by the
4 professional employer organization to the client employer, which
5 include, but are not limited to, human resource functions, risk
6 management, or payroll administration services, in a coemployment
7 relationship.

8 (6) "Coemployment relationship" means a relationship that is
9 intended to be ongoing rather than temporary or project-specific, where
10 the rights, duties, and obligations of an employer in an employment
11 relationship are allocated between coemployers pursuant to a
12 professional employer agreement and state law. A coemployment
13 relationship exists only if a majority of the employees performing
14 services to a client employer, or to a division or work unit of a
15 client employer, are covered employees. In determining the allocation
16 of rights and obligations in a coemployment relationship:

17 (a) The professional employer organization has only those employer
18 rights and is subject only to those obligations specifically allocated
19 to it by the professional employer agreement or state law;

20 (b) The client employer has those rights and obligations allocated
21 to it by the professional employer agreement or state law, as well as
22 any other right or obligation of an employer that is not specifically
23 allocated by the professional employer agreement or state law.

24 (7) "Professional employer agreement" means a written contract
25 between a client employer and a professional employer organization that
26 provides for: (a) The coemployment of covered employees; and (b) the
27 allocation of employer rights and obligations between the client and
28 the professional employer organization with respect to the covered
29 employees.

30 NEW SECTION. **Sec. 45.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 50.04.140 (Employment--Exception tests) and 1991 c 246 s 6
33 & 1945 c 35 s 15; and

34 (2) RCW 50.04.145 (Employment--Exclusions) and 2008 c 102 s 1, 1983
35 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13.

1 **Industrial Insurance**

2 **Sec. 46.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to read
3 as follows:

4 "Employer" means any person, body of persons, corporate or
5 otherwise, and the legal representatives of a deceased employer, all
6 while engaged in this state in any work covered by the provisions of
7 this title, by way of trade or business, or who contracts with one or
8 more workers, the essence of which is the personal labor of such worker
9 or workers. Or as an exception to the definition of employer, persons
10 or entities are not employers when they contract or agree to remunerate
11 the services performed by an (~~individual who meets the tests set forth~~
12 ~~in subsections (1) through (6) of RCW 51.08.195 or the separate tests~~
13 ~~set forth in RCW 51.08.181 for work performed that requires~~
14 ~~registration under chapter 18.27 RCW or licensing under chapter 19.28~~
15 ~~RCW~~)) independent contractor, as defined in section 4 of this act.

16 **Sec. 47.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to read
17 as follows:

18 "Worker" means every person in this state who is engaged in the
19 employment of an employer under this title, whether by way of manual
20 labor or otherwise in the course of his or her employment; also every
21 person in this state who is engaged in the employment of or who is
22 working under an independent contract, the essence of which is his or
23 her personal labor for an employer under this title, whether by way of
24 manual labor or otherwise, in the course of his or her employment, or
25 as an exception to the definition of worker, a person is not a worker
26 if he or she meets the (~~tests~~) test set forth in (~~subsections (1)~~
27 ~~through (6) of RCW 51.08.195 or the separate tests set forth in RCW~~
28 ~~51.08.181 for work performed that requires registration under chapter~~
29 ~~18.27 RCW or licensing under chapter 19.28 RCW~~)) section 4 of this act:
30 PROVIDED, That a person is not a worker for the purpose of this title,
31 with respect to his or her activities attendant to operating a truck
32 which he or she owns, and which is leased to a common or contract
33 carrier.

34 NEW SECTION. **Sec. 48.** The following acts or parts of acts are
35 each repealed:

1 (1) RCW 51.08.181 ("Worker"--Registered contractor and electrician
2 exclusions) and 2008 c 102 s 5; and
3 (2) RCW 51.08.195 ("Employer" and "worker"--Additional exception)
4 and 2008 c 102 s 4 & 1991 c 246 s 1.

5 **Liens for Wage Claims**

6 NEW SECTION. **Sec. 49.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Department" means the department of labor and industries.

9 (2) "Employ" and "employer" mean the same as defined in section 3
10 of this act.

11 (3) "Employee" means a person who performs services for an
12 employer, but does not include a bona fide independent contractor. A
13 person or entity may be an employee of two or more employers at the
14 same time.

15 (4) "Improvement" means all property upon which the employee has
16 performed work or furnished materials at the instance of the owner or
17 of any person acting by the owner's authority or under the owner as a
18 contractor or otherwise. "Improvement" does not include an improvement
19 that is subject to a lien under chapter 60.04 RCW or would be subject
20 to a lien under chapter 60.04 RCW if filed during the period of
21 limitation established by RCW 60.04.141.

22 (5) "Party in interest" means a person who stands to gain or lose
23 by the operation of the lien. "Party in interest" includes but is not
24 limited to a purchaser of the property and a financial institution with
25 a security interest in the property.

26 (6) "Wage claim" means the amount of wages owed to an employee, as
27 well as any statutory penalties that may be owed for violation of a
28 state or federal wage law, including but not limited to chapters 39.12,
29 49.12, 49.46, 49.48, 49.52, and 49.-- RCW (the new chapter created in
30 section 61 of this act), and the fair labor standards act, 29 U.S.C.
31 Sec. 201 et seq.

32 NEW SECTION. **Sec. 50.** Section 4 of this act governs the
33 determination of independent contractor status for purposes of this
34 chapter.

1 NEW SECTION. **Sec. 51.** (1) An employee has a lien for wage claims
2 on: (a) Any real or personal property in this state that is owned by
3 the employee's employer; and (b) improvements in this state.

4 (2) Chapter 62A.9A RCW of the uniform commercial code does not
5 apply to a lien on the personal property of an employer under this
6 chapter.

7 NEW SECTION. **Sec. 52.** (1) To establish a lien on real property or
8 improvements, the lien claimant must:

9 (a) File for recording a notice of claim of lien in the county
10 where the property is located. The notice must:

11 (i) State the name, telephone number, and address of the lien
12 claimant, and if the lien has been assigned, the name of the assignee;

13 (ii) State the name of the employer;

14 (iii) State the street address, legal description, or other
15 description reasonably calculated to identify, for a person familiar
16 with the area, the location of the real property or the nature of the
17 improvements to be charged with the lien;

18 (iv) State the principal amount for which the lien is claimed;

19 (v) Be signed by the lien claimant or a person authorized to act on
20 his or her behalf;

21 (vi) Affirmatively state that the lien claimant or person
22 authorized to act on his or her behalf has read the notice of claim of
23 lien and believes it to be true and correct under penalty of perjury;
24 and

25 (vii) Be acknowledged and certified as set forth in subsection (3)
26 of this section;

27 (b) Pay a filing fee established by the county auditor; and

28 (c) Mail a copy of the notice filed under this subsection (1) to
29 the employer's registered agent, the employer's registered business
30 address, or the address where the employer resides, by certified mail
31 with return receipt requested.

32 (2) To establish a lien on personal property, the lien claimant
33 must:

34 (a) File for recording a notice of claim of lien with the
35 department of licensing. The notice must:

36 (i) State the name, phone number, and address of the lien claimant,
37 and if the lien has been assigned, the name of the assignee;

(ii) State the name of the employer;
(iii) Describe the personal property subject to the lien or indicate that the lien covers all personal property;
(iv) State the principal amount for which the lien is claimed;
(v) Be signed by the lien claimant or a person authorized to act on his or her behalf;
(vi) Affirmatively state that the lien claimant or person authorized to act on his or her behalf has read the notice of claim of lien and believes it to be true and correct under penalty of perjury; and
(vii) Be acknowledged and certified as set forth in subsection (3) of this section;
(b) Pay a filing fee established by the department of licensing; and
(c) Mail a copy of the notice filed under this subsection (2) to the employer's registered agent, the employer's registered business address, or the address where the employer resides, by certified mail with return receipt requested.
(3) Notwithstanding subsections (1) and (2) of this section, a claim of lien, acknowledgment, and certificate substantially in the following form shall be sufficient:

CLAIM OF LIEN

., claimant, vs, name of person indebted to claimant:

Notice is hereby given that the claimant named below asserts a lien pursuant to chapter 60.-- RCW (the new chapter created in section 62 of this act). In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:
TELEPHONE NUMBER:
ADDRESS:

2. NAME OF EMPLOYER:

3. DESCRIPTION OF THE REAL PROPERTY, PERSONAL PROPERTY, OR IMPROVEMENTS AGAINST WHICH A LIEN IS CLAIMED (Street address, legal description, or other information that will

1 reasonably describe the property, or statement that the lien
2 covers all personal property):
3
4
5

6 4. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:
7

8 5. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO
9 STATE HERE:
10

11 6. IF THE PERSON SIGNING THIS CLAIM OF LIEN IS NOT THE
12 CLAIMANT, BUT IS AUTHORIZED TO ACT ON THE CLAIMANT'S BEHALF,
13 STATE THE PERSON'S NAME AND REPRESENTATIVE CAPACITY:
14

15 NAME:
16 REPRESENTATIVE CAPACITY (e.g., officer or employee of claimant;
17 attorney or agent; representative of lien filing service;
18 administrator, representative, or agent of trustees of employee
19 benefit plan):

20 ACKNOWLEDGMENT

21 FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:
22 STATE OF WASHINGTON, COUNTY OF
23, ss.
24, being sworn, says: I, ...(name of person)..., am the
25 claimant. I have read the foregoing claim of lien, believe the claim
26 of lien to be true and correct under penalty of perjury, and believe
27 the claim of lien is not frivolous, is made with reasonable cause, and
28 is not clearly excessive. The foregoing claim of lien is my free and
29 voluntary act for the uses and purposes stated therein.

30Dated:
31
32(Signature)

33 FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

1 STATE OF WASHINGTON, COUNTY OF
2, ss.
3, being sworn, says: I, ...(name of person)..., am
4 authorized to act on behalf of the claimant. I have read the foregoing
5 claim of lien, believe the claim of lien to be true and correct under
6 penalty of perjury, and believe the claim of lien is not frivolous, is
7 made with reasonable cause, and is not clearly excessive. The
8 foregoing claim of lien is the free and voluntary act of the claimant
9 for the uses and purposes stated therein.

10Dated:
11
12(Signature)

13 CERTIFICATE
14 FOR A CERTIFICATE OF ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

15 I certify that I know or have satisfactory evidence
16 that . . . (name of person) . . . is the person who appeared before me,
17 and said person acknowledged that he/she signed this instrument and
18 acknowledged it to be his/her free and voluntary act for the uses and
19 purposes mentioned in the instrument.

20Dated:
21
22(Signature)

23 (Seal or stamp)
24 Title
25 My appointment
26 Expires

27 FOR A CERTIFICATE OF ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

28 I certify that I know or have satisfactory evidence
29 that . . . (name of person) . . . is the person who appeared before me,
30 and said person acknowledged that he/she signed this instrument, on
31 oath stated that he/she was authorized to execute the instrument and
32 acknowledged it as the . . . (type of authority, e.g., officer or
33 employee, etc.) . . . of . . . (name of party on behalf of whom

instrument was executed) . . . to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

.Dated:
.
. (Signature)
(Seal or Stamp)

. Title
. My appointment
. Expires

(4) (a) For a notice of claim of lien on real property or improvements filed under subsection (1) of this section, the county auditor shall record the notice in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien for registered land need not be recorded in the Torrens register.

(b) For a notice of claim of lien on personal property filed under subsection (2) of this section, the department of licensing shall record the notice in the same manner as filings accepted pursuant to chapter 62A.9A RCW.

(5) The notice of claim of lien may be filed at any time prior to the expiration of the statute of limitations for an action to recover the wages that are the subject of the lien.

(6) Mistakes or errors in the claimed amount owed do not invalidate the lien unless made with the intent to defraud.

(7) A lien under this chapter continues in all identifiable cash proceeds of the property subject to the lien.

NEW SECTION. **Sec. 53.** Any lien or right of lien created by this chapter and the right of action to recover the lien is assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made.

NEW SECTION. **Sec. 54.** (1) An action to foreclose the lien must be filed within one year of the date the lien was recorded.

(2) (a) A lien may be foreclosed by an action in: (i) The superior court in the county in which the real property or improvements are

1 located; (ii) the district court in the county in which the personal
2 property is located if the value of the claim does not exceed the
3 jurisdictional limit of the court provided in RCW 3.66.020; or (iii)
4 the superior court in the county in which the personal property is
5 located if the value of the claim exceeds the jurisdictional limit of
6 the district court provided in RCW 3.66.020.

7 (b) If the lien claimant has instituted an action for the wage
8 claim that is the subject of the lien, that action must also be deemed
9 an action to foreclose on the lien.

10 (3) A foreclosure action or an action for a wage claim may be
11 brought by the employee individually, the department, the United States
12 department of labor, the office of the attorney general, or a
13 representative of the employee, including a collective bargaining
14 representative or class representative. Multiple wage claims against
15 the same employer may be joined in a single proceeding, but the court
16 may order separate trials or hearings.

17 (4) If the employee pursues the wage claim in an administrative
18 proceeding before the department, a final and binding citation issued
19 by the department establishes the amount of wages and penalties owed
20 for the purpose of foreclosure under this chapter.

21 (5) In the judgment resulting from such a foreclosure action, the
22 court may order the sale at sheriff's auction or the transfer to the
23 plaintiff of title or possession of any property subject to the lien.
24 Whether or not the court makes such an order as part of the judgment,
25 a writ of sale may be issued for any property subject to the lien for
26 ten years after a judgment for a wage claim is issued. A lien based on
27 an underlying judgment continues in force for an additional ten-year
28 period if the period of execution for the underlying judgment is
29 extended under RCW 6.17.020. A lien claimant who prevails in a
30 foreclosure action is entitled to costs and reasonable attorneys' fees.

31 NEW SECTION. **Sec. 55.** (1) A lien is extinguished:

32 (a) If an action for the underlying wage claim is not brought
33 within one year of the filing of the lien;

34 (b) If the action for the underlying wage claim is dismissed with
35 prejudice and no appeal is filed within the applicable appeals period.
36 If an appeal is filed, the lien continues in force until final judgment
37 is rendered; or

1 (c) Upon payment and acceptance of the amount due to the lien
2 claimant.

3 (2) If the lien is extinguished, upon demand and fifteen days'
4 written notice by the property owner, the lien claimant shall file a
5 release of lien at the place the lien was recorded and provide a copy
6 of the release of lien to the property owner. If the lien claimant
7 fails to release the lien as provided in this section, the property
8 owner has a private right of action against the lien claimant for
9 injunctive relief, costs, and reasonable attorneys' fees.

10 NEW SECTION. **Sec. 56.** (1) Except for child support income
11 withholding, which has priority, and except as provided in subsections
12 (2) and (3) of this section, a lien recorded under this chapter takes
13 priority over all other debts, judgments, decrees, liens, security
14 interests, or mortgages against the employer, regardless as to whether
15 these debts, judgments, decrees, liens, security interests, or
16 mortgages originated before or after the wage lien, and regardless of
17 whether these debts, judgments, decrees, liens, or mortgages were
18 perfected prior to the wage lien. A wage lien is effective against the
19 estate of the employer. A wage lien is not effective against a
20 subsequent bona fide purchaser of the property subject to the lien.

21 (2) If more than one statutory lien for wages owed is filed,
22 including but not limited to liens under this chapter and chapters
23 60.04, 60.11, 60.16, 60.24, 60.28, 60.34, and 60.76 RCW, priority is
24 based on the order in which the liens are filed, with the earlier-filed
25 liens taking priority over the later-filed liens.

26 (3) A lien recorded under this chapter is subordinate to a lien for
27 taxes that the department of revenue is authorized or required to
28 collect and that originates before a lien recorded under this chapter.

29 NEW SECTION. **Sec. 57.** (1)(a) An employer subject to a lien under
30 this chapter or a party in interest may file a bond issued by a surety
31 company authorized to issue surety bonds in the state. Recording a
32 bond releases the real property, personal property, or improvements
33 described in the notice of claim of lien from the lien and any action
34 brought to recover the amount claimed.

35 (b) The bond must be recorded at the place the lien was recorded.
36 The bond must: (i) Contain a description of the claim of lien and real

1 property, personal property, or improvements involved; and (ii) be in
2 an amount no less than one thousand dollars or one and one-half times
3 the amount of the lien, whichever is greater.

4 (c) The condition of the bond must be to guarantee payment of any
5 judgment on the lien in favor of the lien claimant that is entered in
6 an action for a wage claim or a foreclosure action.

7 (d) If no action is commenced to recover on a lien within one year
8 of the filing of the lien, the surety is discharged from liability
9 under the bond. If an action is timely commenced, then on payment of
10 any judgment entered in the action or on payment of the full amount of
11 the bond to the holder of the judgment, whichever is less, the surety
12 is discharged from liability under the bond.

13 (2) In lieu of the surety bond provided for in subsection (1) of
14 this section, an employer subject to a lien under this chapter or a
15 party in interest may deposit with the treasurer of the county in which
16 the claim of lien is filed or with the department of licensing, as
17 applicable, an amount equal to the greater of one thousand dollars or
18 one and one-half times the amount claimed under the lien.

19 (3) A person entitled to post a bond under subsection (1) of this
20 section or to deposit an amount under subsection (2) of this section
21 may provide to the lien claimant a written notice of the filing of the
22 bond or deposit. The notice must include a demand that the lien be
23 released or foreclosed and state that if the lien is not released or
24 foreclosed, the person may recover the actual costs the person incurred
25 in complying with this section or five hundred dollars, whichever is
26 greater. The written notice and demand must be delivered to the lien
27 claimant by certified mail with return receipt requested.

28 (4)(a) A lien claimant who is served with a written notice and
29 demand in compliance with subsection (3) of this section is liable to
30 the person who filed the bond or made the deposit if the lien claimant
31 does not release or bring an action to foreclose the lien within
32 fifteen days after receiving the written notice and demand.

33 (b) The amount of the lien claimant's liability under this
34 subsection (4) is the amount of the costs the person who filed the bond
35 or made the deposit incurred in complying with this section, or five
36 hundred dollars, whichever is greater.

37 (5) If a lien claimant who is served with a written notice and
38 demand under subsection (3) of this section prevails in the action to

1 release or foreclose the lien, then in addition to other costs and
2 attorney fees to which the lien claimant is entitled, the court shall
3 award the lien claimant five hundred dollars or the lien claimant's
4 actual costs incurred in addressing the written notice and demand,
5 whichever is greater.

6 (6) If a lien claimant establishes the validity of the underlying
7 wage claim in an action to enforce the lien, the lien claimant is
8 entitled to judgment against the surety upon the bond or against the
9 money deposited.

10 NEW SECTION. **Sec. 58.** A contract between an employer and employee
11 may not waive or require an employee to waive the right to a lien under
12 this chapter. A provision of a contract made in violation of this
13 section is void as against the public policy of this state.

14 NEW SECTION. **Sec. 59.** The claim of lien, when filed as required
15 by this chapter, shall be notice to the spouse or the domestic partner
16 of the person who appears on record to be the owner of the property
17 sought to be charged with the lien, and shall subject all the community
18 interest of both spouses or both domestic partners to the lien.

19 NEW SECTION. **Sec. 60.** This chapter is to be liberally construed
20 to provide security for all parties intended to be protected by its
21 provisions.

22 NEW SECTION. **Sec. 61.** Sections 2 through 11 of this act
23 constitute a new chapter in Title 49 RCW.

24 NEW SECTION. **Sec. 62.** Sections 49 through 60 of this act
25 constitute a new chapter in Title 60 RCW.

26 NEW SECTION. **Sec. 63.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 64.** If any part of this act is found to be in
31 conflict with federal requirements that are a prescribed condition to

1 the allocation of federal funds to the state or the eligibility of
2 employers in this state for federal unemployment tax credits, the
3 conflicting part of this act is inoperative solely to the extent of the
4 conflict, and the finding or determination does not affect the
5 operation of the remainder of this act. Rules adopted under this act
6 must meet federal requirements that are a necessary condition to the
7 receipt of federal funds by the state or the granting of federal
8 unemployment tax credits to employers in this state.

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