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UNFINISHED BUSINESS

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Bill No: SB 588  
Author: De León (D), et al.  
Amended: 9/4/15  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 4-1, 4/28/15  
AYES: Jackson, Leno, Monning, Wieckowski  
NOES: Anderson  
NO VOTE RECORDED: Moorlach, Hertzberg

SENATE LABOR & IND. REL. COMMITTEE: 4-1, 4/29/15  
AYES: Mendoza, Jackson, Leno, Mitchell  
NOES: Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/28/15  
AYES: Lara, Beall, Hill, Leyva, Mendoza  
NOES: Bates, Nielsen

SENATE FLOOR: 26-13, 6/1/15  
AYES: Allen, Beall, Block, Cannella, De León, Galgiani, Glazer, Hall, Hancock, Hernandez, Hill, Hueso, Jackson, Lara, Leno, Leyva, Liu, McGuire, Mendoza, Mitchell, Monning, Pan, Pavley, Roth, Wieckowski, Wolk  
NOES: Anderson, Bates, Berryhill, Fuller, Gaines, Huff, Moorlach, Morrell, Nguyen, Nielsen, Runner, Stone, Vidak  
NO VOTE RECORDED: Hertzberg

ASSEMBLY FLOOR: 58-18, 9/08/15 - See last page for vote

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**SUBJECT:** Employment: nonpayment of wages: Labor Commissioner: judgment enforcement

**SOURCE:** Koreatown Immigrant Workers Alliance  
Service Employees International Union California  
Wage Justice Center

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**DIGEST:** This bill allows the Labor Commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer.

*Assembly Amendments* create a sliding scale for the surety bond depending on the amount of outstanding wages, require that the Labor Commissioner reports to the State Department of Public Health or the State Department of Social Services if a long-term care facility is operating in violation of the surety bond provisions, clarify technical issues with wage orders, appeals, and attorney's fees, and also add co-authors.

**ANALYSIS:**

- 1) Provides mechanics, persons furnishing materials, artisans, and laborers of every class the right to file a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor and material. Existing law also requires the Legislature to provide, by law, for the speedy and efficient enforcement of such liens. (California Constitution Article XIV, Section 3)
- 2) Provides for mechanics liens relating to services and supplies authorized and provided on a work of improvement. Existing law also regulates the conditions under which a mechanics lien may be enforced. (Civil Code §§ 8400-8494)
- 3) Recognizes prejudgment wage liens against property as a remedy in certain industries, including mining (Civil Code § 3060), agriculture (Civil Code §§ 3061.5-3061.6), and logging (Civil Code § 3065).
- 4) Requires the Labor Commissioner and his or her deputies and representatives authorized by him or her in writing, upon the filing of a claim therefor by an employee, or an employee representative authorized in writing by an employee, with the Labor Commissioner, to take assignments of, among other things, wage claims and incidental expense accounts and advances and mechanics and other liens of employees. (Labor Code § 96)
- 5) Authorizes the Labor Commissioner, after investigation and upon determination that wages or monetary benefits are due and unpaid to any worker in the State of California, to collect such wages or benefits on behalf of the worker without assignment of such wages or benefits to the Commissioner. (Labor Code § 96.7)

- 6) Authorizes the Labor Commissioner to investigate employee complaints and provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and is required to determine all matters arising under his or her jurisdiction. (Labor Code § 98)
- 7) Authorizes the Labor Commissioner, at the Commissioner's discretion and upon a final order, to place a lien on real property for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located. (Labor Code § 98.2(g))
- 8) Provides that, if any employer or other person acting on behalf of an employer who violates, or causes to be violated, any provision regulating hours and days of work in either statute or regulation shall be subject to a civil penalty. (Labor Code § 558)

This bill authorizes the Labor Commissioner to file a lien on all property of the employer in California for the full amount of any wages and other compensation, penalties, and interest owed to the employee.

Specifically, this bill:

- 1) Allows the Labor Commissioner, after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner or in favor of any employee, to collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. This can only be done with the consent of the aggrieved worker.
- 2) Provides that, any person, upon whom a levy has been noticed for either possessing or owing credits, money, or property belonging to the judgment shall surrender the credits, money, or property to the commissioner or pay to the commissioner the amount of any debt owing the judgment debtor within 10

days of service of the levy. This includes property, money or credits coming into the person's possession within one year of receipt of the notice of levy.

- 3) Provides that any person who complies with the notice of Levy from the Labor Commissioner shall be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the commissioner.
- 4) Provides that any person who fails or refuses to surrender any credits, money, or property or pay any debts owing to the judgment debtor shall be liable in his or her own person or estate to the commissioner in an amount equal to the levy.
- 5) Provides a process for filing a levy with a bank or other financial institution, as defined under federal law.
- 6) Limits the above-discussed provisions to property that IS NOT real property.

#### *Surety Bond Requirements*

- 7) Requires that, if a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a period of 10 days after the time to appeal therefrom has expired, the employer must cease business operations unless the employer has obtained a surety bond. The bond must be filed with the Labor Commissioner and be payable to the people of the State of California for the benefit of any employee damaged by his or her employer's failure to pay wages, including any interest, penalties, and attorney's fees. The surety bond amounts are as follows:
  - a) Fifty thousand dollars (\$50,000) if the unsatisfied portion of the judgment is no more than five thousand dollars (\$5,000).
  - b) One hundred thousand dollars (\$100,000) if the unsatisfied portion of the judgment is more than five thousand dollars (\$5,000) and no more than ten thousand dollars (\$10,000).
  - c) One hundred fifty thousand dollars (\$150,000) if the unsatisfied portion of the judgment is more than ten thousand dollars (\$10,000).
- 8) Allows the employer to provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment instead of filing a surety bond described above.

- 9) Provides that a subsequent employer similar in operation and ownership to an employer with an unsatisfied final judgment for unpaid wages shall be deemed the same employer for purposes of this section if:
  - a) The employees of the subsequent employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors; or
  - b) If the new entity has substantially the same production process or operations, produces substantially the same products or offers substantially the same services, and has substantially the same body of customers.
- 10) Requires that any employer, or other person acting on behalf of an employer, that conducts business in violation of this section shall be subject to a civil fine \$2,500 and that any employer that has previously paid a fine pursuant to this section shall be subject to an additional fine of one hundred dollars (\$100) for each calendar day that the employer conducts business in violation of this section, capped at \$100,000.
- 11) Exempts employers from the requirements of the bond if they employ workers who are covered by a bona fide collective bargaining agreement that expressly provides for wages, hours of work, working conditions, includes a process to resolve disputes concerning nonpayment of wages, and contains a waiver of the bond.
- 12) Provides notice requirements to the Labor Commissioner in the event of the surety bond being cancelled or terminated.
- 13) Provides the following in the event of an employer failing to comply with the bond provisions listed above:
  - a) A stop order prohibiting the use of employee labor by that employer or use of subcontracted labor until the employer complies with bonding requirements. The stop order must become effective immediately, and the employer must pay any worker for their lost time due to the stop order, not exceeding 10 days.
  - b) A lien on the real property and personal property of an employer that for the full amount of any wages, interest, penalties, and attorney's fees claimed to be owed to any employee. This lien would be filed by the Labor

Commissioner. Unless the lien is satisfied or released, the lien must continue until 10 years from the date of its creation.

- 14) Creates notice and filing requirements for the lien provisions discussed above, as well as give the Labor Commissioner the ability to foreclose on the property.

#### *Licensure*

- 15) Prohibits the State Department of Public Health or the State Department of Social Services from allowing a long-term care industry from obtaining or renewing a license if the employer is conducting business in violation of the surety bond requirement. This bill defines a long-term care industry as a skilled nursing facility, intermediate care facility, congregate living facility, hospice facility, adult residential facility, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, continuing care retirement community, home health agency, or home care organization.

#### *Joint and Several Liability*

- 16) Holds individual, partnership, corporation, limited liability company, joint venture, or association jointly and severally liable for liens against real property if the entity provides janitorial, security guard, valet parking, landscaping, gardening services, and long-term care and has been named a defendant and to the extent that the amounts are for services performed under that contract.
- 17) Creates a notice requirement for contractors of janitorial, security guard, valet parking, landscaping, gardening services, and long-term care if there are outstanding wage violations for prospective contracts, but also states that the employer to provide such notices shall not be a defense to the joint and several liability as described above.

#### *Liability for Acting on Behalf of the Employer*

- 18) Allows provide for the Labor Commissioner to hear complaints against a person acting on behalf of an employer who violates, or causes to be violated, any provision regulating hours and days of work in either statute or regulation, and would also make a person acting on behalf of an employer liable for

willfully failing to pay wages, provide a paystub, unpaid minimum wages or overtime, and failing to indemnifying an employee.

### *Enforcement Provisions*

- 19) Creates enforcement provisions for liens and levies discussed above within the Code of Civil Procedure. These provisions would bestow jurisdiction on the superior court and detail the service and hearing requirements for levies and liens filed by the Labor Commissioner.

### **Comments**

- 1) *Wage Theft: A Brief Background:* In 2008, the Ford Foundation sponsored a survey of 4,387 workers in low-wage industries in the three largest U.S. cities: Chicago, Los Angeles and New York City. The report of that survey, titled *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, revealed that 26 percent of workers in the sample were paid less than the legally required minimum wage the prior work week, and 60 percent of these workers were underpaid by more than \$1 per hour. In addition, 76 percent of the respondents who worked overtime in the previous week were not paid the legally required overtime rate by their employers.

The study also notes that minimum wage violation rates vary significantly by industry, and occupation. For example, some industries, such as apparel and textile manufacturing and personal and repair services have minimum wage violation rates that exceed 40 percent, while others, including restaurants, and retail and grocery stores, have rates of 20 to 25 percent. However, the study found that undocumented immigrant women were at the greatest risk of minimum wage violations. The study estimated that the workers in low-wage industries Chicago, Los Angeles, and New York City lose more than \$56.4 million per week due to labor law violations.

A follow-up study by the UCLA Institute for Research and Labor and Employment was published earlier this year, and that study utilized the data from the 2008 survey, but focused specifically on Los Angeles County. This study, titled *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* focused on a survey results of 1,815 workers in Los Angeles County.

This study found similar results to the national survey: almost 30 percent of the workers sampled were paid less than the minimum wage in the prior work week, and 63.3 percent of these workers were underpaid by more than \$1 per hour. Assuming a full-year work schedule, Los Angeles County survey respondents lost an average of \$2,070.00 annually out of total earnings of \$16,536.00. The study estimated that workers in low-wage industries in Los Angeles County lose more than \$26.2 million per week as a result of employment and labor law violations.

Both of the studies make the same public policy recommendations to address these issues, which included strengthening government enforcement of existing employment and labor laws and stiffening the penalties.

- 2) *Wage Theft in California: Collecting Unpaid Wages*: Equally troubling, if not more troubling, than the high rate of wage theft in California is the low rate of collections. According to a 2013 report published by the National Employment Law Project (NELP) and the UCLA Labor Center, only 17% of workers who PREVAILED in their wage claims before the DLSE and won a judgment were able to receive any payment between 2008 and 2011. Of those who did receive payment between 2008 and 2011, workers were able to collect 15% of what was OWED. In short, the vast majority of wage theft victims received nothing, and those that received anything received little of what they were legally due.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, initial administrative costs of approximately \$2.6 million [Labor Enforcement and Compliance Fund (LECF)] and ongoing costs of approximately \$2.2 million (LECF) for the Department of Industrial Relations to implement the provisions of this bill. This bill imposes new duties on the Labor Commissioner, for example the ability to utilize the levy process as a supplemental option beyond placing liens. The bill also expands duties related to surety bonds and the stop order process. Additionally, the bill could also result in unknown but potentially significant court costs associated with additional proceedings regarding wage claims.

**SUPPORT:** (Verified 9/8/15)

Koreatown Immigrant Workers Alliance (co-source)  
Service Employees International Union California (co-source)  
Wage Justice Center (co-source)

9to5

Alliance of Californians for Community Empowerment

Alliance San Diego

Asian Americans Advancing Justice- Los Angeles

Bet Tzedek Legal Services

California Employment Lawyers Association

California Immigrant Policy Center

California Labor Federation, AFL-CIO

California Professional Firefighters

California Rural Legal Assistance

California School Employees Association

Center on Policy Initiatives

Central American Resource Center

Centro Legal de la Raza

Chinese Progressive Association

CHIRLA-Coalition for Humane Immigrant Rights of Los Angeles

CLEAN Car Wash Campaign

Clergy and Laity United for Economic Justice

Coalition For A Safe Environment

Coalition to Abolish Slavery & Trafficking

Community Action Board of Santa Cruz County Inc.

Community Services

Day Labor Center Hayward/ Oakland

Day Worker Center of Mountain View

Dignity Campaign

Dolores Street Community Services

Employment Rights Center

Equal Rights Advocates

Filipino Advocates for Justice

Filipino Migrant Center

Fresno County Democrats

Garment Worker Center

Gender Justice LA

Graton Day Labor Center

Holman United Methodist Church

Housing Long Beach

Human Impact Partners

InnerCity Struggle

Instituto de Educacion Popular del Sur de California

Katharine & George Alexander Community Law Center

Khmer Girls in Action  
LA Black Worker Center  
La Colectiva De Mujeres  
Liberty Hill Foundation  
Los Angeles Alliance for a New Economy  
Los Angeles Fight for \$15 Organizing Committee  
Maintenance Cooperation Trust Fund  
Making Change at Walmart  
Mi Familia Vota  
National Association of Working Women  
National Day Laborer Organizing Network  
National Employment Law Project  
One LA-IAF  
Pacoima Beautiful  
Pilgrim United Church of Christ  
Pilipino Association of Workers and Immigrants - Silicon Valley  
Restaurant Opportunities Center of Los Angeles  
Sacramento Area Congregations Together  
San Diego and Imperial Counties Labor Council, AFL-CIO  
San Francisco Day Labor Program & Women's Collective, a program of Dolores Street  
San Francisco Progressive Workers Alliance  
Santa Clara University  
SoCalCosh, Southern California Coalition for Occupational Safety and Health  
Social Justice Learning Institute  
Street Level Health Project  
T.R.U.S.T. South LA  
The Institute of Popular Education of Southern California  
The Wage Justice Center  
UCLA Labor Center  
Union de Vecinos  
Workplace Justice Initiative  
Worksafe, Inc.

**OPPOSITION:** (Verified 9/8/15)

None Received

**ARGUMENTS IN SUPPORT:** Proponents, noting the 2010 wage theft study discussed earlier, argue that wage theft is a significant problem in California, with LA County's wage theft resulting in over \$1 billion unlawfully failing to reach the

workers who desperately need it. Proponents also note that current wage theft collection rates are less than 20%, meaning the vast majority of scofflaw employers are successful in robbing their workers of their lawful wages. Proponents believe that SB 588 will help combat the high rate of wage theft in California by creating a simple lien process for the Labor Commissioner to use against employers who rob workers of their wages. Proponents, noting Wisconsin's success, argue that wage liens are simple, effective, and a time tested approach to halting wage theft.

ASSEMBLY FLOOR: 58-18, 9/08/15

AYES: Achadjian, Alejo, Baker, Bloom, Bonilla, Bonta, Brown, Burke, Calderon, Campos, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Dodd, Eggman, Frazier, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Hadley, Roger Hernández, Holden, Irwin, Jones-Sawyer, Lackey, Levine, Linder, Lopez, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, O'Donnell, Perea, Quirk, Rendon, Ridley-Thomas, Rodriguez, Salas, Santiago, Mark Stone, Thurmond, Ting, Weber, Williams, Wood, Atkins

NOES: Travis Allen, Bigelow, Brough, Dahle, Beth Gaines, Gallagher, Grove, Harper, Jones, Mathis, Melendez, Obernolte, Olsen, Patterson, Steinorth, Wagner, Waldron, Wilk

NO VOTE RECORDED: Chang, Chávez, Kim, Mayes

Prepared by: Gideon L. Baum / L. & I.R. / (916) 651-1556  
9/8/15 19:01:26

\*\*\*\* END \*\*\*\*