

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 758

(Senators Ramirez and Kelley)

Judicial Proceedings and Finance

Economic Matters

Labor and Employment - Lien for Unpaid Wages - Establishment

This bill allows an employee to establish a lien for unpaid wages, not including commissions, against an employer. The Commissioner of Labor and Industry may seek to establish a lien on behalf of an employee, and the commissioner is required to adopt implementing regulations that establish content of the notice, complaint, and wage lien statement.

Fiscal Summary

State Effect: General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$56,000 in FY 2014 for a contractual assistant Attorney General. It is likely that enforcement can be handled with existing resources by DLLR, to the extent that most liens are filed directly by affected employees. The bill does not apply to the State as an employer.

| (in dollars) | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|----------------|------------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 56,200 | 0 | 0 | 0 | 0 |
| Net Effect | (\$56,200) | \$0 | \$0 | \$0 | \$0 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The circuit courts can likely handle any increase in litigation with existing resources. The bill does not apply to local governments as employers.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: An employee must provide written notice to an employer regarding the wages claimed and the property sought for a lien for unpaid wages. An employer may dispute a lien for unpaid wages by filing a complaint in the circuit court within 30 days after the notice is served. The complaint must include:

- the name of the employer that owes the employee the wages and the name of the employee to whom the wages are owed;
- a copy of the notice to establish a lien for unpaid wages served on the employer;
- a statement of any defense to the lien for unpaid wages; and
- an affidavit containing a statement of facts that support any defenses raised.

The employer or employee may request an evidentiary hearing. If an employer files a complaint, the circuit court must determine whether to issue an order establishing a lien for unpaid wages within 45 days of the complaint being filed, based on a “preponderance of the evidence” evidentiary standard in which the employee has the burden of proof to establish the lien. If a circuit court issues an order to establish a lien for unpaid wages, the employee is entitled to court costs and attorney’s fees, but if the court determines the case to be frivolous or made in bad faith, then the employer is entitled to court costs and attorney’s fees.

A lien for unpaid wages is established if no complaint is filed within 30 days after a notice is served or after a circuit court issues an order to establish a lien for unpaid wages. A wage lien for real property may be recorded by filing a wage lien statement with the clerk of the circuit court where the property is located, and a wage lien for personal property is recorded by filing a wage lien statement in the same manner as filing a financing statement. If an employee does not record a wage lien statement within 180 days after the lien is established, the lien is extinguished without prejudice. A lien is released when a payment is made or a bond is filed for the amount of wages and damages stated in the wage lien statement. A lien for unpaid wages is considered a secured claim that has priority from the date of the court order establishing the lien or, if no complaint was filed, from the date that the employee filed the wage lien statement. 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 the date of recordation of a wage lien statement.

A lien for unpaid wages is enforced in the same manner as any other judgment under the State. An action to enforce an order for a lien for unpaid wages must be brought within 12 years following recordation of the lien for unpaid wages. A contract between the employer and employee may not waive the right to establish a lien for unpaid wages,

even if payment of wages to the employee is contingent on payment from a property owner or third party to the employer, and a contract is void if it does so.

An employee is not prevented from exercising any right or seeking any remedy to which the employee is otherwise entitled.

Current Law:

Wage Payment and Collection Law

Maryland's Wage Payment and Collection Law regulates the payment of wages by employers in the State. The law requires employers to pay workers the wage promised; establish regular paydays; pay wages when due; pay employees in a specified manner; pay employees at least once every two weeks, with exceptions; furnish employees with a statement of gross earnings; advise employees of their rate of pay and designated payday; and pay employees all wages due on termination of employment. DLLR's Division of Labor and Industry enforces the State's Wage Payment and Collection Law.

Whenever it is determined that the Wage Payment and Collection Law has been violated, the commissioner may (1) try to resolve the violation informally through mediation; (2) ask the Office of the Attorney General (OAG) to bring an action on behalf of the employee; or (3) bring an action on behalf of the employee in the county where the violation allegedly occurred.

In wage complaints amounting to \$3,000 or less, the Commissioner of Labor and Industry may review and investigate the complaint and may either issue an order requiring the employer to pay, or dismiss, the claim. The order to pay wages may include a requirement that the employer pay an additional amount equal to 5% annual interest calculated from the date when the wages were to be paid.

Within 30 days of receiving the order to pay, the employer may request a *de novo* administrative hearing before the Office of Administrative Hearings to dispute the order to pay. If no hearing is requested, the commissioner's finding becomes a final order. If a petition for review by the circuit court is not filed by the employer within 30 days of the issuance of a final order, the commissioner may proceed in District Court to enforce payment of the order.

For wage complaints over \$3,000, employees entitled to wages from an employer may – after two weeks have elapsed – bring an action against the employer in a court of competent jurisdiction to recover the unpaid wages. If a court determines that an employer withheld an employee's wage unlawfully, the court may award the employee up to three times the amount of wages owed, counsel fees, and other costs. Employers who violate the Wage Payment and Collection Law are guilty of a misdemeanor and may be fined up to \$1,000.

Unless otherwise specified, the definition of employer in the State’s Wage Payment and Collection Law does not include units of government.

Maryland Contract Lien Act (MCLA)

Under MCLA, a person seeking to create a lien as a result of a breach of contract must give written notice, within two years of the breach, to the person whose property is subject to the lien. Within 30 days after service of the notice, the person served may file a complaint in circuit court to determine whether probable cause exists to establish a lien. If the court orders a lien or the property owner fails to file a complaint, the person seeking to create a lien may file a statement of lien in the land records.

A lien may be enforced and foreclosed by the lien holder in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on property containing a power of sale or an asset to a decree. An action to foreclose a lien must be brought within 12 years following recordation of the lien statement.

Background: The Division of Labor and Industry received 887 wage payment claims from employees (or former employees) alleging that an employer failed to pay their earned wages in fiscal 2012. Often the disputes arise from a final paycheck or compensation for vacation pay. The division reviews each complaint and attempts to contact the employer to determine the validity of the claim. If the employer either does not respond or admits owing the wages but claims insolvency, then the division refers the matter to OAG to obtain a civil judgment. Most cases are resolved informally, but the commissioner issued 89 wage orders under his authority for small claims; of those, 79 were then referred to the Central Collection Unit due to nonpayment.

State Expenditures: General fund expenditures by DLLR increase by \$56,195 in fiscal 2014 only, which accounts for the bill’s October 1, 2013 effective date. This estimate reflects the cost of hiring one contractual assistant Attorney General for nine months to carry out the bill’s requirements of developing regulations to establish the content of a notice, complaint, and wage lien statement and to implement provisions of the bill. It includes a salary, fringe benefits, and operating expenses. The position terminates in fiscal 2015.

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|---|-----------------|
| Position | 1 |
| Contractual Salary and Fringe Benefits | \$51,149 |
| Operating Expenses | <u>5,046</u> |
| Total FY 2014 State Expenditures | \$56,195 |

Additional Information

Prior Introductions: None.

Cross File: HB 1130 (Delegate Barnes) - Economic Matters.

Information Source(s): State Department of Assessments and Taxation; State Board of Contract Appeals; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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