

HB2351



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2351

by Rep. Barbara Flynn Currie

SYNOPSIS AS INTRODUCED:

New Act

Creates the Wage Lien Act. Provides that a lien exists on an employer's property for the amount of unpaid wages owed to an employee. Defines terms and includes provisions concerning creation of the lien; exemptions; notice; limitations; recording of the lien; enforcement; other claims on the employer's property; successor obligations; and construction.

LRB100 10256 JLS 20440 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Wage
5 Lien Act.

6 Section 5. Definitions. As used in this Act:

7 "Claimant" means an individual attempting to establish a
8 wage lien.

9 "Department" means the Illinois Department of Labor.

10 "Director" means the Director of the Illinois Department of
11 Labor.

12 "Employee" includes any individual permitted to work by an
13 employer in an occupation, but does not include any individual:

14 (1) who has been and will continue to be free from
15 control and direction over the performance of his or her
16 work, both under his or her contract of service with his or
17 her employer and in fact; and

18 (2) who performs work which is either outside the usual
19 course of business or is performed outside all of the
20 places of business or is performed outside all of the
21 places of business of the employer unless the employer is
22 in the business of contracting with third parties for the
23 placement of employees; and

1 (3) who is in an independently established trade,
2 occupation, profession, or business.

3 "Employer" includes any individual, partnership,
4 association, corporation, limited liability company, business
5 trust, and employment and labor placement agency where wage
6 payments are made directly or indirectly by the agency or
7 business for work undertaken by employees under hire to a third
8 party, or any person or group of persons acting directly or
9 indirectly in the interest of an employer in relation to an
10 employee, for which one or more persons is gainfully employed.

11 "Employer payments" means all earned wages by direct
12 employees or employees working under hire of a third party
13 working for the employer.

14 "Wage claim" means an employee's claim with the Illinois
15 Department of Labor against an employer for wages, penalties,
16 or damages provided by law to employees with a claim for unpaid
17 wages.

18 "Wages" means any compensation owed an employee by an
19 employer for:

20 (I) labor and services rendered by an employee; and

21 (II) vacation pay, holiday pay, sick leave pay,
22 parental leave pay, or severance pay pursuant to an
23 employment contract or agreement.

24 Section 10. Wage lien.

25 (a) An employee has a lien on all property of the employer

1 in this State, including after-acquired property, for the full
2 amount of any wages, penalties, and interest owed to the
3 employee.

4 (b) If the employer is a natural person, a lien under this
5 Section applies to the employer's principal residence.

6 (c) The amount of the lien under this Section includes
7 unpaid wages and other compensation required by law, penalties
8 available under law, including liquidated damages, interest at
9 the same rate as for prejudgment interest in this State, and
10 the costs of filing and service of the lien. The amount of
11 compensation that may be claimed as a lien under this Section
12 includes all wages due to the employee either by agreement or
13 as required by law, including wages and compensation required
14 to be paid by an employer to third persons or entities that
15 would qualify as employer payments.

16 (d) An employee's lien upon personal property is limited to
17 property subject to a security interest under the Uniform
18 Commercial Code pursuant to the filing of a financing statement
19 with the Secretary of State.

20 (e) Any action authorized or required by this Act with
21 regard to an employee may also be undertaken by any person or
22 entity, including any governmental agency, to which a portion
23 of an employer's compensation is payable, that has standing
24 under applicable law to maintain a direct legal action on
25 behalf of the employee to collect any portion of compensation
26 owed to the employee, or that is authorized by the employee to

1 act on the employee's behalf.

2 (f) No lien described in this Section is defeated because
3 of an error or overcharging on the part of any person claiming
4 a lien under this Act.

5 (g) A lien pursuant to this Section is in addition to any
6 other lien rights held by the employee and shall not be
7 construed to limit those rights.

8 Section 15. Surety. The lien described in this Act shall
9 not attach if the employer has obtained a surety bond or
10 insurance that provides for payment of the wages and other
11 compensation, penalties, and interest claimed by the employee
12 and is in an amount that is adequate to fully satisfy the
13 employee's claim. If the surety bond or insurance contract is
14 inadequate to cover the entire amount of the employee's claim,
15 the lien is limited to the amount of the claim that exceeds the
16 bond or insurance coverage. Within 30 days of being provided
17 with proof of a valid surety bond or insurance contract that
18 applies to the claim, the employee shall file a release of any
19 lien recorded or a notice reducing the lien to the amount that
20 exceeds the bond or insurance coverage.

21 Section 20. Notice.

22 (a) At least 5 days prior to recording a notice of lien
23 with a county recorder pursuant to Section 30 or filing a
24 notice of lien with the Secretary of State pursuant to Section

1 35, the employee shall provide the owner or reputed owner of
2 the property against which the lien is to be recorded
3 preliminary written notice of the intent to record a notice of
4 lien.

5 (b) Notice under this Section includes the following:

6 (1) All of the information required by subsection (b)
7 of Section 30 in the case of a lien on real property or
8 subsection (b) of Section 35 in the case of a lien on
9 personal property, to the extent known to the person giving
10 notice.

11 (2) The following statement in boldface type: "NOTICE
12 TO THE EMPLOYER. If the claimant is not paid in full for
13 work performed in your employ, a lien may be placed on your
14 property after a period of 5 calendar days after this
15 notice was served. Foreclosure of the lien may lead to loss
16 of all or part of your property. You may wish to protect
17 yourself against this loss by either: (i) ensuring that the
18 claimant is paid in full for work performed in your employ;
19 or (ii) taking any other appropriate actions to resolve the
20 matter under the circumstances. This notice is required by
21 law to be served by the undersigned as a statement of your
22 legal rights."

23 (c) Notice is not invalid by reason of any variance from
24 the requirements of this Section if the notice is sufficient to
25 substantially inform the person given notice of the information
26 required by this Section and other information required in the

1 notice.

2 (d) Service of the notice required by this Section shall be
3 by the means described in subsection (c) of Section 30 in the
4 case of a lien on real property or subsection (c) of Section 35
5 in the case of a lien on personal property and shall be deemed
6 to have been given 3 business days after the mailing of the
7 notice.

8 Section 25. Limitations.

9 (a) A lien described in this Act shall be permanently
10 extinguished unless a notice of lien in accordance with Section
11 30 or 35 is recorded or filed and is served upon the employer
12 within 3 years of the date that the employee ceased working for
13 the employer or the violation occurred. A lien described in
14 this Act shall also be permanently extinguished as to property
15 that is transferred or sold by the employer, unless a notice of
16 lien was recorded or filed before the transfer or sale in
17 accordance with Section 30 or 35.

18 (b) The employee shall commence an action to enforce the
19 lien and prove the amount owed within 180 days of the date of
20 filing or recording of the notice of lien. If the employee does
21 not commence an action to enforce the lien within that time,
22 the lien shall be permanently extinguished and is
23 unenforceable. The employee and the owner of the property
24 subject to the lien may agree to extend the time for enforcing
25 the lien in writing. An extension and its terms must be

1 recorded prior to the expiration of the time for commencing an
2 action to enforce the lien. If the employee does not commence
3 an action to enforce the lien within the extended time period,
4 the lien shall be permanently extinguished and is
5 unenforceable.

6 (c) If the lien has been extinguished pursuant to
7 subsection (a) or (b), upon demand and 15 days' notice by the
8 employer or any affected party, the employee shall record or
9 file a release of the lien. If an employee fails to file a
10 release of the lien after the proper notice has been mailed to
11 the employee's address as indicated on the notice of the lien,
12 the employer or affected party may petition the court for an
13 order releasing the lien.

14 Section 30. Real property.

15 (a) With regard to a lien on real property under this Act,
16 the employee or the Department shall record a notice of lien
17 with the county recorder in the county where the real property
18 is located. The employee or the Department is responsible for
19 paying any fees associated with the recording of a notice of
20 lien. The cost of recording a notice of lien shall be added to
21 the amount of the lien.

22 (b) The notice of lien shall be certified as provided in
23 Section 1-109 of the Code of Civil Procedure and include all of
24 the following:

25 (1) A statement of the employee's demand for payment of

1 the wages and other compensation, penalties, and interest.
2 The statement shall specify the amount owed to the
3 employee, and if the amount is estimated, shall provide an
4 explanation for the basis of the estimate.

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

7 (3) The name of the person or entity by whom the
8 employee was employed.

9 (4) The employee's mailing address.

10 (c) The employee or Department shall serve the notice of
11 lien on the employer owner of the real property subject to the
12 lien by registered mail, certified mail, or first-class mail,
13 evidenced by a certificate of mailing, postage prepaid,
14 addressed to the employer at the employer's residence or place
15 of business.

16 (d) The lien attaches to all real property owned by the
17 employer at the time of the filing of the notice of lien, or
18 that is subsequently acquired by the employer, that is located
19 in any county in which the notice is recorded, regardless of
20 whether the property is identified in the notice of lien.

21 Section 35. Personal property.

22 (a) With regard to a lien on personal property under this
23 Act, the employee or the Department shall file a notice of lien
24 with the Secretary of State. Except as otherwise provided in
25 this Act, the manner, form, and place of filing shall be as

1 described in the Uniform Commercial Code. The notice of the
2 lien shall be placed in the same file as financing statements
3 pursuant to Section 9-522 of the Uniform Commercial Code. The
4 employee or the Department is responsible for paying any fees
5 associated with the recording of a notice of lien. The cost of
6 recording a notice of lien shall be added to the amount of the
7 lien.

8 (b) This notice shall be certified as provided in Section
9 1-109 of the Code of Civil Procedure and shall state the
10 following:

11 (1) A statement of the employee's demand for payment of
12 the wages and other compensation, penalties, and interest.
13 The statement shall specify the amount owed to the
14 employee, and if the amount is estimated, shall provide an
15 explanation for the basis of the estimate.

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

18 (3) The name of the person by whom the employee was
19 employed.

20 (4) The employee's mailing address.

21 (5) To the extent known, a description of the property
22 on which the lien exists.

23 (c) The employee or Department shall serve the notice of
24 lien on the employer of the property subject to the lien by
25 registered mail, certified mail or first-class mail, as
26 evidenced by a certificate of mailing, postage prepaid,

1 addressed to the employer at the employer's residence or place
2 of business.

3 (d) Regardless of whether the property is specifically
4 described in the notice, the lien attaches to all personal
5 property that is owned by the employer at the time of the
6 filing of the notice of lien, or that is subsequently acquired
7 by the employer, that can be made subject to a security
8 interest under the Uniform Commercial Code.

9 Section 40. Enforcement of lien.

10 (a) In order to enforce a lien under this Act, the employee
11 shall demonstrate in a civil action, in an administrative
12 proceeding under Section 12 of the Minimum Wage Law, Section 11
13 of the Illinois Wage Payment and Collection Act, Section 11 of
14 the Prevailing Wage Act, Section 55 of the Day and Temporary
15 Labor Services Act, or Section 25 of the Employee
16 Classification Act, or as otherwise provided by law, that he or
17 she is owed wages or other compensation and any related
18 penalties and interest.

19 (b) If the employee chooses to pursue the wage claim in a
20 civil action, if a notice of lien is recorded or filed under
21 Section 30 or 35 prior to an administrative hearing, the action
22 shall also be deemed an action to enforce the lien and
23 foreclose upon any property subject to the recorded lien. The
24 employee is entitled to court costs and reasonable attorney's
25 fees for filing a successful action to enforce a lien pursuant

1 to this Section. In the judgment resulting from the action, the
2 court may order the sale at a sheriff's auction or the transfer
3 to the plaintiff of title or possession of any property subject
4 to the lien. Regardless of whether the court makes an order as
5 part of the judgment, any property subject to the lien may be
6 foreclosed upon at any point after a judgment for wages is
7 issued.

8 (c) If the employee chooses to pursue the wage claim in an
9 administrative proceeding before the Department of Labor
10 pursuant to Section 12 of the Minimum Wage Law, Section 11 of
11 the Illinois Wage Payment and Collection Act, Section 11 of the
12 Prevailing Wage Act, Section 55 of the Day and Temporary Labor
13 Services Act, or Section 25 of the Employee Classification Act,
14 if no lien has been recorded at the time the administrative
15 claim is filed, the Director may provide the notice and record
16 the lien on behalf of the employee. If a notice of lien is
17 recorded or filed under Section 30 or 35 prior to an
18 administrative hearing, the action shall also be deemed an
19 action to enforce the lien.

20 (d) An administrative decision under Section 12 of the
21 Minimum Wage Law, Section 11 of the Illinois Wage Payment and
22 Collection Act, Section 11 of the Prevailing Wage Act, Section
23 55 of the Day and Temporary Labor Services Act, or Section 25
24 of the Employee Classification Act is a binding and final
25 decision as to the underlying wage claim. The decision is also
26 binding and final as to the enforcement of the lien and any

1 property subject to the lien may be foreclosed upon in court,
2 either by the employee or the Director, at any point after an
3 administrative decision for wages is issued.

4 (e) If judgment is entered against the employee in the
5 action to enforce the lien or if the case is dismissed with
6 prejudice, the lien shall be extinguished. The judgment shall
7 include the date the notice of lien was recorded and, to the
8 extent applicable, the county in which it was recorded, the
9 book and page or series number of the place in the legal
10 records in which the lien was recorded, and a legal description
11 of the property to which the lien is attached. The judgment may
12 be appealed by filing a notice of appeal on or before 30 days
13 after the entry of judgment. If an appeal is filed, the lien
14 shall continue in force until all issues on the appeal have
15 been decided. If the period for appeal runs without an appeal
16 having being filed, or if the appeal fails, the judgment
17 entered under this Section shall be equivalent to cancellation
18 of the lien and its removal from the record. A judgment entered
19 pursuant to this subsection is a recordable instrument. Upon
20 recordation of a certified copy of the judgment, the property
21 described in the judgment is released from the lien.
22 Alternatively, if the lien is extinguished, upon demand and 15
23 days' notice by the property owner, the employee shall file a
24 release of the lien. If an employee refuses to file a release
25 of the lien after proper notice, an employer or property owner
26 may petition the court for an order to file a release of the

1 lien.

2 (g) Any number of claims to enforce employee liens against
3 the same employer may be joined in a single proceeding. If the
4 proceeds of the sale of the property subject to the lien are
5 insufficient to pay all the claimants, regardless of whether
6 the claims have been joined together, the court shall order the
7 claimants to be paid in proportion to the amount due each
8 claimant.

9 Section 45. Other claims; exceptions.

10 (a) After an employee has filed a civil action, the
11 employee shall have a lien upon all property of the employer,
12 real or personal, including after-acquired property, located
13 in this State for the full amount of any wage claim. The
14 employee also has a lien upon the real property of the
15 individual employer or employers.

16 (b) After an employee has filed a wage claim with the
17 Department, the employee or the Department shall have a lien
18 upon all property of the employer, real or personal, including
19 after-acquired property, located in this State for the full
20 amount of any wage claim. The employee or the Department shall
21 also have a lien upon the real property of the individual
22 employer.

23 Section 50. Other claims. A lien under this Act takes
24 precedence over all other debts, judgments, decrees, liens, or

1 mortgages against the employer, regardless of whether those
2 other debts, judgments, decrees, liens, or mortgages originate
3 before or after the lien under takes effect.

4 Section 55. Successor obligations. Whenever any employer
5 quits, sells, exchanges, or otherwise disposes of the
6 employer's business or stock of goods, any person who becomes a
7 successor to the business becomes liable for the full amount of
8 any of any recorded or filed notice of lien under this Act if,
9 at the time of the conveyance of the business, the successor
10 has: (1) actual knowledge of the fact and amount of the
11 recorded or filed notice of lien, or (2) a prompt, reasonable,
12 and effective means of accessing and verifying the fact and
13 amount of the recorded or filed notice of lien. If the amount
14 of the recorded or filed notice of lien is not paid in full by
15 the employer within 10 days of the date of the sale, exchange,
16 or disposal, the successor is liable for the payment of the
17 full amount of the lien.

18 Section 60. Construction. This Act is and shall be
19 liberally construed as a remedial Act.