



Rep. Barbara Flynn Currie

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LRB099 05150 JLS 45987 a

1 AMENDMENT TO HOUSE BILL 1290

2 AMENDMENT NO. _____. Amend House Bill 1290 by replacing
3 everything after the enacting clause with the following:

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

1 her employer and in fact; and

2 (2) who performs work which is either outside the usual
3 course of business or is performed outside all of the
4 places of business or is performed outside all of the
5 places of business of the employer unless the employer is
6 in the business of contracting with third parties for the
7 placement of employees; and

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

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

18 "Employer payments" means all earned wages by direct
19 employees or employees working under hire of a third party
20 working for the employer.

21 "Wage claim" means an employee's claim with the Illinois
22 Department of Labor against an employer for wages, penalties,
23 or damages provided by law to employees with a claim for unpaid
24 wages.

25 "Wages" means any compensation owed an employee by an
26 employer for:

1 (I) labor and services rendered by an employee; and
2 (II) vacation pay, holiday pay, sick leave pay,
3 parental leave pay, or severance pay pursuant to an
4 employment contract or agreement.

5 Section 10. Wage lien.

6 (a) An employee has a lien on all property of the employer
7 in this State, including after-acquired property, for the full
8 amount of any wages, penalties, and interest owed to the
9 employee.

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

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

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

1 (e) Any action authorized or required by this Act with
2 regard to an employee may also be undertaken by any person or
3 entity, including any governmental agency, to which a portion
4 of an employer's compensation is payable, that has standing
5 under applicable law to maintain a direct legal action on
6 behalf of the employee to collect any portion of compensation
7 owed to the employee, or that is authorized by the employee to
8 act on the employee's behalf.

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

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

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

1 lien recorded or a notice reducing the lien to the amount that
2 exceeds the bond or insurance coverage.

3 Section 20. Notice.

4 (a) At least 5 days prior to recording a notice of lien
5 with a county recorder pursuant to Section 30 or filing a
6 notice of lien with the Secretary of State pursuant to Section
7 35, the employee shall provide the owner or reputed owner of
8 the property against which the lien is to be recorded
9 preliminary written notice of the intent to record a notice of
10 lien.

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

12 (1) All of the information required by subsection (b)
13 of Section 30 in the case of a lien on real property or
14 subsection (b) of Section 35 in the case of a lien on
15 personal property, to the extent known to the person giving
16 notice.

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

1 matter under the circumstances. This notice is required by
2 law to be served by the undersigned as a statement of your
3 legal rights."

4 (c) Notice is not invalid by reason of any variance from
5 the requirements of this Section if the notice is sufficient to
6 substantially inform the person given notice of the information
7 required by this Section and other information required in the
8 notice.

9 (d) Service of the notice required by this Section shall be
10 by the means described in subsection (c) of Section 30 in the
11 case of a lien on real property or subsection (c) of Section 35
12 in the case of a lien on personal property and shall be deemed
13 to have been given 3 business days after the mailing of the
14 notice.

15 Section 25. Limitations.

16 (a) A lien described in this Act shall be permanently
17 extinguished unless a notice of lien in accordance with Section
18 30 or 35 is recorded or filed and is served upon the employer
19 within 3 years of the date that the employee ceased working for
20 the employer or the violation occurred. A lien described in
21 this Act shall also be permanently extinguished as to property
22 that is transferred or sold by the employer, unless a notice of
23 lien was recorded or filed before the transfer or sale in
24 accordance with Section 30 or 35.

25 (b) The employee shall commence an action to enforce the

1 lien and prove the amount owed within 180 days of the date of
2 filing or recording of the notice of lien. If the employee does
3 not commence an action to enforce the lien within that time,
4 the lien shall be permanently extinguished and is
5 unenforceable. The employee and the owner of the property
6 subject to the lien may agree to extend the time for enforcing
7 the lien in writing. An extension and its terms must be
8 recorded prior to the expiration of the time for commencing an
9 action to enforce the lien. If the employee does not commence
10 an action to enforce the lien within the extended time period,
11 the lien shall be permanently extinguished and is
12 unenforceable.

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

21 Section 30. Real property.

22 (a) With regard to a lien on real property under this Act,
23 the employee or the Department shall record a notice of lien
24 with the county recorder in the county where the real property
25 is located. The employee or the Department is responsible for

1 paying any fees associated with the recording of a notice of
2 lien. The cost of recording a notice of lien shall be added to
3 the amount of the lien.

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

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

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

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

16 (4) The employee's mailing address.

17 (c) The employee or Department shall serve the notice of
18 lien on the employer owner of the real property subject to the
19 lien by registered mail, certified mail, or first-class mail,
20 evidenced by a certificate of mailing, postage prepaid,
21 addressed to the employer at the employer's residence or place
22 of business.

23 (d) The lien attaches to all real property owned by the
24 employer at the time of the filing of the notice of lien, or
25 that is subsequently acquired by the employer, that is located
26 in any county in which the notice is recorded, regardless of

1 whether the property is identified in the notice of lien.

2 Section 35. Personal property.

3 (a) With regard to a lien on personal property under this
4 Act, the employee or the Department shall file a notice of lien
5 with the Secretary of State. Except as otherwise provided in
6 this Act, the manner, form, and place of filing shall be as
7 described in the Uniform Commercial Code. The notice of the
8 lien shall be placed in the same file as financing statements
9 pursuant to Section 9-5222 of the Uniform Commercial Code. The
10 employee or the Department is responsible for paying any fees
11 associated with the recording of a notice of lien. The cost of
12 recording a notice of lien shall be added to the amount of the
13 lien.

14 (b) This notice shall be certified as provided in Section
15 1-109 of the Code of Civil Procedure and shall state the
16 following:

17 (1) A statement of the employee's demand for payment of
18 the wages and other compensation, penalties, and interest.
19 The statement shall specify the amount owed to the
20 employee, and if the amount is estimated, shall provide an
21 explanation for the basis of the estimate.

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

24 (3) The name of the person by whom the employee was
25 employed.

1 (4) The employee's mailing address.

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

4 (c) The employee or Department shall serve the notice of
5 lien on the employer of the property subject to the lien by
6 registered mail, certified mail or first-class mail, as
7 evidenced by a certificate of mailing, postage prepaid,
8 addressed to the employer at the employer's residence or place
9 of business.

10 (d) Regardless of whether the property is specifically
11 described in the notice, the lien attaches to all personal
12 property that is owned by the employer at the time of the
13 filing of the notice of lien, or that is subsequently acquired
14 by the employer, that can be made subject to a security
15 interest under the Uniform Commercial Code.

16 Section 40. Enforcement of lien.

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

1 (b) If the employee chooses to pursue the wage claim in a
2 civil action, if a notice of lien is recorded or filed under
3 Section 30 or 35 prior to an administrative hearing, the action
4 shall also be deemed an action to enforce the lien and
5 foreclose upon any property subject to the recorded lien. The
6 employee is entitled to court costs and reasonable attorney's
7 fees for filing a successful action to enforce a lien pursuant
8 to this Section. In the judgment resulting from the action, the
9 court may order the sale at a sheriff's auction or the transfer
10 to the plaintiff of title or possession of any property subject
11 to the lien. Regardless of whether the court makes an order as
12 part of the judgment, any property subject to the lien may be
13 foreclosed upon at any point after a judgment for wages is
14 issued.

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

1 (d) An administrative decision under Section 12 of the
2 Minimum Wage Law, Section 11 of the Illinois Wage Payment and
3 Collection Act, Section 11 of the Prevailing Wage Act, Section
4 55 of the Day and Temporary Labor Services Act, or Section 25
5 of the Employee Classification Act is a binding and final
6 decision as to the underlying wage claim. The decision is also
7 binding and final as to the enforcement of the lien and any
8 property subject to the lien may be foreclosed upon in court,
9 either by the employee or the Director, at any point after an
10 administrative decision for wages is issued.

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

1 recordation of a certified copy of the judgment, the property
2 described in the judgment is released from the lien.
3 Alternatively, if the lien is extinguished, upon demand and 15
4 days' notice by the property owner, the employee shall file a
5 release of the lien. If an employee refuses to file a release
6 of the lien after proper notice, an employer or property owner
7 may petition the court for an order to file a release of the
8 lien.

9 (g) Any number of claims to enforce employee liens against
10 the same employer may be joined in a single proceeding. If the
11 proceeds of the sale of the property subject to the lien are
12 insufficient to pay all the claimants, regardless of whether
13 the claims have been joined together, the court shall order the
14 claimants to be paid in proportion to the amount due each
15 claimant.

16 Section 45. Other claims; exceptions.

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

23 (b) After an employee has filed a wage claim with the
24 Department, the employee or the Department shall have a lien
25 upon all property of the employer, real or personal, including

1 after-acquired property, located in this State for the full
2 amount of any wage claim. The employee or the Department shall
3 also have a lien upon the real property of the individual
4 employer.

5 Section 50. Other claims. A lien under this Act takes
6 precedence over all other debts, judgments, decrees, liens, or
7 mortgages against the employer, regardless of whether those
8 other debts, judgments, decrees, liens, or mortgages originate
9 before or after the lien under takes effect.

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

1 Section 60. Construction. This Act is and shall be
2 liberally construed as a remedial Act."