



State of Wisconsin
2009 - 2010 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 2**

April 20, 2010 – Offered by COMMITTEE ON LABOR.

1 **AN ACT** *to amend* 109.03 (5), 109.03 (6), 109.09 (1), 109.09 (2) (a), 109.09 (2) (b)
2 1., 109.09 (2) (b) 2., 109.09 (2) (b) 3., 109.09 (2) (c) 1m., 109.09 (2) (c) 2., 109.09
3 (2) (c) 3. and 109.11 (2) (a); and *to create* 109.09 (2) (c) 1r. and 109.09 (2) (d) of
4 the statutes; **relating to:** the filing of a wage claim or the bringing of a wage
5 claim action by a collective bargaining representative on behalf of an employee
6 and the priority of a wage claim lien over a prior lien of a commercial lending
7 institution and over the rights of a purchaser of any property of the employer.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Workforce Development (DWD) must investigate and attempt to adjust any claim by an employee that his or her employer has not paid the employee any wages that are owed to the employee (wage claim). Currently, DWD or an employee who brings a wage claim action has a lien upon all property of the employer, real and personal, located in this state for the full amount of any wages owed to the employee (wage claim lien). Currently, a wage claim lien takes precedence over all other debts, judgments, decrees, liens, or mortgages against an employer, except for a lien of a commercial lending institution that

originates before the wage claim lien takes effect (prior lien), regardless of whether those other debts, judgments, decrees, liens, or mortgages originated before or after the wage claim lien takes effect. Current law provides, however, that a wage claim lien takes precedence over a prior lien of a commercial lending institution as to the first \$3,000 of unpaid wages covered under the wage claim lien that are earned within the six months preceding the filing of the wage claim with DWD or the commencement of an action by the employee to recover the wages due.

This substitute amendment increases that \$3,000 cap to \$4,500, eliminates that six-month time limit, and applies that cap to the aggregate of all prior liens of commercial lending institutions so that under the substitute amendment the first \$4,500 of unpaid wages covered under a wage claim lien *that are earned at any time* takes precedence over the aggregate of all prior liens of commercial lending institutions.

The substitute amendment also requires the secretary of workforce development (secretary), at least once every five years or more frequently if DWD finds reasonable cause to believe that the cap should be adjusted, to appoint a wage claim lien review committee (committee) for the purpose of studying the need for an adjustment to the cap and making recommendations to the legislature for any adjustments to the cap. In conducting that study and making those recommendations, the committee may consider any changes in the consumer price index and the effect that an adjustment to the cap might have on the economy of the state. The committee must submit a report of its recommendations, together with an explanation for those recommendations and any proposed legislation that may be necessary to implement those recommendations, to the secretary, the governor, the speaker of the assembly, the senate majority leader, and the minority leaders of each house of the legislature and to the standing committees of each house of the the legislature that are concerned with labor issues and issues affecting financial institutions. Those standing committees must then review and conduct public hearings on those recommendations.

In addition, the substitute amendment provides that a wage claim lien takes precedence over the rights of any person that purchases any property of the employer after the lien is created, including any bona fide purchaser. This change reverses *In Re Globe Building Materials, Inc.*, 463 F. 3d 631 (7th Cir. 2006), which held that the trustee in bankruptcy could avoid a wage claim lien because under the current wage claim lien law a wage claim does not expressly take precedence over the rights of a bona fide purchaser under the federal bankruptcy law.

Finally, the substitute amendment permits a recognized or certified collective bargaining representative of an employee to file a wage claim with DWD, or to bring a wage claim action in court, on behalf of an employee and grants a wage claim lien to a collective bargaining representative that brings a wage claim action.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 109.03 (5) of the statutes is amended to read:

2 109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by
3 special contract with employees or by any other means secure exemption from this
4 section. Each employee shall have a right of action against any employer for the full
5 amount of the employee's wages due on each regular pay day as provided in this
6 section and for increased wages as provided in s. 109.11 (2), in any court of competent
7 jurisdiction. An employee may bring an action under this subsection on his or her
8 own behalf or the recognized or certified collective bargaining representative of the
9 employee may bring an action against an employer under this subsection on behalf
10 of the employee. An employee or collective bargaining representative may bring an
11 action against an employer under this subsection without first filing a wage claim
12 with the department under s. 109.09 (1). An employee who or collective bargaining
13 representative that brings an action against an employer under this subsection shall
14 have a lien upon all property of the employer, real or personal, located in this state
15 as described in s. 109.09 (2).

16 **SECTION 2.** 109.03 (6) of the statutes is amended to read:

17 109.03 (6) WAGE CLAIM. In an action by an employee, a collective bargaining
18 representative, or the department against the employer on a wage claim, no security
19 for payment of costs is required. In any such proceeding the court may allow the
20 prevailing party, in addition to all other costs, a reasonable sum for expenses. No
21 person other than an employee, a collective bargaining representative, or the
22 department shall be benefited or otherwise affected by this subsection.

23 **SECTION 3.** 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
24 amended to read:

1 109.09 (1) The department shall investigate and attempt equitably to adjust
2 controversies between employers and employees as to alleged wage claims. An
3 employee may file a wage claim under this subsection on his or her own behalf or the
4 recognized or certified collective bargaining representative of the employee may file
5 a wage claim under this subsection on behalf of the employee. The department may
6 receive and investigate any wage claim which is filed with the department, or
7 received by the department under s. 109.10 (4), no later than 2 years after the date
8 the wages are due. The department may, after receiving a wage claim, investigate
9 any wages due from the employer against whom the claim is filed to any employee
10 during the period commencing 2 years before the date the claim is filed. The
11 department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
12 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
13 employer on behalf of the employee to collect any wage claim or wage deficiency and
14 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
15 under s. 109.10, the department may refer such an action to the district attorney of
16 the county in which the violation occurs for prosecution and collection and the
17 district attorney shall commence an action in the circuit court having appropriate
18 jurisdiction. Any number of wage claims or wage deficiencies against the same
19 employer may be joined in a single proceeding, but the court may order separate
20 trials or hearings. In actions that are referred to a district attorney under this
21 subsection, any taxable costs recovered by the district attorney shall be paid into the
22 general fund of the county in which the violation occurs and used by that county to
23 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
24 of the district attorney who prosecuted the action.

25 **SECTION 4.** 109.09 (2) (a) of the statutes is amended to read:

1 109.09 (2) (a) The department of workforce development, under its authority
2 under sub. (1) to maintain actions for the benefit of employees, or an employee who
3 brings an action under s. 109.03 (5), or the recognized or certified collective
4 bargaining representative of an employee that brings an action under s. 109.03 (5),
5 shall have a lien upon all property of the employer, real or personal, located in this
6 state for the full amount of any wage claim or wage deficiency. A lien under this
7 paragraph is created when the services for which the wages are due are performed.

8 **SECTION 5.** 109.09 (2) (b) 1. of the statutes is amended to read:

9 109.09 (2) (b) 1. A lien under par. (a) upon real property ~~takes effect~~ is perfected
10 when the department of workforce development or, employee, or collective
11 bargaining representative files a notice of the lien with the clerk of the circuit court
12 of the county in which the services or some part of the services were performed, pays
13 the fee specified in s. 814.61 (5) to that clerk of circuit court, and serves a copy of that
14 ~~petition~~ the notice on the employer by personal service in the same manner as a
15 summons is served under s. 801.11 or by certified mail with a return receipt
16 requested. The clerk of circuit court shall enter the notice of the lien on the judgment
17 and lien docket kept under s. 779.07.

18 **SECTION 6.** 109.09 (2) (b) 2. of the statutes is amended to read:

19 109.09 (2) (b) 2. A lien under par. (a) upon personal property ~~takes effect~~ is
20 perfected when the department of workforce development or, employee, or collective
21 bargaining representative files a notice of the lien with the department of financial
22 institutions in the same manner, and form, ~~and~~ place as financing statements are
23 filed under subch. V of ch. 409 regarding debtors who are located in this state, pays
24 the same fee provided in s. 409.525 for filing financing statements, and serves a copy
25 of the notice on the employer by personal service in the same manner as a summons

1 is served under s. 801.11 or by certified mail with a return receipt requested. The
2 department of financial institutions shall place the notice of the lien in the same file
3 as financing statements are filed under subch. V of ch. 409.

4 **SECTION 7.** 109.09 (2) (b) 3. of the statutes is amended to read:

5 109.09 (2) (b) 3. The department of workforce development ~~or~~, employee, or
6 collective bargaining representative must file the notice under subd. 1. or 2. within
7 2 years after the date on which the wages were due. The notice shall specify the
8 nature of the claim and the amount claimed, describe the property upon which the
9 claim is made, and state that the person filing the notice claims a lien on that
10 property.

11 **SECTION 8.** 109.09 (2) (c) 1m. of the statutes is amended to read:

12 109.09 (2) (c) 1m. A lien under par. (a) takes precedence over all other debts,
13 judgments, decrees, liens, interests, or mortgages against the employer, except a lien
14 of a commercial lending institution as provided in ~~subd. subds. 1r. and 2. and 3., a~~
15 lien of a financial institution as provided in subd. 3., or a lien under s. 292.31 (8) (i)
16 or 292.81, regardless of whether those other debts, judgments, decrees, liens,
17 interests, or mortgages ~~originate~~ are created before or after the lien under par. (a)
18 ~~takes effect is perfected.~~ A lien under par. (a) also takes precedence over the rights
19 of any person that purchases any property of the employer after the lien is created,
20 including any bona fide purchaser. A lien under par. (a) may be enforced in the
21 manner provided in ss. 779.09 to 779.12, 779.20, and 779.21, insofar as those
22 provisions are applicable. The lien ceases to exist if the department of workforce
23 development ~~or the~~, employee, or collective bargaining representative does not bring
24 an action to enforce the lien within the period prescribed in s. 893.44 for the
25 underlying wage claim.

1 **SECTION 9.** 109.09 (2) (c) 1r. of the statutes is created to read:

2 109.09 (2) (c) 1r. Except as provided in this subdivision, a lien under par. (a)
3 does not take precedence over a lien of a commercial lending institution against the
4 employer that is perfected before the lien under par. (a) is perfected. Subject to subds.
5 2. and 3., a lien under par. (a) takes precedence over the aggregate of all liens of
6 commercial lending institutions against the employer that are perfected before the
7 lien under par. (a) is perfected only as to the first \$4,500 of unpaid wages covered
8 under the lien.

9 **SECTION 10.** 109.09 (2) (c) 2. of the statutes is amended to read:

10 109.09 (2) (c) 2. Except as provided in this subdivision, a lien under par. (a) does
11 not take precedence over a lien of a commercial lending institution against the
12 employer that is perfected as of the day before the effective date of this subdivision
13 ... [LRB inserts date], and that originates is perfected before the lien under par. (a)
14 takes effect is perfected or over a lien of a commercial lending institution against the
15 employer for any amount advanced by the commercial lending institution after a lien
16 under par. (a) is perfected under a contract entered into before the effective date of
17 this subdivision ... [LRB inserts date], including any renewal or time extension of
18 such a contract. Subject to subd. 3., a lien under par. (a) takes precedence over ~~a lien~~
19 ~~of a~~ the aggregate of all liens of commercial lending institutions against
20 the employer that are perfected as of the day before the effective date of this
21 subdivision ... [LRB inserts date], and that originates are perfected before the lien
22 under par. (a) ~~takes effect is perfected, or over the aggregate of all liens of commercial~~
23 lending institutions against the employer for any amount advanced by the
24 commercial lending institutions after a lien under par. (a) is perfected under
25 contracts entered into before the effective date of this subdivision ... [LRB inserts

1 date], including any renewal or time extension of such contracts, only as to the first
2 \$3,000 of unpaid wages covered under the lien that are earned by an employee within
3 the 6 months preceding the date on which the employee or collective bargaining
4 representative files the wage claim under sub. (1) or brings the action under s. 109.03
5 (5) or the date on which the department receives the wage claim under s. 109.10 (4)
6 (a), whichever is applicable.

7 **SECTION 11.** 109.09 (2) (c) 3. of the statutes is amended to read:

8 109.09 (2) (c) 3. Notwithstanding ~~subd.~~ subds. 1r. and 2., a lien of a financial
9 institution that ~~exists on~~ is perfected as of November 30, 2003, and that ~~originates~~
10 is perfected before a lien under par. (a) ~~takes effect~~ is perfected takes precedence over
11 the lien under par. (a), and a lien of a financial institution for any amount advanced
12 by the financial institution after a lien under par. (a) ~~takes effect~~ is perfected under
13 a contract entered into before December 1, 2003, including any ~~extension or renewal~~
14 or time extension of such a contract, takes precedence over the lien under par. (a).
15 Notwithstanding ~~subd.~~ subds. 1r. and 2., a lien under par. (a) that ~~exists on~~ is
16 perfected as of November 30, 2003, takes precedence over a lien of a commercial
17 lending institution that is not a financial institution, regardless of whether the lien
18 of the commercial lending institution ~~originates~~ is perfected before or after the lien
19 under par. (a) ~~takes effect~~ is perfected.

20 **SECTION 12.** 109.09 (2) (d) of the statutes is created to read:

21 109.09 (2) (d) 1. In this paragraph, “consumer price index” means the average
22 of the consumer price index over each 12-month period for all urban consumers, U.S.
23 city average, as determined by the bureau of labor statistics of the U.S. department
24 of labor.

1 2. At least once every 5 years, or more frequently if upon investigation the
2 department finds that there is reasonable cause to believe that the amount specified
3 in par. (c) 1r. should be adjusted, the secretary of workforce development shall
4 appoint a wage claim lien review committee under s. 15.04 (1) (c), selected so as fairly
5 to represent employers, employees, commercial lending institutions, and the public,
6 for the purpose of studying the need for an adjustment to that amount and making
7 recommendations to the legislature for any adjustments to that amount.

8 3. In conducting the study and making the recommendations under subd. 2.,
9 the wage claim lien review committee may consider any of the following:

10 a. The percentage difference between the consumer price index for the
11 12-month period ending on the last day of the month in which the amount specified
12 in par. (c) 1r. was last adjusted and the consumer price index for the 12-month period
13 ending on the last day of the month in which the committee is appointed.

14 b. The effect that an adjustment to the amount specified in par. (c) 1r. might
15 have on the economy of the state, including the effect of such an adjustment on job
16 creation, retention, and expansion; on the availability of entry-level jobs; and on
17 regional economic conditions within the state.

18 4. The wage claim lien review committee shall submit a report of its
19 recommendations, together with an explanation for those recommendations and any
20 proposed legislation that may be necessary to implement those recommendations, to
21 the secretary of workforce development, the governor, the speaker of the assembly,
22 the senate majority leader, and the minority leaders of each house of the legislature
23 and to the standing committees of each house of the the legislature that are
24 concerned with labor issues and issues affecting financial institutions under s.

1 13.172 (3). Those standing committees shall review and conduct public hearings on
2 those recommendations.

3 **SECTION 13.** 109.11 (2) (a) of the statutes is amended to read:

4 109.11 (2) (a) In a wage claim action that is commenced by an employee before
5 the department has completed its investigation under s. 109.09 (1) and its attempts
6 to compromise and settle the wage claim under sub. (1), a circuit court may order the
7 employer to pay to the employee, in addition to the amount of wages due and unpaid
8 and in addition to or in lieu of the criminal penalties specified in sub. (3), increased
9 wages of not more than 50% of the amount of wages due and unpaid.

10 **SECTION 14. Initial applicability.**

11 (1) WAGE CLAIM LIEN PRIORITY. The treatment of section 109.09 (2) (c) 1m. of the
12 statutes first applies to a lien under section 109.09 (2) (a) of the statutes that is
13 created on the effective date of this subsection.

14 **SECTION 15. Effective dates.** This act takes effect on the first day of the 4th
15 month beginning after publication, except as follows:

16 (1) WAGE CLAIM LIEN REVIEW COMMITTEE. The treatment of section 109.09 (2) (d)
17 of the statutes takes effect on the first day of the 24th month beginning after
18 publication.

19 (END)