

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 572 (Hertzberg)
Version: February 18, 2021
Hearing Date: April 20, 2021
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Labor Commissioner: enforcement: lien on real property

DIGEST

This bill authorizes the Labor Commissioner to record a real property lien, as an alternative to a judgment lien, as part of the Labor Commissioner's efforts to collect money owed by an employer based on a Bureau of Field Enforcement citation for labor law violations.

EXECUTIVE SUMMARY

California's Labor Commissioner is empowered to collect unpaid wages and civil penalties against employers who violate the state's wage and hour laws in two different scenarios: (1) on the basis of a decision reached after receiving and adjudicating a complaint from a worker; or (2) on the basis of a citation issued by the Labor Commissioner's Bureau of Field Enforcement (BOFE) after an investigation. If the employer does not voluntarily make payment under the first scenario, the Labor Commissioner is currently empowered to record a real property lien on any such property that the employer owns in the county in which the lien is recorded. The Labor Commissioner may also record a real property lien if the employer does not voluntarily pay a BOFE citation, but in order to do so, the Labor Commissioner must take the additional steps of obtaining a judgment and an abstract of judgment from the courts. This largely bureaucratic and ministerial step takes time and unscrupulous employers sometimes take advantage of the delay to transfer title to their real property, thus allowing them to evade paying the citation. This bill would allow the Labor Commissioner to record a real property lien for BOFE citations in the same manner it already can for Labor Commission decisions based on complaints, thus eliminating the delay that has allowed some unscrupulous employers to evade payment.

The bill is author-sponsored. Support is from organized labor and an association of consumer attorneys. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment, and Retirement Committee by a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Creates the Bureau of Field Enforcement (BOFE) within the Division of Labor Standards Enforcement (DLSE) and tasks it with administering and enforcing all statutes and regulations, with emphasis on those labor laws most effectively enforced through field investigations, in accordance with a plan adopted by the Labor Commissioner. (Lab. Code § 90.5 (b).)
- 2) Authorizes the Labor Commissioner to adjudicate complaints received from employees through a hearing process, and to obtain a superior court judgment for wages and penalties from employers found to have violated the law. (Lab. Code §§ 98 and 98.2.)
- 3) Empowers the Labor Commissioner to create a lien on real property, as an alternative to a judgment lien, for amounts due under the judgment issued pursuant to (2), above. (Lab. Code § 98.2(g)(1).)

This bill:

- 1) Authorizes the Labor Commissioner to create a lien on real property, as an alternative to a judgment lien, to secure the amount due to the Labor Commissioner under any citation, findings, or decision based on specified labor laws that has become final and may be entered as a judgment. The lien attaches to all interests in real property of those parties located in the country where the lien is created.
- 2) Requires the Labor Commissioner to issue a certificate of release upon payment of the amount due, including any interest and costs that have lawfully accrued on the original amount.
- 3) Allows the real property lien to continue for 10 years after its creation. The lien may be renewed for additional periods of 10 years by recording a renewal certificate of lien or a copy of the renewed judgment at any time prior to its expiration.

COMMENTS

1. About judgment liens

At the conclusion of a lawsuit, the court issues a judgment indicating its ruling on the matter. Many times, that judgement includes an order that one party to the lawsuit, the judgment debtor, has to pay money to another party, the judgment creditor. If the judgment debtor simply pays up, then the judgment is satisfied. If the judgment debtor does not pay right away, the judgment creditor has a few different options for trying to collect the money.

Under California law, one of those options is to record a judgment lien against the judgment debtor's real property. (Code Civ. Proc. § 697.310(a).) Once recorded, such a lien attaches to any real property that the judgment debtor owns in the county where the judgment lien is recorded. (Code Civ. Proc. § 697.340(a).) The lien lasts for 10 years from the time the judgment was entered. (Code Civ. Proc. § 697.310(b).)

To place a judgment lien on the judgment debtor's property, the judgment creditor must go through at least two steps. First, the judgment creditor has to obtain a document known as an "abstract of judgment" from the court that issued the judgment. Then, the judgment creditor has to have that abstract of judgment recorded in the county recorder's office for each county that the judgment creditor wants the lien to apply.

2. About real property liens created pursuant to a Labor Commission hearing on a claim for wages

Existing law allows the Labor Commissioner to record an alternative type of lien – a real property lien – against an employer's property, but only in certain circumstances. Specifically, when a worker files a claim with the Labor Commissioner for unpaid wages and penalties, the Labor Commissioner notifies the employer and sets a hearing on the matter. (Lab. Code § 98.) If the worker prevails at the hearing, the Labor Commissioner issues an Order, Decision, or Award (ODA) setting forth the amount that the employer owes. (Lab. Code § 98.1.) The Labor Commissioner can then record a copy of that ODA in any county recorder's office and doing so creates a real property lien, lasting for ten years, against any real property that the employer owes in that county. (Lab. Code § 98.2(g).)

In other words, a real property lien functions exactly the same way as a judgment lien made against real property. The key difference is that no judgment or abstract of judgment is required for recording a real property lien. The Labor Commissioner can create the lien simply by recording the ODA.

3. The problem the bill is intended to address

Under existing law, when BOFE issues a citation to an employer for a violation of the labor laws and the employer does not pay, the Labor Commissioner can only record a judgment lien to try to collect the payment, not a real property lien. That means that the Labor Commissioner has to obtain judgment and an abstract of judgment from the court before it can proceed to record the lien. According to the author of this bill, this process takes up a lot of the Labor Commissioner and the court's time unnecessarily. Moreover, it provides advance warning and delay that unscrupulous employers can exploit to transfer title to the employer's real property in time to avoid imposition of the lien. In that way, the employer can continue to avoid paying the citation.

This bill would enable the use of real property liens based on BOFE citations, findings, or decisions issued to employers for labor code violations.

4. Due process considerations

The attachment of a lien impacts real property rights. It therefore implicates the due process clauses of the federal and state constitutions. (U.S. Const., Amend XIV, § 1; Cal. Const., art. I, § 7.) Both require, at a minimum, notice of the proposed action and an opportunity to be heard before an impartial adjudicator before anyone can be deprived of property. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 332-334; *San Diego Building Contractors Assn. v. City Council of San Diego* (1974) 13 Cal.3d 205, 211-213.) Under this bill, Labor Commission citations, findings, or decisions could only form the basis for real estate liens once the citation, finding, or decision has become final and may be entered as a judgment. In order for any Labor Commission citation, finding, or decision to reach that stage, the Labor Commissioner would have to have given the employer notice of the proposed action, an opportunity to have that decision considered at a hearing, and even the option of seeking court review.

For example, employers must regularly provide workers with specified information about their wages. (Lab. Code § 226(a).) The Labor Commissioner can issue a citation to the employer if, upon inspection or investigation, the Labor Commissioner discovers that the employer is not compliant with this requirement. (Lab. Code § 226.1.) Upon receipt of such a citation, the employer has 15 days to request a hearing on the matter. (Lab. Code § 226.5(a).) If the Labor Commissioner does not dismiss the citation after the hearing, the employer is entitled to seek further review in court by petitioning for a writ of mandate against the Labor Commissioner. (*Ibid.*) The Labor Commissioner's citation and findings only become final and can be entered as a judgment after the hearing process is complete. (*Id.* at (d).)

Similarly, employers must pay their workers at least minimum wage. (Lab. Code § 1197.) If, upon inspection or investigation, the Labor Commissioner determines that an employer is not paying at least minimum wage, the Labor Commissioner can issue a citation to the employer. (Lab. Code § 1197.1(b).) The employer then has 15 days in which to request a hearing to contest the citation, and can petition the courts to overturn the decision that follows. (*Id.* at (c).) Only once this notice and hearing process has been completed can the Labor Commissioner's citation or decision be converted into a court judgment. (*Id.* at (f).)

In short, because any Labor Commissioner citation, finding, or decision has to go through a notice and hearing process in order to reach the point where it could become the basis for a real property lien under this bill, the bill does not appear to raise any due process concerns.

5. Arguments in support of the bill

According to the author:

California's Labor Commissioner, through its Bureau of Field Enforcement (BOFE), is responsible for enforcing minimum labor standards and holding unscrupulous employers accountable. When a BOFE investigation concludes with the issuance of a penalty citation to an employer, the Labor Commissioner is entitled to collect a judgment from the employer, often in the form of a lien. Currently, however, obtaining such a lien involves an archaic ministerial process that causes significant delays between the finalization of the BOFE citation and the creation of the lien on the employer's property. Because of these delays, violating employers can transfer property out of their name in order to avoid the consequences of the citation issued against them. This results in lost money for both workers, who are owed wages, and the State, which is owed penalties.

SB 572 remedies this inefficiency and protects victimized workers by establishing a straightforward process for collecting penalties owed by employers who have violated the law. By streamlining a time-intensive and unnecessary ministerial process, the measure strengthens the Labor Commissioner's workplace enforcement efforts and ensures that lawbreaking employers are held responsible for their actions.

In support of the bill, the California Labor Federation writes:

BOFE is charged with enforcing minimum labor standards in order to protect workers from unlawful conditions while also leveling the playing field for law abiding employers. When a BOFE investigation concludes with the issuance of a penalty citation to an employer, and the process for contesting that citation has ended, the Labor Commissioner is entitled to collect a judgment from the employer, often in the form of a lien. Currently, however, in order to obtain a lien against a violating employer's property, the Labor Commissioner must engage in a lengthy ministerial process, causing significant delays in enforcement.

As a result of these delays, violating employers may transfer the real property out of their name in order to avoid the consequences of the citation issued against them. This results in lost money for both workers, who are owed wages, and the State, which is owed

penalties. This process also imposes unnecessary burdens and expenses on both local courts and the Labor Commissioner's Office, as it involves the processing and transmittal of paperwork for no clear practical or policy purpose.

SUPPORT

California Labor Federation
Consumer Attorneys of California
Service Employees International Union - California
United Food and Commercial Workers, Western States Council

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 588 (De León, Ch. 803, Stats. 2015) authorized 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.

AB 2416 (Stone, 2014) would have authorized specific employees to request that the Labor Commissioner record a wage lien on property of an employer who fails to pay wages due. AB 2416 died on the Senate Floor.

AB 1386 (Assembly Labor and Employment Committee, Ch. 750, Stats. 2013) empowered the Labor Commissioner to record a certificate of lien on a violating employer's property, under specified conditions.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 5, Noes 0)
