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TO: Senator Gomes, Co-Chairman
Representative Tercyak, Co-Chairman
Members of the Labor and Public Employees Committee

FROM: David S. Veleber
Title Counsel, CATIC®

RE: **Raised Bill 1037 - *AN ACT CONCERNING EMPLOYEE LIENS AGAINST EMPLOYERS FOR UNPAID WAGES.***

DATE: March 5, 2015

I am writing to offer Connecticut Attorneys Title Insurance Company's ("CATIC's or CATIC") comments on **Raised Bill 1037 - *AN ACT CONCERNING EMPLOYEE LIENS AGAINST EMPLOYERS FOR UNPAID WAGES.*** CATIC is the nation's largest Bar-Related® title insurance underwriter. The company has seven offices throughout New England, and issues its policies through a network of more than 2,000 attorney agents.

CATIC is opposed to the bill as drafted. The biggest objections to the bill are the secret nature of the lien, its super-priority over almost all other interests in the property, including existing secured liens such as those of a lender under a mortgage or a bona fide purchaser who paid consideration for the property without any knowledge of the lien, and the potential ability to foreclose the lien without any notice of the foreclosure being recorded.

We feel the proposed bill will create an issue with the marketability of title for any property owned by a party who is an "employer" as contemplated by this proposed bill. It will also impact the ability and willingness of buyers to purchase or lenders to mortgage real property as well as other third parties to secure their liens without fear of their interest being disrupted by this proposed employee lien.

As drafted, Section (a) not only contemplates that the Labor Commissioner shall have a lien on the property of an employer for failure to pay wages, but also goes on in Section (b) to create a possible private lien right in the aggrieved employee in addition to the lien of the Labor Commissioner. The proposed bill does not specifically state that there is a separate lien right in the employee but that appears to be the intention. The lien contemplated under this proposed bill would be in addition to all of the statutory remedies already available under the cited labor statutes.

Our first concern is that the lien against property of the employer could be created and encumber the real or personal property of the employer without there being any record notice of the claim of unpaid wages. Nothing in the proposed bill would require either the Labor Commissioner or the employee to record any notice of the lien. The lien is created simply by mailing the claim of unpaid wages to the employer. The lien becomes perfected automatically upon the failure to pay the wages. Section (b) discusses the lien being filed within three (3) years after that purported final pay period but what that means is unclear and will be addressed further below. So, even if that is intended to mean some form of notice is to be filed no later than three years after the failure to pay the wages, during that three-year time frame, there is a purported perfected lien but there would be no record notice of that lien to provide notice to prospective purchasers, lenders, or other parties who rely on the land records for an accurate reflection of the status of ownership and title.

In addition to the non-recorded nature of the lien, subsection (f) gives this lien super priority. This section of the proposed bill would elevate any lien under this bill to the highest of priorities. It states it would have priority over the rights of a bona fide purchaser, any existing mortgage lender, as well as over any debts, judgments, decrees, or liens. So, not only would the lien disregard traditional record notice provisions, it would also disregard the rights of already perfected interests properly recorded in the land records. Not only would this disrupt the ownership of property purchased by bona fide third party purchasers or the security interest of lenders, the language of the proposed bill would arguably raise the lien to an even higher priority than that of a municipal real property tax lien (traditionally the most senior of all liens) or that of a State or Federal Income Tax lien. It could even disrupt a transfer of title between divorcing spouses by undermining the terms of a divorce decree leaving the spouse of the employer with a property now subject to this employee lien.

The broadness of the lien disrupts the traditional protection of the buyer, lender and creditor based on record notice. Although employees should be protected from the failure to be paid, the employee's rights should be protected with a more traditional lien that requires the recording of a notice on the land records and has a priority tied to the lien's recording date. Doing so would protect the sanctity of the land records, the historic concept of the importance of record notice, and the rights of purchasers, lenders, and other secured parties who have properly established their positions, while still providing an additional avenue for compensation in addition to the other remedies available at law for wage disputes.

In addition to the above issues related to the nature and priority of the lien, there are a few other issues wherein this lien differs from other types of liens, making it difficult to properly document the lien and its status.

First, related to the above secret nature of the lien, the bill is inconsistent as to how and when a lien even needs to be filed on the land records. Lines 17-20 in section (b) state that the "lien shall be ***filed*** not later than three years after the final pay period ... and shall be perfected automatically upon the date that such an employee's wages become due." (emphasis added) It is

unclear with whom the lien is to be filed and what happens if it is not so filed. If with the town clerk, then there is a conflict with Section (g) since this provision uses "shall" and (g) uses the permissive "may." Section (g) states that a "wage lien against real property ***may*** be recorded with the town clerk for the town in which any portion of the property is located." (emphasis added). It is unclear in the proposed bill. If not with the town clerk, then with whom shall the lien be filed? The Department of Labor? If with the Department of Labor, then this is, again, an event that would not provide any record notice to third parties.

The meaning of "filed" is also important because the term of the lien is tied to the filing date. Per Section (d), the lien is effective for ten (10) years from the date of filing. It is unclear when that 10 years starts to run. Section (b) says the lien shall be "filed" within three years of the last wage period. Since the lien is effective upon failure to pay wages and notice to the employer but the statute of limitations does not start to run until filed, the lien could effectively run for thirteen (13) years.

Not only is there an issue with the filing requirements, the other language of the proposed bill makes the lien a perfected lien simply by the notice to the employer. Even if there is a hearing because the employer disputes the claim of wages and the lien, the lien itself is still created by the process of the certified mail notice. Any recording on the land records and notice by the Labor Department or the employee to third parties appears to be irrelevant to the effectiveness of the lien.

Second, the proposed bill does not state that a lis pendens needs to be recorded on the land records either if the owner of the property disputes the claim or prior to foreclosing the lien or a purported transfer by the Labor Commissioner. So, not only would the lien be effective without anyone having record notice of it, the lien could also be foreclosed under section (e) without any notice of the foreclosure action being recorded on the land records. Additionally, it would also be possible for the Commissioner of the Department of Labor to order the sale or the transfer of the title of the property to the employee without any notice on the land records. All of this while also potentially wiping out all properly recorded and secured liens because of the super priority nature of this lien.

In summary, we oppose the bill as drafted because the lien would exist even though nothing has been (nor even needs to be) recorded on the land records, the lien would take super priority over any other interest, even those interests which have been properly perfected and secured, the lien could be foreclosed or the property transferred without any notice, and the underlying purpose of the proposed bill could be accomplished by a more traditional lien structure where record notice is required and where the lien takes its priority based on the date of its recording.

Thank you for your consideration.