



# Senate

General Assembly

**File No. 210**

February Session, 2016

Substitute Senate Bill No. 223

*Senate, March 24, 2016*

The Committee on Labor and Public Employees reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING LIENS FOR UNPAID EMPLOYEE WAGES AND DISCIPLINARY SUSPENSIONS FOR HARASSMENT OR WORKPLACE VIOLENCE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) Whenever an  
2 employee is aggrieved by an employer's failure to pay wages in  
3 violation of section 31-68 or 31-72 of the general statutes, the Labor  
4 Commissioner or the employee shall have a lien on any property, real  
5 or personal, in which such employer has an interest to enforce  
6 payment of such wages with costs and such reasonable attorney's fees  
7 that may be allowed by the court pursuant to said sections.

8 (b) To establish a lien for unpaid wages under this section, the Labor  
9 Commissioner or the employee shall serve notice of such lien by  
10 certified mail with a return receipt requested or by priority mail with  
11 delivery confirmation to the employer that failed to pay such wages.  
12 Such notice of lien shall contain such information as will identify (1)

13 the owner of the property upon which the lien is claimed, (2) the  
14 residence or business address of such owner, (3) the specific property  
15 claimed to be subject to such lien, (4) the location of such property, (5)  
16 the amount of wages and accrued penalties and interest, including  
17 reasonable attorney's fees, claimed to be due the employee in relation  
18 to the lien, and (6) the pay period or periods for which such lien is  
19 claimed. Such lien shall be filed not later than one year after the final  
20 pay period in which such wages were due and shall attach and become  
21 perfected at the time when notice of such lien is filed pursuant to the  
22 filing provisions of part 5 of article 9 of title 42a of the general statutes.

23 (c) An employer may dispute such lien by filing a complaint in  
24 small claims court or the Superior Court where the employer's  
25 property is located not later than thirty days after notice was served on  
26 the employer. A complaint under this section shall include (1) a copy  
27 of the notice served pursuant to subsection (b) of this section, and (2) a  
28 statement of any defense to the lien for unpaid wages with an affidavit  
29 containing a statement of facts that support such defense. Not later  
30 than forty-five days after receiving such complaint, the court shall  
31 determine whether to issue an order establishing such lien and shall  
32 provide written notification to the employer and to the Labor  
33 Commissioner or the employee of such determination. On request of  
34 the employer or the commissioner or the employee, the court may hold  
35 an evidentiary hearing prior to making such determination.

36 (d) A lien is established under this section after the court provides  
37 written notification to the employer and to the Labor Commissioner or  
38 the employee of such determination, provided such employer does not  
39 file an appeal of such determination within thirty days after receiving  
40 such determination. Such lien shall be effective for a period of ten  
41 years from the date of filing unless extinguished or discharged as  
42 provided in subsection (f) of this section.

43 (e) An action to recover unpaid wages by the Labor Commissioner  
44 or the employee shall be deemed an action to foreclose upon any  
45 property subject to a lien established under this section. In any

46 judgment resulting from such action, the court may order the sale or  
47 the transfer to the employee of title or possession of any property  
48 subject to such lien. Any property subject to such lien may be  
49 foreclosed upon at any point after a judgment for unpaid wages is  
50 issued.

51 (f) A lien established under this section shall be extinguished upon  
52 expiration of the limitations period applicable to any claim for unpaid  
53 wages if no action to recover such wages is commenced prior to the  
54 expiration of such limitations period. If judgment is entered in any  
55 action to recover unpaid wages, the lien shall be extinguished upon  
56 expiration of the applicable appeals period if no appeal is filed. If an  
57 appeal is filed, the lien shall remain in force until all issues on appeal  
58 have been decided. When the amount of unpaid wages with respect to  
59 which a lien has been created under this section has been satisfied, the  
60 Commissioner of Revenue Services, upon request of any interested  
61 party, shall issue a certificate discharging such lien, which certificate  
62 shall be filed with the Uniform Commercial Code Division of the office  
63 of the Secretary of the State in the same manner as termination  
64 statements are filed under section 42a-9-513 of the general statutes.

65 (g) Notwithstanding any provision of the general statutes, a lien  
66 established and perfected under this section has priority over the  
67 rights of any purchaser of any property of the employer, including any  
68 bona fide purchaser under 11 USC 545(2), and over all other debts,  
69 judgments, decrees, liens or mortgages against the employer, including  
70 a lien by a commercial lending company, regardless of whether these  
71 debts, judgments, decrees, liens or mortgages originated before or after  
72 the wage lien, and regardless of whether these debts, judgments,  
73 decrees, liens or mortgages were perfected prior to the wage lien. The  
74 Labor Commissioner's or the employee's lien is effective against the  
75 employer and the estate of the employer.

76 (h) A wage lien against real property may be recorded with the  
77 town clerk for the town in which any portion of the employer's  
78 property is located. A wage lien against personal property may be

79 recorded in the same manner as a financing statement is filed with the  
80 Secretary of the State.

81 (i) Nothing in this section shall be construed to prevent the Labor  
82 Commissioner or the employee from exercising any right or seeking  
83 any remedy to which he or she may otherwise be entitled under any  
84 state or federal law.

85 Sec. 2. (NEW) (*Effective from passage*) (a) For purposes of this section,  
86 "employer" has the same meaning as provided in section 31-58 of the  
87 general statutes, and "employee" means any individual employed or  
88 permitted to work by an employer.

89 (b) If an employee employed in a bona fide executive,  
90 administrative or professional capacity, as defined in the regulations of  
91 the Labor Commissioner issued pursuant to section 31-60 of the  
92 general statutes, is absent from work as a result of a disciplinary  
93 suspension for violating a written workplace conduct rule prohibiting  
94 harassment or workplace violence, the employer may deduct from the  
95 wages of such employee an amount equal to the wages that would  
96 have been paid for the number of days such employee is absent.

97 (c) The Labor Commissioner may adopt regulations, in accordance  
98 with the provisions of chapter 54 of the general statutes, as the  
99 commissioner deems necessary to implement the provisions of  
100 subsection (b) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>from passage</i>	New section

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill creates a lien on the property of an employer for failure to pay wages or certain other required payments. Under the bill, the wage lien is given to either the employee or labor commissioner. This does not result in any fiscal impact to the state or municipalities as it is expected the bill's provisions could be accommodated within the normal course of the enforcement process.

There is no impact to the Judicial Department from allowing employers to contest the lien in court. The number of motions is not anticipated to be great enough to need additional resources. The court system disposes of over 500,000 cases annually.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 223*****AN ACT CONCERNING LIENS FOR UNPAID EMPLOYEE WAGES AND DISCIPLINARY SUSPENSIONS FOR HARASSMENT OR WORKPLACE VIOLENCE.*****SUMMARY:**

This bill creates a lien on the property of an employer (including the state and its political subdivisions) who fails to pay an employee's wages or certain other payments as required by law. It gives the wage lien to either the employee or the labor commissioner, who must follow certain notice and filing procedures to perfect the lien. The bill gives a properly established and perfected wage lien priority over the rights of anyone who purchases the subject property and all other debts, judgments, liens, and mortgages on the property. Employers can contest the lien in small claims court or Superior Court. If the employee or commissioner brings an action against the employer for unpaid wages, the action must be considered an action to foreclose on any property subject to the lien and the property can be foreclosed at any point after judgment.

The bill also allows employers to withhold the pay of executive, administrative, or professional employees for periods during which they were suspended from work for violating written workplace rules that prohibit harassment or workplace violence. The bill allows the labor commissioner to adopt regulations implementing this provision. (Current regulations prohibit employers from withholding these employees' pay under these circumstances, although it is allowed under federal law (Conn Agencies Reg. § 31-60-14)).

**EFFECTIVE DATE:** October 1, 2016, except the provision on withholding pay for suspended employees is effective upon passage.

**WAGE LIENS**

The bill gives an employee or the labor commissioner a wage lien on an employer's property whenever the employee is aggrieved by an employer's failure to (1) pay the employee's wages, accrued fringe benefits, or arbitration award or (2) meet the law's minimum wage or overtime rate requirements for the employee. The lien also covers costs and reasonable attorney's fees allowed by the court. (It is unclear whether an employee is "aggrieved" when he or she initially believes that the employer failed to pay, when the labor commissioner or a court determines that the employer failed to pay, or when the employer fails to pay as ordered by the court.)

***Notice & Filing the Lien***

To establish the lien under the bill, the commissioner or employee must serve notice on the employer by certified mail, return receipt requested, or by priority mail with delivery confirmation. The notice must identify the:

1. specific property subject to the lien;
2. property's location and owner;
3. owner's residence or business address;
4. amount of wages, accrued penalties, and interest, including attorney's fees, claimed due under the lien; and
5. pay period or periods for which the lien is claimed.

The lien must be filed within one year after the final pay period in which the unpaid wages were due. It attaches and becomes perfected when the notice is filed under the Uniform Commercial Code's (UCC) filing requirements for secured transactions (generally, with the secretary of the state or in the local land records).

***Wage Lien Priority***

Regardless of any other state law, the bill requires a properly established and perfected wage lien to have priority over (1) the rights

of anyone who purchases the employer's property, including someone who purchases the property in certain bankruptcy cases, and (2) all other debts, judgments, decrees, liens, or mortgages against the employer, including commercial lending company liens, regardless of whether they originated before or after the wage lien or were perfected before the wage lien. The wage lien is effective against the employer and his or her estate.

### ***Contesting the Lien***

The bill allows employers to dispute the lien within 30 days after the notice was served by filing a complaint in small claims court (which has jurisdiction of claims of up to \$5,000) or the Superior Court where the employer's property is located. The complaint must include a copy of the notice, a statement of any defenses, and an affidavit containing a statement of facts to support the defenses. The court may hold an evidentiary hearing at either party's request, but must decide whether to establish the lien within 45 days after receiving the complaint.

The court must provide written notice of its determination to the parties. Unless an employer files an appeal within 30 days, the lien is established at that time. (Presumably, the lien is only established if the court rules for the employee, however the bill does not specify what happens to the lien if the court rules in the employer's favor.)

### ***Foreclosing Property Subject to the Liens***

The bill requires lawsuits to recover unpaid wages brought by the commissioner or an employee to be deemed an action to foreclose on any property subject to a wage lien. The property may be foreclosed at any point after a judgment for unpaid wages is issued. And the court may, in any judgment resulting from the suit, order the employer to sell or transfer to the employee any property subject to the lien (the bill does not refer to any particular statutes or procedures through which the foreclosure must occur).

### ***Extinguishing & Discharging the Liens***

The bill requires the lien to be effective for 10 years from the filing

date unless it is extinguished or discharged as specified in the bill. Under the bill, wage liens are extinguished if the employee or commissioner takes no action against the employer to recover wages within the applicable statute of limitations (generally, two years unless the employee filed a complaint with the commissioner). If a judgment is entered in the action, and neither party appeals, the lien is extinguished when the applicable appeals period expires. If a party appeals, the lien remains in force until all issues on appeal have been decided.

Once the employer repays the unpaid wages, the revenue services commissioner, upon request, must issue a certificate discharging the lien (it unclear why the revenue services commissioner would be involved in this procedure). The certificate must be filed in the secretary of the state's UCC Division the same way that the law requires termination statements to be filed. (Although the bill allows a lien to be filed in land records, it does not authorize the filing of a discharge certificate in the land records.)

### **Other Provisions**

The bill allows a wage lien against real property to be recorded with the town clerk for the town in which any portion of the employer's property is located. A wage lien for personal property may be recorded the same way that financing statements are filed with the secretary of the state.

The bill specifies that it does not prevent the commissioner or employee from exercising any right or seeking any remedy under any state or federal law.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 5 (03/10/2016)