



General Assembly

February Session, 2020

Raised Bill No. 5426

LCO No. 1923



Referred to Committee on BANKING

Introduced by:

(BA)

**AN ACT CONCERNING LIENS FOR UNPAID WAGES AND A
REQUIREMENT THAT FISCAL INTERMEDIARIES MEET EMPLOYER
TIMELY PAY OBLIGATIONS.**

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

- 1 Section 1. (NEW) (*Effective October 1, 2020*) (a) As used in this section:
- 2 (1) "Employer" has the same meaning as provided in section 31-71a
- 3 of the general statutes;
- 4 (2) "Employee" has the same meaning as provided in section 31-71a
- 5 of the general statutes;
- 6 (3) "Wages" has the same meaning as provided in section 31-71a of
- 7 the general statutes;
- 8 (4) "Commissioner" has the same meaning as provided in section 31-
- 9 71a of the general statutes; and
- 10 (5) "Property" has the same meaning as provided in section 52-278a
- 11 of the general statutes.

12 (b) Notwithstanding any provision of the general statutes to the
13 contrary, whenever an employer fails to pay wages to an employee in
14 accordance with the provisions of section 31-60 or sections 31-71a to 31-
15 71i, inclusive, of the general statutes, or fails to compensate an employee
16 in accordance with section 31-76k of the general statutes, the
17 commissioner or the employee shall be entitled to a lien on any property
18 of the employer. The lien shall be in the amount that the commissioner
19 or the employee will be entitled to recover from the employer in a civil
20 action for unpaid wages.

21 (c) To establish a lien for unpaid wages under this section, the
22 commissioner or the employee shall serve notice of such lien by certified
23 mail with a return receipt requested or by priority mail with delivery
24 confirmation to the employer that failed to pay such wages. Such notice
25 of lien shall contain such information as will identify (1) the owner of
26 the property upon which the lien is claimed, (2) the residence or
27 business address of such owner, (3) the specific property claimed to be
28 subject to such lien, (4) the location of such property, (5) the amount
29 claimed to be due the employee pursuant to subsection (b) of this section
30 as of the date of the notice of lien, and (6) the pay period or periods for
31 which such lien is claimed. Such notice of lien shall advise the employer
32 that the employer may dispute such lien in accordance with the
33 provisions of subsection (d) of this section. Such notice of lien shall be
34 sent not later than one year after the final pay period in which such
35 unpaid wages were due.

36 (d) An employer may dispute such lien by filing a complaint in the
37 small claims court or the Superior Court where the employer's property
38 is located not later than thirty days after notice was served on the
39 employer. A complaint under this section shall include (1) a copy of the
40 notice served pursuant to subsection (c) of this section, and (2) a
41 statement of any defense, counterclaim, or set-off to the lien with an
42 affidavit containing a statement of facts that support such defense,
43 counterclaim or set-off.

44 (e) Upon request of the commissioner, employee or employer, the

45 court may hold an evidentiary hearing.

46 (f) If the court, upon consideration of the facts before it and taking
47 into account any defenses, counterclaims or set-offs, finds that the
48 commissioner or the employee has shown probable cause that a
49 judgment will be rendered in a civil action for unpaid wages in favor of
50 the commissioner or the employee in the amount of the lien sought, the
51 lien applied for shall be granted as requested or as modified by the
52 court. The court shall determine whether to issue an order granting
53 such lien not later than forty-five days after receiving the employer's
54 complaint and shall provide written notification to the employer and to
55 the commissioner or the employee of such determination.

56 (g) If a court issues an order granting a lien, the commissioner or the
57 employee is entitled to court costs and reasonable attorneys' fees. If a
58 court determines that the effort to establish a lien for unpaid wages has
59 been frivolous or made in bad faith, the court may award court costs
60 and reasonable attorneys' fees to the employer.

61 (h) If the employer fails to file a timely complaint disputing the lien
62 and the commissioner or the employee files a copy of the notice of lien
63 and proof of service with the clerk of the small claims court or Superior
64 Court where the employer's property is located, the court shall
65 forthwith issue an order granting a lien for the amount claimed and
66 provide written notification to the employer and to the commissioner or
67 the employee of such order.

68 (i) A lien is established under this section after the court provides
69 written notification to the employer and to the commissioner or the
70 employee of its decision to grant a lien.

71 (j) A lien established under this section against real property may be
72 recorded with the town clerk for the town in which such real property
73 is located. A lien established under this section against personal
74 property may be recorded and indexed in the same manner as financing
75 statements filed with the office of the Secretary of the State pursuant to
76 title 42a of the general statutes. Upon filing, the Secretary of the State

77 shall provide information as to and copies of any such wage lien
78 certificate, or any release thereof, in the same manner that information
79 and copies are provided with respect to a financing statement. The
80 Secretary of the State shall charge the same fees for filing, for inspection
81 of, for release of, and for information relating to or copies of, such a
82 wage lien certificate as are charged with respect to a financing statement
83 and may destroy records of lapsed liens and of releases thereof in the
84 same manner as if such wage lien certificate was a financing statement.
85 If an employee does not record a wage lien statement within one
86 hundred eighty days after the lien for unpaid wages is established, such
87 lien shall be extinguished without prejudice. Such lien shall be effective
88 for a period of ten years from the date of filing unless extinguished or
89 discharged as provided in subsection (k) or (l) of this section.

90 (k) A lien established under this section shall be extinguished upon
91 expiration of the limitations period applicable to the employee's claim
92 for unpaid wages if no civil action to recover such wages is commenced
93 prior to the expiration of such limitations period. If judgment is entered
94 in favor of the employer in a civil action by the commissioner or the
95 employee to recover unpaid wages, the lien shall be extinguished upon
96 expiration of the applicable appeals period if no appeal is filed. If an
97 appeal is filed, the lien shall remain in force until all issues on appeal
98 have been decided.

99 (l) Any person who has lodged for record a wage lien on any
100 property, after receiving satisfaction of his or her claim or after the lien
101 is extinguished in accordance with subsection (k) of this section, shall,
102 within ten days after being requested in writing to do so by any person
103 interested in having the lien removed, sign and lodge, in the office in
104 which the lien was filed for record, a certificate that such lien is
105 removed, which, when recorded, shall discharge such lien. If the person
106 fails to comply with such request, he or she shall pay to the party
107 aggrieved such sum, not exceeding half the amount claimed by such
108 lien, as the court having cognizance of the action brought therefor may
109 determine.

110 (m) The commissioner or the employee may execute against property
111 subject to such lien at any point after a judgment is rendered against the
112 employer in a civil action for unpaid wages, provided the property
113 subject to execution shall not exceed the unpaid amount of the
114 judgment, including interest and costs. Any real property subject to
115 such lien may be foreclosed upon in the same manner as a mortgage.
116 Any personal property subject to such lien may be executed against and
117 levied on in the same manner as a judgment lien.

118 (n) Notwithstanding any provision of the general statutes, a lien
119 established under this section shall have priority over any other
120 encumbrance originating after the employee's unpaid wages became
121 due. A lien established under this section is effective against the
122 employer and the estate of the employer.

123 (o) A contract between an employee and an employer may not
124 contain a provision waiving or requiring an employee to waive the right
125 to seek the establishment of a lien under this section.

126 (p) Nothing in this section shall be construed to prevent the
127 commissioner or an employee from exercising any right or seeking any
128 remedy to which he or she may otherwise be entitled under any state or
129 federal law.

130 Sec. 2. (NEW) (*Effective October 1, 2020*) (a) Any fiscal intermediary
131 that provides payroll services to personal care attendants, as defined in
132 section 17b-706 of the general statutes, shall be deemed an employer
133 solely for the purposes of failure to timely pay wages under sections 31-
134 71 to 31-71i, inclusive, of the general statutes.

135 (b) A delay caused by a fiscal intermediary's failure to perform the
136 actions described in subdivisions (1) and (2) of this subsection shall be
137 deemed a failure to timely pay wages under sections 31-71a to 31-71i,
138 inclusive, of the general statutes. A fiscal intermediary shall (1) provide
139 clear and timely communication directly to a personal care attendant
140 about pay discrepancies, payment confirmation or a change in the status
141 of a consumer, as defined in section 17b-706 of the general statutes, (2)

142 provide sufficient notice to a personal care attendant prior to the date
143 when wages are to be paid with specific information about any problem
144 with the time records submitted by such personal care attendant which
145 would have the effect of decreasing the total amount of the wages paid
146 to such personal care attendant on such date, (3) provide a specific and
147 accessible means for a personal care attendant to address and correct
148 any problem related to the time records submitted by such personal care
149 attendant so that the full and proper amount of wages may be paid on
150 time, and (4) not later than forty-eight hours following the resolution of
151 a pay discrepancy, pay the full and proper amount of wages due to a
152 personal care attendant.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2020</i> | New section |
| Sec. 2 | <i>October 1, 2020</i> | New section |

Statement of Purpose:

To authorize the Labor Commissioner or an employee to seek to establish a lien against the property of an employer for unpaid wages; and to establish requirements relating to the payment of timely wages on fiscal intermediaries that provide payroll services to personal care attendants.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]