

Chapter 541

(House Bill 1130)

AN ACT concerning

Labor and Employment – Lien for Unpaid Wages – Establishment

FOR the purpose of requiring an employee to provide certain written notice to a certain employer first in order to establish a lien for unpaid wages; authorizing a certain employer to dispute a lien for unpaid wages by filing a certain complaint in a certain circuit court in a certain manner; authorizing the employer or employee to request an evidentiary hearing; requiring a circuit court to make a determination on a claim to establish a lien for unpaid wages in a certain manner; authorizing a circuit court to take certain actions; providing for certain court costs and attorney's fees under certain circumstances; specifying the manner in which a lien for unpaid wages may be established; specifying the manner in which an employee may record a lien for unpaid wages; requiring a lien for unpaid wages to be extinguished without prejudice if it is not recorded within a certain period of time; requiring a lien for unpaid wages to be released if certain payment is made or a certain bond is filed; establishing the date by which a lien for unpaid wages takes priority over other claims; providing that certain purchasers of certain property are deemed to have constructive notice of a lien for unpaid wages under certain circumstances; specifying the manner in which an order for a lien for unpaid wages shall be enforced; requiring an action to enforce a certain order to be brought within a certain period of time; prohibiting certain contracts from waiving or requiring an employee to waive a certain right; specifying that a provision of a contract that violates a certain provision of this Act is void; providing for the construction of this Act; authorizing the Commissioner of Labor and Industry to seek to establish a lien for unpaid wages on behalf of an employee; requiring the Commissioner to adopt certain regulations; defining certain terms; and generally relating to liens for unpaid wages.

BY adding to

Article – Labor and Employment

Section 3–1101 through 3–1110 to be under the new subtitle “Subtitle 11. Lien for Unpaid Wages”

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

SUBTITLE 11. LIEN FOR UNPAID WAGES.**3-1101.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

(C) “LIEN FOR UNPAID WAGES” MEANS A LIEN FOR THE AMOUNT OF WAGES OWED TO AN EMPLOYEE AND PENALTIES AUTHORIZED UNDER THIS TITLE OR OTHER PROVISIONS OF LAW AGAINST REAL OR PERSONAL PROPERTY OWNED BY AN EMPLOYER AND LOCATED IN THE STATE.

(D) “WAGES” DOES NOT INCLUDE COMMISSIONS.

3-1102.

TO ESTABLISH A LIEN FOR UNPAID WAGES UNDER § 3-1104 OF THIS SUBTITLE, AN EMPLOYEE SHALL FIRST PROVIDE WRITTEN NOTICE TO AN EMPLOYER THAT:

(1) IS SERVED ON THE EMPLOYER WITHIN THE STATUTE OF LIMITATIONS PERIOD UNDER § 5-101 OF THE COURTS ARTICLE;

(2) IS PERSONALLY SERVED IN ACCORDANCE WITH MARYLAND RULE 2-121; AND

(3) CONTAINS THE INFORMATION REQUIRED BY THE COMMISSIONER UNDER § 3-1110 OF THIS SUBTITLE TO PROVIDE THE EMPLOYER WITH ADEQUATE NOTICE OF THE WAGES CLAIMED AND THE PROPERTY AGAINST WHICH THE LIEN FOR UNPAID WAGES IS SOUGHT.

3-1103.

(A) AN EMPLOYER MAY DISPUTE A LIEN FOR UNPAID WAGES BY FILING A COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY WHERE PROPERTY OF AN EMPLOYER IS LOCATED.

(B) A COMPLAINT FILED UNDER THIS SECTION SHALL:

(1) BE FILED WITHIN 30 DAYS AFTER NOTICE IS SERVED ON THE EMPLOYER; AND

(2) INCLUDE:

(I) THE NAME OF THE EMPLOYER THAT OWES THE EMPLOYEE THE WAGES AND THE NAME OF THE EMPLOYEE TO WHOM THE WAGES ARE OWED;

(II) A COPY OF THE NOTICE TO ESTABLISH A LIEN FOR UNPAID WAGES SERVED ON THE EMPLOYER UNDER § 3-1102 OF THIS SUBTITLE;

(III) A STATEMENT OF ANY DEFENSE TO THE LIEN FOR UNPAID WAGES; AND

(IV) AN AFFIDAVIT CONTAINING A STATEMENT OF FACTS THAT SUPPORT ANY DEFENSES RAISED.

(C) THE EMPLOYER OR EMPLOYEE MAY REQUEST AN EVIDENTIARY HEARING.

(D) IF AN EMPLOYER FILES A COMPLAINT, THE CIRCUIT COURT SHALL DETERMINE WHETHER TO ISSUE AN ORDER ESTABLISHING A LIEN FOR UNPAID WAGES:

(1) WITHIN 45 DAYS AFTER THE DATE ON WHICH THE COMPLAINT WAS FILED; AND

(2) BASED ON A PREPONDERANCE OF THE EVIDENCE IN WHICH THE EMPLOYEE HAS THE BURDEN OF PROOF TO ESTABLISH THE LIEN FOR UNPAID WAGES.

(E) (1) IF A CIRCUIT COURT ISSUES AN ORDER TO ESTABLISH A LIEN FOR UNPAID WAGES, THE EMPLOYEE IS ENTITLED TO COURT COSTS AND REASONABLE ATTORNEY'S FEES.

(2) IF A CIRCUIT COURT DETERMINES THE EFFORT TO ESTABLISH A LIEN FOR UNPAID WAGES TO HAVE BEEN FRIVOLOUS OR MADE IN BAD FAITH, THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY'S FEES TO AN EMPLOYER.

3-1104.

A LIEN FOR UNPAID WAGES IS ESTABLISHED:

(1) AFTER A CIRCUIT COURT ISSUES AN ORDER TO ESTABLISH A LIEN FOR UNPAID WAGES; OR

(2) IF NO COMPLAINT DISPUTING THE LIEN FOR UNPAID WAGES IS FILED, WITHIN 30 DAYS AFTER A NOTICE IS SERVED UNDER § 3-1102 OF THIS SUBTITLE.

3-1105.

(A) IF A CIRCUIT COURT ORDERS THE ESTABLISHMENT OF A LIEN FOR UNPAID WAGES, THE EMPLOYEE MAY RECORD THE LIEN FOR UNPAID WAGES BY FILING A WAGE LIEN STATEMENT UNDER SUBSECTION (C) OF THIS SECTION.

(B) IF THE EMPLOYER FAILS TO FILE A TIMELY COMPLAINT DISPUTING THE NOTICE OF WAGE LIEN, THE EMPLOYEE MAY RECORD THE LIEN FOR UNPAID WAGES BY FILING A WAGE LIEN STATEMENT UNDER SUBSECTION (C) OF THIS SECTION ALONG WITH PROOF OF SERVICE IN ACCORDANCE WITH MARYLAND RULE 2-126.

(C) A WAGE LIEN STATEMENT MAY BE RECORDED:

(1) FOR A LIEN AGAINST REAL PROPERTY, BY FILING A WAGE LIEN STATEMENT, IN A FORM PRESCRIBED BY THE COMMISSIONER, WITH THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY WHERE ANY PORTION OF THE PROPERTY IS LOCATED; AND

(2) FOR A LIEN AGAINST PERSONAL PROPERTY, BY FILING A WAGE LIEN STATEMENT IN THE SAME MANNER, FORM, AND PLACE AS A FINANCING STATEMENT UNDER TITLE 9, SUBTITLE 5 OF THE COMMERCIAL LAW ARTICLE.

(D) (1) IF AN EMPLOYEE DOES NOT RECORD A WAGE LIEN STATEMENT WITHIN 180 DAYS AFTER THE LIEN FOR UNPAID WAGES IS ESTABLISHED, A LIEN FOR UNPAID WAGES SHALL BE EXTINGUISHED WITHOUT PREJUDICE.

(2) IF PAYMENT IS MADE OR A BOND IS FILED FOR THE AMOUNT OF WAGES AND DAMAGES STATED IN THE WAGE LIEN STATEMENT, THE RECORDED LIEN FOR UNPAID WAGES SHALL BE RELEASED.

(E) A LIEN FOR UNPAID WAGES RECORDED UNDER THIS SECTION SHALL BE CONSIDERED A SECURED CLAIM THAT HAS PRIORITY:

(1) FROM THE DATE OF THE COURT ORDER ESTABLISHING THE LIEN FOR UNPAID WAGES; OR

(2) IF NO COMPLAINT DISPUTING THE LIEN FOR UNPAID WAGES IS FILED, FROM THE DATE THAT THE EMPLOYEE FILED THE WAGE LIEN STATEMENT.

(F) SUBSEQUENT BONA FIDE PURCHASERS OF ANY PROPERTY SUBJECT TO A RECORDED LIEN FOR UNPAID WAGES ARE DEEMED TO HAVE CONSTRUCTIVE NOTICE OF THE LIEN FOR UNPAID WAGES FROM DATE OF RECORDATION OF A WAGE LIEN STATEMENT.

3-1106.

(A) AN ORDER FOR A LIEN FOR UNPAID WAGES SHALL BE ENFORCED IN THE SAME MANNER AS ANY OTHER JUDGMENT UNDER STATE LAW.

(B) AN ACTION TO ENFORCE AN ORDER FOR A LIEN FOR UNPAID WAGES SHALL BE BROUGHT WITHIN 12 YEARS OF THE DATE OF RECORDATION OF A LIEN FOR UNPAID WAGES.

3-1107.

(A) A CONTRACT BETWEEN AN EMPLOYEE AND AN EMPLOYER MAY NOT WAIVE OR REQUIRE THE EMPLOYEE TO WAIVE THE RIGHT TO SEEK THE ESTABLISHMENT OF A LIEN FOR UNPAID WAGES UNDER THIS SUBTITLE.

(B) A PROVISION IN AN EXECUTORY CONTRACT BETWEEN AN EMPLOYER AND AN EMPLOYEE THAT CONDITIONS PAYMENT OF WAGES TO THE EMPLOYEE ON RECEIPT BY THE EMPLOYER OF A PAYMENT FROM A PROPERTY OWNER OR A THIRD PARTY MAY NOT ABROGATE OR WAIVE THE RIGHT OF AN EMPLOYEE TO SEEK THE ESTABLISHMENT OF A LIEN FOR UNPAID WAGES UNDER THIS SUBTITLE.

(C) A PROVISION OF A CONTRACT THAT VIOLATES THIS SECTION IS VOID AS AGAINST THE PUBLIC POLICY OF THE STATE.

3-1108.

THIS SUBTITLE MAY NOT BE CONSTRUED TO PREVENT AN EMPLOYEE FROM EXERCISING ANY RIGHT OR SEEKING ANY REMEDY TO WHICH THE EMPLOYEE MAY BE OTHERWISE ENTITLED.

3-1109.

THE COMMISSIONER MAY SEEK TO ESTABLISH A LIEN FOR UNPAID WAGES ON BEHALF OF AN EMPLOYEE.

3-1110.

THE COMMISSIONER SHALL ADOPT REGULATIONS TO:

(1) ESTABLISH THE CONTENT OF THE NOTICE, COMPLAINT, AND WAGE LIEN STATEMENT UNDER THIS SUBTITLE; AND

(2) IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 16, 2013.