

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 588

Introduced by Senator De León

February 26, 2015

An act to add Chapter 10 (commencing with Section 690.020) to Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, and to amend Section 98 of, and to add Sections 96.8, 238, 238.1, 238.2, 238.3, 238.4, 238.5, and 558.1 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, De León. Employment: nonpayment of wages: Labor Commissioner: judgment enforcement.

(1) The Enforcement of Judgments Law provides for the enforcement of money judgments and other civil judgments. Under that law, a judgment creditor may levy upon the property of a judgment debtor to satisfy a judgment, and a levying officer holds the property until the final determination of any exemptions claimed by the judgment debtor.

This bill would enact special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state. The bill would authorize the Labor Commissioner to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided.

The bill would also authorize the Labor Commissioner to issue a notice of levy, as specified, if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor.

(2) Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Existing law requires the Labor Commissioner to determine all matters arising under his or her jurisdiction. Existing law makes any employer or other person acting on behalf of an employer who violates or causes to be violated specified provisions regulating hours and days of work in any order of the Industrial Welfare Commission to be subject to a civil penalty, as specified.

This bill would authorize the Labor Commissioner to provide for a hearing against any employer or other person acting on behalf of an employer for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission. The bill would also authorize any person liable for a violation of those provisions to be held liable in various other actions relating to, among other things, an employer's failure to pay wages.

Under existing law, within a specified period of time after service of notice of an order, decision, or award, the parties are authorized to seek review by filing an appeal to the superior court, where the appeal is required to be heard de novo.

This bill, after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner or in favor of any employee pursuant to an appeal, would authorize the Labor Commissioner to, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. The bill would also require the judgment debtor to be served with a copy of the notice of levy. The bill would require any person who surrenders to the ~~commissioner~~ *Labor Commissioner* any credits, money, or property, or pays the debts ~~owing~~ *owed to* the judgment debtor to be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the ~~commissioner~~ *Labor Commissioner* as a result of the levy. The bill would make any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts ~~owing~~ *owed to* the judgment debtor liable in his or her own person or estate to the ~~commissioner~~ *Labor Commissioner* in an

amount equal to the value of the credits, money, or property or in the amount of the levy, as provided.

If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, the bill would prohibit an employer from continuing to conduct business in this state unless the employer has obtained a bond from a surety company admitted and has filed a copy of that bond with the Labor Commissioner, as provided. As an alternative to the bond requirement, the bill would authorize the employer to provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. The bill would make any employer conducting business without satisfying the bond requirement subject to a specified civil ~~fine~~ *penalty*. The bill, where an employer is conducting business in violation of the bond requirement, would authorize the Labor Commissioner to issue and serve on such employer a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The bill would make the failure of an employer, officer, or anyone having direction, management, or control of any place of employment or of employees to observe a stop order guilty of a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program. Subject to required prior notice to the employer, the bill would authorize the Labor Commissioner to create a lien on any real or personal property in California of an employer that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, penalties, and attorney's fees claimed to be owed to an employee.

Existing law generally provides for the licensure and regulation of various types of long-term care facilities by the State Department of Public Health and the State Department of Social Services.

If a final judgment against an employer arising from the employer's nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal, this bill would prohibit an employer in the long-term care industry, as specified, from obtaining a license or renewing that license if the employer is conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, as described above. The bill would

make a specified entity that contracts with an employer to perform services in the property services, as defined, or long-term care industries jointly and severally liable where the entity has been named as a defendant with the employer for any unpaid wages and the employer was found liable for those unpaid wages pursuant to a specified action, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 10 (commencing with Section 690.020)
2 is added to Division 1 of Title 9 of Part 2 of the Code of Civil
3 Procedure, to read:

4
5 CHAPTER 10. ENFORCEMENT OF JUDGMENTS BY LABOR
6 COMMISSIONER
7

8 690.020. For the purpose of the remedies provided under this
9 chapter, jurisdiction is conferred upon the superior court.

10 690.030. (a) Except as otherwise provided by statute, whenever
11 a warrant or notice of levy may properly be issued by the Labor
12 Commissioner pursuant to Section 96.8 of the Labor Code, and
13 the warrant may be levied with the same effect as a levy pursuant
14 to a writ of execution, ~~the commissioner~~ *Labor Commissioner* may
15 use any of the remedies available to a judgment creditor, including,
16 but not limited to, those provided in Chapter 6 (commencing with
17 Section 708.010) of Division 2.

18 (b) The proper court for the enforcement of the remedies
19 provided under this chapter is the superior court of any of the
20 following counties:

- 21 (1) The county where the employee resides.
- 22 (2) The county where the judgment debtor resides.
- 23 (3) The county where the person against whom the levy or
24 warrant was issued resides.

1 690.040. (a) Whenever the Labor Commissioner, pursuant to
2 Section 96.8 of the Labor Code, levies upon property pursuant to
3 a warrant or notice of levy for the collection of an unsatisfied
4 judgment or award:

5 (1) If the debtor is a natural person, the debtor is entitled to the
6 same exemptions to which a judgment debtor is entitled. Except
7 as provided in subdivisions (b) and (c), the claim of exemption
8 shall be made, heard, and determined as provided in Chapter 4
9 (commencing with Section 703.010) of Division 2 in the same
10 manner as if the property were levied upon under a writ of
11 execution.

12 (2) A third person may claim ownership or the right to
13 possession of the property or a security interest in or lien on the
14 property. Except as provided in subdivisions (b) and (c) or as
15 otherwise provided by statute, the third-party claim shall be made,
16 heard, and determined as provided in Division 4 (commencing
17 with Section 720.010) in the same manner as if the property were
18 levied upon under a writ of execution.

19 (b) In the case of a warrant or notice of levy issued pursuant to
20 Section 96.8 of the Labor Code, the claim of exemption or the
21 third-party claim shall be filed with the Labor Commissioner.

22 (c) A claim of exemption or a third-party claim pursuant to this
23 section shall be heard and determined in a superior court specified
24 in subdivision (b) of Section 690.030.

25 690.050. (a) Notwithstanding any other law, in the case of a
26 writ of execution issued by a court of competent jurisdiction
27 pursuant to Chapter 3 (commencing with Section 699.010) and
28 Chapter 5 (commencing with Section 706.010) of Division 2, the
29 Labor Commissioner, when collecting an unsatisfied judgment or
30 award pursuant to Section 96.8 of the Labor Code, may perform
31 the duties of the levying officer, except that the ~~commissioner~~
32 *Labor Commissioner* need not give himself or herself the notices
33 that the levying officer is required to serve on a judgment creditor
34 or the notices that a judgment creditor is required to give to the
35 levying officer.

36 (b) Notwithstanding subdivision (a) of Section 700.140 and
37 Section 700.170, if the levy is for a deposit, credits, money, or
38 property in the possession or under the control of a bank or savings
39 and loan association or for an account receivable or other general
40 intangible owed to the judgment debtor by an account debtor, the

1 ~~commissioner~~ *Labor Commissioner* may deliver or mail a notice
2 of levy to a centralized location designated by the bank or savings
3 and loan association or, in the case of an account receivable or
4 other general intangible, to the agent for service of process of the
5 account debtor. If the notice of levy is received at the designated
6 central location for the bank or savings and loan association, ~~the~~
7 *notice of levy* will apply to all deposits, credits, money, and
8 personal property held by the bank or savings and loan association
9 regardless of the location of that property. The notice of levy may
10 be issued directly by the ~~commissioner~~, *Labor Commissioner*,
11 whether or not a court has issued a writ of execution, and shall
12 contain all of the information required to be included in a writ of
13 execution under Section 699.520 and in a notice of levy under
14 Section 699.540.

15 SEC. 2. Section 96.8 is added to the Labor Code, to read:

16 96.8. (a) Notwithstanding any other law, after a judgment is
17 entered by a court of competent jurisdiction in favor of the Labor
18 Commissioner or in favor of any employee pursuant to Section
19 98.2, the Labor Commissioner may, with the consent of any
20 employee in whose favor the judgment is entered, collect any
21 outstanding amount of the judgment by mailing a notice of levy
22 upon all persons having in their possession, or who will have in
23 their possession or under their control, any credits, money, or
24 property belonging to the judgment debtor, or who owe any debt
25 to the judgment debtor at the time they receive the notice of levy.

26 (b) Notwithstanding any other law, the Labor Commissioner
27 may execute a levy on any property that may be levied under
28 Section 700.140 or 700.170 of the Code of Civil Procedure by
29 mailing a notice of levy to the person against whom the levy is
30 directed and serving a copy on the judgment debtor. The notice of
31 levy shall contain all of the information required to be included in
32 a writ of execution under Section 699.520 of the Code of Civil
33 Procedure and in a notice of levy under Section 699.540 of the
34 Code of Civil Procedure.

35 (c) Any person, upon whom a levy has been noticed having in
36 his or her possession or under his or her control any credits, money,
37 or property belonging to the judgment *debtor* or owing any debts
38 to the judgment debtor at the time of receipt of the levy or coming
39 into his or her possession or under his or her control within one
40 year of receipt of the notice of levy, shall surrender the credits,

1 money, or property to the ~~commissioner~~ *Labor Commissioner* or
2 pay to the ~~commissioner~~ *Labor Commissioner* the amount of any
3 debt ~~owing~~ *owed* to the judgment debtor within 10 days of service
4 of the levy, and shall surrender the credits or property, or the
5 amount of any debt owing to the judgment debtor coming into his
6 or her own possession or control within one year of receipt of the
7 notice of levy within 10 days of the date of coming into possession
8 or control of the credits or property or the amount of any debt
9 ~~owing~~ *owed* to the judgment debtor.

10 (d) Any person who surrenders to the ~~commissioner~~ *Labor*
11 *Commissioner* pursuant to this section any credits, money, or
12 property, or pays the debts ~~owing~~ *owed* to the judgment debtor,
13 shall be discharged from any obligation or liability to the judgment
14 debtor to the extent of the amount paid to the ~~commissioner~~ *Labor*
15 *Commissioner* as a result of the levy.

16 (e) If the levy is made on a deposit or credits, money, or property
17 in the possession or under the control of a bank, savings and loan
18 association, or other financial institution as defined by Section
19 669a(d)(1) of Title 42 of the United States Code, the notice of levy
20 may be delivered or mailed to a centralized location designated
21 by the bank, savings and loan association, or other financial
22 institution pursuant to Section 690.050 of the Code of Civil
23 Procedure.

24 (f) Any person who is noticed with a levy pursuant to this section
25 and who fails or refuses to surrender any credits, money, or
26 property or pay any debts ~~owing~~ *owed* to the judgment debtor shall
27 be liable in his or her own person or estate to the ~~commissioner~~
28 *Labor Commissioner* in an amount equal to the value of the credits,
29 money, or other property or in the amount of the levy, up to the
30 amount specified in the levy.

31 (g) The fees, commissions, expenses, and the reasonable costs
32 associated with the sale of property levied upon by warrant or levy
33 pursuant to this section, including, but not limited to, appraisers'
34 fees, auctioneers' fees, and advertising fees are an obligation of
35 the judgment debtor and may be collected from the judgment debtor
36 by virtue of the warrant or levy or in any other manner as though
37 these items were part of the judgment or award outstanding.

38 (h) This section shall not apply to the judgment debtor's interest
39 in real property.

40 SEC. 3. Section 98 of the Labor Code is amended to read:

1 98. (a) The Labor Commissioner is authorized to investigate
2 employee complaints. The Labor Commissioner may provide for
3 a hearing in any action to recover wages, penalties, and other
4 demands for compensation, including liquidated damages if the
5 complaint alleges payment of a wage less than the minimum wage
6 fixed by an order of the Industrial Welfare Commission or by
7 statute, properly before the division or the Labor Commissioner,
8 including orders of the Industrial Welfare Commission, and shall
9 determine all matters arising under his or her jurisdiction. The
10 Labor Commissioner may also provide for a hearing against any
11 employer or other person acting on behalf of an employer for a
12 violation of Section 558. It is within the jurisdiction of the Labor
13 Commissioner to accept and determine claims from holders of
14 payroll checks or payroll drafts returned unpaid because of
15 insufficient funds, if, after a diligent search, the holder is unable
16 to return the dishonored check or draft to the payee and recover
17 the sums paid out. Within 30 days of the filing of the complaint,
18 the Labor Commissioner shall notify the parties as to whether a
19 hearing will be held, whether action will be taken in accordance
20 with Section 98.3, or whether no further action will be taken on
21 the complaint. If the determination is made by the Labor
22 Commissioner to hold a hearing, the hearing shall be held within
23 90 days of the date of that determination. However, the Labor
24 Commissioner may postpone or grant additional time before setting
25 a hearing if the Labor Commissioner finds that it would lead to an
26 equitable and just resolution of the dispute. A party who has
27 received actual notice of a claim before the Labor Commissioner
28 shall, while the matter is before the Labor Commissioner, notify
29 the Labor Commissioner in writing of any change in that party's
30 business or personal address within 10 days after the change in
31 address occurs.

32 It is the intent of the Legislature that hearings held pursuant to
33 this section be conducted in an informal setting preserving the
34 rights of the parties.

35 (b) When a hearing is set, a copy of the complaint, which shall
36 include the amount of compensation requested, together with a
37 notice of time and place of the hearing, shall be served on all
38 parties, personally or by certified mail, or in the manner specified
39 in Section 415.20 of the Code of Civil Procedure.

1 (c) Within 10 days after service of the notice and the complaint,
2 a defendant may file an answer with the Labor Commissioner in
3 any form as the Labor Commissioner may prescribe, setting forth
4 the particulars in which the complaint is inaccurate or incomplete
5 and the facts upon which the defendant intends to rely.

6 (d) No pleading other than the complaint and answer of the
7 defendant or defendants shall be required. Both shall be in writing
8 and shall conform to the form and the rules of practice and
9 procedure adopted by the Labor Commissioner.

10 (e) Evidence on matters not pleaded in the answer shall be
11 allowed only on terms and conditions the Labor Commissioner
12 shall impose. In all these cases, the claimant shall be entitled to a
13 continuance for purposes of review of the new evidence.

14 (f) If the defendant fails to appear or answer within the time
15 allowed under this chapter, no default shall be taken against him
16 or her, but the Labor Commissioner shall hear the evidence offered
17 and shall issue an order, decision, or award in accordance with the
18 evidence. A defendant failing to appear or answer, or subsequently
19 contending to be aggrieved in any manner by want of notice of the
20 pendency of the proceedings, may apply to the Labor
21 Commissioner for relief in accordance with Section 473 of the
22 Code of Civil Procedure. The Labor Commissioner may afford
23 this relief. No right to relief, including the claim that the findings
24 or award of the Labor Commissioner or judgment entered thereon
25 are void upon their face, shall accrue to the defendant in any court
26 unless prior application is made to the Labor Commissioner in
27 accordance with this chapter.

28 (g) All hearings conducted pursuant to this chapter are governed
29 by the division and by the rules of practice and procedure adopted
30 by the Labor Commissioner.

31 (h) (1) Whenever a claim is filed under this chapter against a
32 person operating or doing business under a fictitious business
33 name, as defined in Section 17900 of the Business and Professions
34 Code, which relates to the person's business, the division shall
35 inquire at the time of the hearing whether the name of the person
36 is the legal name under which the business or person has been
37 licensed, registered, incorporated, or otherwise authorized to do
38 business.

39 (2) The division may amend an order, decision, or award to
40 conform to the legal name of the business or the person who is the

1 defendant to a wage claim, if it can be shown that proper service
2 was made on the defendant or his or her agent, unless a judgment
3 had been entered on the order, decision, or award pursuant to
4 subdivision (d) of Section 98.2. The Labor Commissioner may
5 apply to the clerk of the superior court to amend a judgment that
6 has been issued pursuant to a final order, decision, or award to
7 conform to the legal name of the defendant, if it can be shown that
8 proper service was made on the defendant or his or her agent.

9 SEC. 4. Section 238 is added to the Labor Code, to read:

10 238. (a) If a final judgment against an employer arising from
11 the employer's nonpayment of wages for work performed in this
12 state remains unsatisfied after a period of 10 days after the time
13 to appeal therefrom has expired and no appeal therefrom is pending,
14 the employer shall not continue to conduct business in this state
15 ~~related to that final judgment~~ unless the employer has obtained a
16 bond from a surety company admitted to do business in this state
17 and has filed a copy of that bond with the Labor Commissioner.
18 The principal sum of the bond shall not be less than one hundred
19 and fifty thousand dollars (\$150,000).

20 (b) In lieu of filing and maintaining the bond required by this
21 section, the employer may provide the Labor Commissioner with
22 a notarized copy of an accord reached with an individual holding
23 an unsatisfied final judgment.

24 (c) (1) The bond required by this section shall be in favor of,
25 and payable to, the people of the State of California, and shall be
26 for the benefit of any employee damaged by his or her employer's
27 failure to pay wages, including any interest, penalties, and
28 attorney's fees.

29 (2) This section shall not require a bond in favor of employees
30 covered by a bona fide collective bargaining agreement, if the
31 agreement expressly provides for wages, hours of work, working
32 conditions, a process to resolve disputes concerning nonpayment
33 of wages, and a waiver of the bond required by this section.

34 (3) Thirty days prior to the cancellation or termination of any
35 bond required by this section, the surety shall send written notice
36 to both the employer and the Labor Commissioner, identifying the
37 bond and the date of the cancellation or termination. If the bond
38 is terminated or canceled, the employer shall obtain a new surety
39 bond and file a copy of that bond with the Labor Commissioner
40 to remain in compliance with this section.

1 (d) For purposes of this section, a judgment also includes any
2 final arbitration award where the time to file a petition for a trial
3 de novo or a petition to vacate or correct the arbitration award has
4 expired and no petition is pending.

5 ~~(e) Subject to written notice to a subsequent employer about~~
6 ~~any unsatisfied judgments against the employer for nonpayment~~
7 ~~of wages, a subsequent~~ An employer similar in operation and
8 ownership to an employer with an unsatisfied final judgment for
9 unpaid ~~wages~~ *wages, upon receiving written notice of the*
10 *unsatisfied judgment,* shall be deemed the same employer for
11 purposes of this section if (1) the employees of the subsequent
12 employer are engaged in substantially the same work in
13 substantially the same working conditions under substantially the
14 same supervisors or (2) if the new entity has substantially the same
15 production process or operations, produces substantially the same
16 products or offers substantially the same services, and has
17 substantially the same body of customers.

18 (f) Any employer, or other person acting on behalf of an
19 employer, that conducts business in violation of this section shall
20 be subject to a civil ~~fine~~ *penalty* of two thousand five hundred
21 dollars (\$2,500). Any employer that has previously paid a ~~fine~~
22 *penalty* pursuant to this section shall be subject to an additional
23 ~~fine~~ *penalty* of one hundred dollars (\$100) for each calendar day
24 that the employer conducts business in violation of this section;
25 however, this additional amount shall not exceed one hundred
26 thousand dollars (\$100,000).

27 SEC. 5. Section 238.1 is added to the Labor Code, to read:

28 238.1. (a) Where an employer is conducting business in
29 violation of Section 238, the Labor Commissioner may issue and
30 serve on that employer a stop order prohibiting the use of employee
31 labor by that employer until the employer's compliance with
32 Section 238, provided that the stop order would not compromise
33 or imperil public safety or the life, health, and care of vulnerable
34 individuals. The stop order shall also prohibit the employer from
35 continuing to provide services by subcontracting for labor. The
36 stop order shall become effective immediately upon the service of
37 the order. Any employee affected by the work stoppage shall be
38 paid by the employer for such time lost, not exceeding 10 days,
39 pending compliance by the employer. The employer may protest
40 the stop order by making and filing with the Labor Commissioner

1 a written request for a hearing within 20 days after service of the
2 stop order. The hearing shall be held within 5 days from the date
3 of filing the request. The Labor Commissioner shall notify the
4 employer of the time and place of the hearing by mail. At the
5 conclusion of the hearing, the stop order shall be immediately
6 affirmed or dismissed, and within 24 hours thereafter, the Labor
7 Commissioner shall issue and serve on all parties to the hearing
8 by registered or certified mail a written notice of findings,
9 accompanied by written findings. A writ of mandate may be taken
10 from the findings to the appropriate superior court. The writ shall
11 be taken within 45 days after the mailing of the notice of findings
12 ~~and findings.~~ *accompanied by written findings.*

13 (b) Failure of an employer, officer, or anyone having direction,
14 management, or control of any place of employment or of
15 employees to observe a stop order issued and served upon him or
16 her pursuant to this section is guilty of a misdemeanor punishable
17 by imprisonment in the county jail not exceeding 60 days or by a
18 fine not exceeding ten thousand dollars (\$10,000), or both. The
19 Labor Commissioner may also obtain injunctive and other relief
20 from the courts to carry out the purposes of this section.

21 SEC. 6. Section 238.2 is added to the Labor Code, to read:

22 238.2. (a) The Labor Commissioner may create a lien on any
23 real property in California of an employer that is conducting
24 business in violation of Section 238 for the full amount of any
25 wages, interest, penalties, and attorney's fees claimed to be owed
26 to any employee.

27 (b) The Labor Commissioner may create the lien provided in
28 this section by recording a certificate of lien using the same
29 procedure applicable under subsection (g) of Section 98.2.

30 (c) The Labor Commissioner shall issue a certificate of release,
31 releasing the lien created under this section, upon final satisfaction
32 of any judgment entered in favor of the employee, upon
33 adjudication of the claim in favor of the employer, upon the filing
34 of a surety bond pursuant to Section 238. The certificate of release
35 may be recorded by the employer at the employer's expense.

36 (d) Unless the lien is satisfied or released, a lien under this
37 section shall continue until 10 years from the date of its creation.

38 (e) Prior to using this lien procedure in this section, the Labor
39 Commissioner shall provide at least 20 days' preliminary notice
40 to the employer. The preliminary notice shall advise the employer

1 of the nature and amount of the employee’s claim and of the Labor
2 Commissioner’s authority to create a lien on the employer’s
3 property to secure payment of the claim.

4 (f) The Labor Commissioner shall serve the preliminary notice
5 on the employer by certified mail with return receipt requested,
6 evidenced by a certificate of mailing, postage prepaid, addressed
7 to the employer at the employer’s residence or place of business.
8 The Labor Commissioner shall serve a copy of any notice of lien
9 on the employer in the same manner.

10 (g) Upon entry of a final order, decision, or award issued in an
11 appeal pursuant to Section 98.2 against the employer for unpaid
12 wages, or entry of a final judgment against the employer for unpaid
13 wages in an action filed in the superior court, the Labor
14 Commissioner may bring an action to foreclose on any lien created
15 pursuant to this section.

16 (h) A lien created pursuant to this section is in addition to any
17 other lien rights available to an employee or to the Labor
18 Commissioner and shall not be construed to limit those rights.

19 SEC. 7. Section 238.3 is added to the Labor Code, to read:

20 238.3. (a) The Labor Commissioner may create a lien on any
21 personal property in California of an employer that conducts
22 business in violation of Section 238 for the full amount of any
23 wages, interest, penalties, and attorney’s fees claimed to be owed
24 to any employee.

25 (b) The Labor Commissioner may create the lien provided in
26 this section by filing a notice of lien with the Secretary of State
27 on the standard form of initial financing statement pursuant to
28 Section 9521 of the Commercial Code. The standard form shall
29 be completed in the following manner:

30 (1) The Labor Commissioner shall be identified as the secured
31 party.

32 (2) The employer shall be identified as the debtor.

33 (3) The description of the collateral shall include the following
34 statements:

35 (A) A statement of the Labor Commissioner’s demand for
36 payment of the wages, penalties, interest, and attorney’s fees. The
37 statement shall specify the amount owed to the employee, and if
38 the amount is estimated, shall provide an explanation for the basis
39 of the estimate.

1 (B) A general statement of the kind of work furnished by the
2 employee and the dates of employment.

3 (c) For the purpose of the Secretary of State's index pursuant
4 to Sections 9515, 9516, and 9522 of the Commercial Code and for
5 the purpose of the issuance of a certificate pursuant to Section
6 9519 or 9528 of the Commercial Code, the Secretary of State shall
7 treat a notice of lien pursuant to this section as a financing
8 statement.

9 (d) The lien attaches to all personal property that is owned by
10 the employer at the time of the filing of the notice of lien, or that
11 is subsequently acquired by the employer, that can be made subject
12 to a security interest under the Commercial Code.

13 (e) The Labor Commissioner shall file a termination statement,
14 releasing the lien created under this section, upon final satisfaction
15 of any judgment entered in favor of the employee, upon
16 adjudication of the claim in favor of the employer, upon the filing
17 of a surety bond in a form acceptable to the Labor Commissioner
18 sufficient to secure the claim.

19 (f) The notice of claim of lien to which the termination statement
20 relates ceases to be effective upon the filing of a termination
21 statement with the office of the Secretary of State. A termination
22 statement for a notice of lien may be filed in the same manner as
23 a termination statement for a financing statement filed pursuant
24 to Section 9513 of the Commercial Code.

25 (g) Unless the lien is satisfied or released, a lien under this
26 section shall continue until 10 years from the date of its creation.

27 (h) Prior to using this lien procedure in this section, the Labor
28 Commissioner shall provide at least 20 days' preliminary notice
29 to the employer. The preliminary notice shall advise the employer
30 of the nature and amount of the employee's claim and of the Labor
31 Commissioner's authority to create a lien on the employer's
32 personal property to secure payment of the claim.

33 (i) The Labor Commissioner shall serve the preliminary notice
34 on the employer by certified mail with return receipt requested,
35 evidenced by a certificate of mailing, postage prepaid, addressed
36 to the employer at the employer's residence or place of business.
37 The Labor Commissioner shall serve a copy of any notice of lien
38 on the employer in the same manner.

39 (j) Upon entry of a final order, decision, or award issued in an
40 appeal pursuant to Section 98.2 against the employer for unpaid

1 wages, or entry of a final judgment against the employer for unpaid
2 wages in an action filed in the superior court, the Labor
3 Commissioner may bring an action to foreclose on any lien created
4 pursuant to this section.

5 (k) A lien created pursuant to this section in addition to any
6 other lien rights available to an employee or to the Labor
7 Commissioner shall not be construed to limit those rights.

8 SEC. 8. Section 238.4 is added to the Labor Code, to read:

9 238.4. (a) An employer in the long-term care industry that is
10 also required to obtain a license from the State Department of
11 Public Health or the State Department of Social Services pursuant
12 to Division 2 (commencing with Section 1200) of the Health and
13 Safety Code may not obtain a license or renew that license if the
14 employer is conducting business in violation of Section 238.

15 (b) For purposes of this section “long-term care” means the
16 operation of a skilled nursing facility, intermediate care facility,
17 congregate living facility, hospice facility, adult residential facility,
18 residential care facility for persons with chronic life-threatening
19 illness, residential care facility for the elderly, continuing care
20 retirement community, home health agency, or home care
21 organization, as those terms are used in Division 2 (commencing
22 with Section 1200) of the Health and Safety Code.

23 SEC. 9. Section 238.5 is added to the Labor Code, to read:

24 238.5. (a) An individual, partnership, corporation, limited
25 liability company, joint venture, or association that, as part of its
26 business, contracts with an employer to perform services in the
27 property services or long-term care industries shall be jointly and
28 severally liable, where the individual, partnership, corporation,
29 limited liability company, joint venture, or association has been
30 named as a defendant and provided notice pursuant to subdivision
31 ~~(e)~~, (b) of Section 98, with the employer for any unpaid wages,
32 including interest, and the employer was found liable for those
33 unpaid wages by an order, decision or award issued pursuant to
34 Section 98.2, to the extent the amounts are for services performed
35 under that contract. The issue of joint and several liability under
36 this section may be determined by the Labor Commissioner in a
37 proceeding under Section 98.

38 (b) The joint and several liability provided by this section shall
39 not apply to unpaid wages owed to employees covered by a bona
40 fide collective bargaining agreement, if the agreement expressly

1 provides for wages, hours of work, working conditions, a process
2 to resolve disputes concerning nonpayment of wages, and a waiver
3 of the joint and several liability provided by this section.

4 (c) An employer that contracts to provide services in the property
5 services or long-term care industries shall, prior to entering into
6 such a contract, provide written notice to the other party to the
7 prospective contract of any unsatisfied final judgments against the
8 employer for nonpayment of wages. The notice shall also provide
9 the text of this section. The employer shall provide, within thirty
10 (30) days of the entry of the judgment, written notice of any
11 unsatisfied final judgments against the employer for nonpayment
12 of wages to any parties with which the employer is presently under
13 contract to provide services in the property services or long-term
14 care industries. The failure of the employer to provide such notices
15 shall not be a defense to the joint and several liability provided by
16 this section.

17 (d) For purposes of this section:

18 (1) "Property services" means janitorial, security guard, valet
19 parking, landscaping and gardening services.

20 (2) "Long-term care" has the same definition as in Section 238.4.

21 SEC. 10. Section 558.1 is added to the Labor Code, to read:

22 558.1. Any person who would be liable for any violation under
23 Section 558 may also be held liable in an action pursuant to Section
24 98, 203, 226, 1193.6, 1194, or 2802.

25 SEC. 11. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.