

# Senate Bill 573

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes right of employee for civil action based on unpaid wages. Authorizes creation of lien on employer's real and personal property for unpaid wages under certain circumstances. Establishes priority of lien for amounts of unpaid wages up to specified amount. Creates exception.

## A BILL FOR AN ACT

1  
2 Relating to establishing a lien on employer property based on an unpaid wage claim.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 652.310 to**  
5 **652.414.**

6 **SECTION 2. (1)(a) An employee has a right of civil action for a claim for unpaid wages**  
7 **against the employer in the full amount of the employee's unpaid wages due as provided**  
8 **under ORS 652.110, 652.120, 652.130, 652.140, 652.145, 652.150, 652.160, 652.170, 652.190, 652.200,**  
9 **652.220, 652.230, 652.240, 652.250, 652.260 and 653.055.**

10 **(b) An employee who has a claim against the employer under this subsection or the**  
11 **assignee of an employee who has filed a wage claim under this subsection has a lien upon**  
12 **all property of the employer, real and personal, located in this state for the amount of the**  
13 **unpaid wages to which the employee is entitled.**

14 **(2)(a) A lien under subsection (1) of this section upon real property takes effect on the**  
15 **date on which the employee or the assignee of the employee:**

16 **(A) Files a notice of claim of lien with the county clerk of the county in which the real**  
17 **property is located;**

18 **(B) Pays any required filing fees; and**

19 **(C) Serves a copy of the notice filed under this subsection on the employer by certified**  
20 **mail with return receipt requested.**

21 **(b) The county clerk shall enter notice of the lien in the County Clerk Lien Record.**

22 **(3)(a) A lien under subsection (1) of this section upon personal property takes effect on**  
23 **the date on which the employee or the assignee of the employee:**

24 **(A) Files a notice of claim of lien with the Secretary of State;**

25 **(B) Pays any required filing fees; and**

26 **(C) Serves a copy of the notice filed under this subsection on the employer by certified**  
27 **mail with return receipt requested.**

28 **(b) The Secretary of State shall include notice of the lien that is filed under this sub-**  
29 **section in the index maintained by the secretary for filing financing statements pursuant to**  
30 **ORS chapter 79.**

31 **(4) A notice of claim of lien must be a written statement that:**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (a) Is filed under subsection (2) or (3) of this section within two years after the date on  
2 which wages for the final pay period were due; and

3 (b) Specifies:

4 (A) The nature of the claim;

5 (B) The amount claimed;

6 (C) All property, real and personal, upon which the claim is made, in a manner sufficient  
7 for identification; and

8 (D) That the person filing the notice has a claim of lien on the property.

9 (5) A lien established under subsection (1) of this section has priority over the rights of  
10 any purchaser of property of the employer, including any bona fide purchaser under 11 U.S.C.  
11 545 (2), and over all other debts, judgments, decrees, liens or mortgages against the em-  
12 ployer, except:

13 (a) A lien established by a commercial lending institution as provided in subsection (6)  
14 of this section, regardless of whether those debts, judgments, decrees, liens or mortgages  
15 originated before or after the lien established under subsection (1) of this section takes ef-  
16 fect; or

17 (b) A lien held by a public body for unpaid taxes.

18 (6)(a) A lien established under subsection (1) of this section does not take priority over  
19 a lien of a commercial lending institution against the employer that was originated before  
20 the lien established under subsection (1) of this section takes effect.

21 (b) Notwithstanding paragraph (a) of this subsection, a lien established under subsection  
22 (1) of this section has priority for the first \$3,000 of the lien amount over a lien of a com-  
23 mercial lending institution that was originated before the lien established under subsection  
24 (1) of this section takes effect.

25 (7) A lien established under subsection (1) of this section expires if the employee or the  
26 assignee of the employee does not bring an action to enforce the lien within 120 days after  
27 the claim is filed.

28 (8) An employee may bring an action against an employer under subsection (1) of this  
29 section without first filing a claim for unpaid wages with the Bureau of Labor and Industries  
30 under ORS 652.310 to 652.414.

31 (9)(a) The employer against whose property a lien is made under subsection (1) of this  
32 section, or an interested person, may file with the recording officer of the county in which  
33 the claim of lien on real property is filed, or of the county in which the services for unpaid  
34 wages that are claimed were performed, a bond executed by a corporation authorized to issue  
35 surety bonds in this state, to the effect that the principal or principals on the bond shall pay  
36 the amount of the claim and all costs and attorney fees awarded against the property on  
37 account of the lien. The bond must be in an amount that is not less than \$1,000 or 150 per-  
38 cent of the amount claimed under the lien, whichever is greater.

39 (b) In lieu of the surety bond provided for in paragraph (a) of this subsection, the em-  
40 ployer against whose property a lien is made under subsection (1) of this section, or an in-  
41 terested person, may deposit with the treasurer of the county in which the claim of lien is  
42 filed an amount equal to \$1,000 or 150 percent of the amount claimed under the lien, which-  
43 ever is greater.

44 (c) A person entitled to file a bond under paragraph (a) of this subsection or to deposit  
45 an amount under paragraph (b) of this subsection may deliver to the lien claimant a written

1 **notice:**

2 **(A) Of the filing of the bond or of the deposit; and**

3 **(B) That includes a demand that the lien be released or foreclosed, and that states that**  
4 **if the lien is not released or foreclosed, the person may recover the amount of \$500 or the**  
5 **actual costs the person incurred in complying with this subsection, whichever is greater.**

6 **(d) The written notice and demand required under paragraph (c) of this subsection must**  
7 **be delivered to the lien claimant by certified mail with return receipt requested. A lien**  
8 **claimant who fails to release or foreclose a lien is liable to the person who filed the bond or**  
9 **made the deposit for the greater of \$500 or the actual costs the person incurred in complying**  
10 **with this subsection if:**

11 **(A) The person making the demand has complied with the requirements of this sub-**  
12 **section;**

13 **(B) The lien has not been released or foreclosed within 20 days after the written notice**  
14 **and demand is delivered; and**

15 **(C) The lien claimant does not bring an action to release or foreclose the lien within the**  
16 **time specified in subsection (7) of this section.**

17 **(e) If a lien claimant is served with a written notice and demand under paragraph (c) of**  
18 **this subsection and is a prevailing party in the action to release or foreclose the lien, then**  
19 **in addition to other costs and attorney fees to which the lien claimant is entitled, the court**  
20 **shall allow the lien claimant \$500 or the actual costs incurred in addressing the demand,**  
21 **whichever is greater.**

22 **(f) If the lien claimant establishes the validity of the lien claim in an action to enforce**  
23 **the lien, the lien claimant is entitled to judgment against the sureties upon the bond or**  
24 **against the money deposited.**

25

\_\_\_\_\_