

Delete text of bill and insert:

(1)(a) An employee has a right of civil action for a claim for unpaid wages, as defined in ORS 653.010, against an employer in the full amount of the employee's unpaid wages due as provided under ORS 652.110, 652.120, 652.130, 652.140, 652.145, 652.150, 652.160, 652.170, 652.190, 652.200, 652.220, 652.230, 652.240, 652.250, 652.260 and 653.055. An employee may bring an action under this section against an employer without first filing a claim for unpaid wages with the Bureau of Labor and Industries under ORS 652.310 to 652.414.

(b) An employee who has a claim against an employer under this section or the assignee of an employee who has filed a wage claim with the Commissioner of the Bureau of Labor and Industries may file a notice of lis pendens upon all property of the employer, real and personal, located in this state for the amount of the unpaid wages to which the employee claims to be entitled. With respect to real property the notice may be filed with the county clerk of the county in which the real property is located. With respect to personal property the notice may be filed with the Secretary of State. Upon receipt of the notice, any required filing fee and proof of service upon the employer by certified mail:

(A) The county clerk shall enter the notice of lis pendens in the County Clerk Lien Record.

(B) The Secretary of State shall include the notice of lis pendens that is filed under this subsection in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.

(2) A notice of lis pendens under subsection (1) of this section must be a written statement that:

(a) Includes a declaration that the notice is made under penalty of perjury as described in ORCP 1 E;

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

(c) Specifies:

(A) The nature and basis of the claim;

(B) The amount claimed;

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

(D) That the person filing the notice will claim a lien on the property.

(3)(a) A notice of lis pendens established under subsection (1) of this section expires if the employee or the assignee of the employee does not bring an action or proceeding to establish the liability of the employer for the wages claimed in a forum of competent jurisdiction within 120 days after the notice of lis pendens is filed, or does not within that time file notice of the filing of the action or proceeding with the county clerk or Secretary of State, as applicable.

(b) Any interested party may file a certified copy of the final judgment in an action or proceeding to establish the liability of the employer for the wages claimed with the county clerk or Secretary of State, as applicable. If the forum has found that no wages are due, the notice of lis pendens is void as of the filing of the final judgment.

(4) The employer against whose property a notice of lis pendens is filed under subsection (1) of this section may:

(a) Accede to a lien for the unpaid wages pursuant to subsection (7)(a)(B) or (7)(c)(B) of this section;

(b) Pay the unpaid wages as claimed in the notice, in which case, the employee or assignee shall promptly file a notice of withdrawal of the lis pendens notice with the county clerk or Secretary of State, as applicable;

(c) Request an ex parte review by the Commissioner of the Bureau of Labor and Industries of the representations made in the notice of lis pendens to determine whether the representations establish a prima facie case that the wages claimed are owed by the employer to the person claiming them. The commissioner may review the notice and accompanying declaration on an expedited basis, without hearing, and without the filing of any action or proceeding, and may void the notice of lis pendens for failure to establish a prima facie case.

Either party may seek review of the determination of the commissioner by filing an action for declaratory relief naming as parties the employer and employee and not naming the commissioner;

(d) File with the recording officer of the county in which the lis pendens notice on real property is filed, or of the county in which the services for unpaid wages that are claimed were performed, a bond executed by a corporation authorized to issue surety bonds in this state, to the effect that the principal or principals on the bond shall pay the amount of the claim and all costs and attorney fees awarded against the property on account of the unpaid wages. The bond must be in an amount that is not less than \$1,000 or 150 percent of the amount claimed under the notice, whichever is greater;

(e) Deposit with the treasurer of the county in which the notice of lis pendens is filed, or of the county in which the services for unpaid wages that are claimed were performed, an amount equal to \$1,000 or 150 percent of the amount claimed under the notice, whichever is greater;

(f) File an action to vacate the notice; or

(g) Take no action, and wait for the notice to expire or become void pursuant to subsection (3) of this section.

(5) Upon the filing of a bond or the making of a deposit under subsection (4)(d) or (e) of this section:

(a) The notice of lis pendens becomes void.

(b) The treasurer of the county in which the bond was filed or deposit was made shall:

(A) Release the bond or return the deposit to the person who filed the bond or made the deposit if no action or proceeding to establish the

liability of the employer for the wages claimed in a forum of competent jurisdiction within 120 days after the claim is filed; or

(B) Upon entry of the final judgment in an action or proceeding to resolve the liability of the employer to the employee, pay any amount the court determines to be owed to the employee or, if no amount is owed, release the bond or return the deposit to the person who filed the bond or made the deposit.

(c) If an employee or assignee who has filed a notice of lis pendens establishes in an action or proceeding to resolve the liability of the employer to the employee that the employee is owed wages by the employer, the employee or assignee is entitled to judgment against the sureties upon the bond or against the moneys deposited.

(6) An employee who is owed wages by an employer in this state has a lien upon all property of the employer, real and personal, located in this state for the amount of the unpaid wages to which the employee is entitled.

(7)(a) A lien under subsection (6) of this section upon real property is perfected if the employee or the assignee of the employee:

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

(B) Files proof of the amount of wages owed in the form of a court judgment, wage order determined by the commissioner or acknowledgement of wage debt made by the employer with the county clerk of the county in which the real property is located;

(C) Pays any required filing fees; and

(D) Serves a copy of the notice filed under this subsection on the employer by certified mail.

(b) The county clerk shall enter notice of a perfected lien established under this sub-section in the County Clerk Lien Record.

(c) A lien under subsection (6) of this section upon personal property is perfected if the employee or the assignee of the employee:

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

(B) Files proof of the amount of wages owed in the form of a court judgment, wage order determined by the commissioner or acknowledgement of wage debt made by the employer with the Secretary of State;

(C) Pays any required filing fees; and

(D) Serves a copy of the notice filed under this subsection on the employer by certified mail.

(d) The Secretary of State shall include notice of a perfected lien established under this subsection in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.

(e) A lien established under subsection (6) of this section and perfected as specified in paragraph (a) or (c) of this subsection shall be effective as of the date that a notice of lis pendens concerning the same debt that has not expired or been voided was filed with the county clerk or Secretary of State.

(8) A lien established under subsection (6) of this section has priority over the rights of any purchaser of property of the employer, including any bona fide purchaser under 11 U.S.C. 545(2), and over all other debts, judgments, decrees, liens or mortgages against the employer, except a lien established by a commercial lending institution as provided in subsection (9) of this section or a lien held by a public body for unpaid taxes, regardless of whether those debts, judgments, decrees, liens or mortgages originated before or after the lien established under subsection (6) of this section takes effect.

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

(b) Notwithstanding paragraph (a) of this subsection, a lien established under subsection (6) of this section has priority for the first \$3,000 of the lien amount over a lien of a commercial lending institution that was originated before the lien established under subsection (6) of this section takes effect.

(10) A lien claimant who fails to establish that the employer is indebted to the lien claimant and is found by the court to have filed a frivolous claim or a claim without a reasonable basis is liable to the employer for the greater of \$500 or the actual costs the employer incurred in complying with the requirements of this section.

(11) An attorney who assists a lien claimant in filing a lien claim under this section that the court finds to be frivolous or without a reasonable basis is liable for the actual costs the employer incurred in complying with the requirements of this section and for attorney fees as provided under ORS 20.075.