

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1387

H.P. 998

House of Representatives, April 27, 1989

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PRIEST of Brunswick.

Cosponsored by Representative CONLEY of Portland, Representative McHENRY of Madawaska and Senator MATTHEWS of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Increase the Priority of Wage Claims Against Insolvent Employers.



1 Be it enacted by the People of the State of Maine as follows:

3 10 MRSA c. 608 is enacted to read:

5 CHAPTER 608
7 WAGE LIENS

9 §3371. Lien established

11 Any person who performs or furnishes labor or services to an
12 employer within 90 days before the employer terminates operation
13 of the business or the business is adjudicated a bankrupt has a
14 lien in the amount of the wages owed on any real or personal
15 property in which the employer has an interest.

17 §3372. Dissolution unless claim filed

19 1. Filing. The lien established under section 3371 shall
20 be dissolved unless the claimant, within 90 days after the
21 claimant demands payment according to Title 26, section 626 or
22 626-A, files notice of the claim. The notice must include the
23 amount owed by the employer, a description, sufficiently accurate
24 to identify, of the property covered by the lien and the names of
25 the owners of the property, if known. The notice of the claim
26 shall be filed in the following places.

27 A. If the property covered by the lien is real property,
28 including buildings, the claimant shall file the notice in
29 the office of the register of deeds in the county in which
30 the property is located.

31 B. If the property covered by the lien is property other
32 than real property, the claimant shall file the notice with
33 the Secretary of State in the same manner as provided in
34 Title 11, Article 9.

35 C. The claimant shall provide a copy of the notice filed
36 under paragraph A or B to any bank or depository, if
37 reasonably ascertainable, which is holding funds of the
38 employer.

39 2. Notice subscribed and sworn. Each notice must be
40 subscribed and sworn to by the claimant or by someone on the
41 claimant's behalf.

42 3. Fees. The office of the register of deeds and the
43 Secretary of State may charge the same fee for recording liens as
44 for mortgages under Title 33, section 751.

1 §3373. Inaccuracy does not void lien if reasonably certain

3 No inaccuracy in a notice filed under section 3372 in the
5 description of the property, if the property can be reasonably
7 recognized, or in stating the amount due for labor or services,
 unless the claimant willfully claims more than is due,
 invalidates the lien.

9 §3374. Liens preserved and enforced by action

11 1. Enforcement action. The claimant may preserve and
13 enforce the lien created under this chapter by filing an action
15 in the Superior Court in the county where the property is located
17 against the employer and all other parties interested in the
 property. The action must be filed within 120 days after the
 demand for payment is made in accordance with Title 26, section
 626 or 626-A.

19 2. Bona fide purchaser. Any person who is a bona fide
21 purchaser for value of a building or land shall take title free
23 of the lien described in this chapter unless, before the bona
25 fide purchaser takes title to the property on which the lien
 attaches, the claimant has filed the notice required by section
 3372.

27 §3375. Extension of lien

29 When the employer terminates operation of the business or
31 the business is adjudicated a bankrupt within the 120 days
33 described in section 3374 and before the commencement of an
 action, the claimant may commence an action within 90 days after
 the termination or adjudication. The lien shall be extended
 accordingly.

35 §3376. Allegations of complaint; joinder of parties

37 1. Allegations. The complaint filed by the claimant must
39 state that the claimant claims a lien on the property described
41 in the complaint for labor or services performed for or furnished
43 to the employer who holds an interest in the property. The
 complaint must request that the property be sold and the proceeds
 applied to the discharge of the lien.

45 2. Parties. Two or more lienholders may join in filing and
47 prosecuting the complaint. Other lienholders may be made
49 parties. Other lienholders may become parties and preserve and
 enforce their liens on the property, provided they file their
 complaints within 120 days after the demand for payment is made
 in accordance with Title 26, section 626 or 626-A or within the
 additional time under section 3375.

1
3 3. Venue. If a court finds that in the interest of justice
5 an action claiming a lien on property should be located in
another court of this State, the court making the finding may
transfer the action to the other court.

7 4. Consolidation; parties; priorities. The court may
9 consolidate 2 or more actions claiming liens on the same property
11 into one proceeding. Any mortgagee or other person having a
13 claim upon, or interested legally or equitably in, the property
may be made a party. The court may determine all questions of
priority of lien or interest, if any, among parties to the
proceeding.

15 When 2 or more proceedings to enforce liens on the same property
17 are pending at the same time in one or more courts, a Justice of
19 the Superior Court after notice and hearing may, upon the
21 complaint of any lienholder who has commenced the proceedings, or
of the owner of the property, order all the actions to be
transferred to the Superior Court and require the parties in all
the proceedings, in whatever court commenced, to plead
substantially in the manner prescribed in this section.

23 §3377. Determination of amount; jury trial

25 Either party may request that a jury or the justice
27 determine the amount for which each lienholder has a lien upon
29 the property. The determination shall be conclusive as to the
31 fact and amount of the lien, subject to appeal as in other
actions. Any lienholder may contest another lienholder's claim
upon issues framed under direction of the court.

33 §3378. Sale of property; redemption; portion; pro rata shares

35 1. Sale of property. If the judge or jury determines that
37 any of the parties claiming a lien have a lien upon the property,
39 the court may order that the property, or the interest in it that
is subject to any of the liens, be sold. The court shall
prescribe the place, time, terms, manner and conditions of the
sale.

41 2. Redemption. The court may provide in the order of sale
43 that the owner has a right to redeem the property from the sale
within a time fixed in the order of sale.

45 3. Sale of portion of property. If the court determines
47 that all of the property on which the lien exists is not
49 necessary to satisfy the lien, it shall describe in the order of
sale a suitable portion of the property to be sold. Only that
portion ordered to be sold may be sold.

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1 4. Costs. The court may order any party to pay any costs
2 that the court determines appropriate.

3 §3379. Deficiency; judgment for balance

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5 If the proceeds of the sale after payment of costs and
6 expenses of sale are insufficient to pay the lien claims and
7 costs in full, the court may render judgment against the debtor
8 in favor of each individual lienholder for the balance of each
9 claim and costs remaining unpaid, and may issue executions for
10 each judgment. If the proceeds of sale, after the payment of
11 costs and expenses of sale, are more than sufficient to pay the
12 lien claims and all costs in full, the balance remaining shall be
13 paid to the person or persons legally or equitably entitled to
14 the proceeds.

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16 §3380. Petition for release

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18 1. Petition for release. Any owner of property upon which
19 a lien is claimed may petition in writing the judge or justice of
20 the court in which the lien action is filed setting forth the
21 name of the lienholder, the court and county or division in which
22 the action is pending, the fact that a lien is claimed on the
23 property under sections 3371 to 3373, the particular property and
24 the owner's interests in the property, its value and the owner's
25 desire to have it released from the lien.

26
27 2. Notice of hearing. The judge or justice shall issue a
28 written notice which shall be served on the lienholder or the
29 lienholder's attorney at least 10 days prior to the time fixed in
30 the notice for a hearing.

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32 3. Hearing; bond. At the hearing, the judge or justice may
33 order the owner to give bond to the lienholder in an amount and
34 with sureties as the judge or justice may approve, conditioned to
35 pay the amount for which the lienholder may be entitled to a lien
36 as determined by the court, with the lienholder's costs in the
37 action, within 30 days after final decree or judgment.

38
39 4. Certificate of bond. The clerk shall give the
40 lienholder an attested copy of the complaint and proceedings,
41 with a certificate under seal of the court attached, that the
42 bond has been duly filed in the clerk's office.

43
44 5. Lien vacated. Recording the copy and certificate of
45 bond in the registry of deeds in the county where the property is
46 located vacates the lien.

1 **§3381. Action or lien**

3 Any action or lien provided for under this chapter may be
5 taken by an individual, or individuals, or may be taken on the
7 behalf of individuals by a labor organization having the duty to
represent the individual under federal law or by collective
bargaining agreement.

9 **§3382. Liens for labor**

11 Liens for labor described in this chapter include
13 compensation for labor in the form of wages and all fringe
benefits either payable to or on behalf of the laborer, including
15 health plans, health and accident plans, retirement and
retirement plans, vacation plans or funds, insurance of all kinds
and all other fringe benefits.

17 **§3383. Action brought by labor organization**

19 No action brought by a labor organization under this chapter
21 may be settled, dismissed or disposed of without the approval of
the court.

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STATEMENT OF FACT

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This bill creates a lien on the property of any employer for
wages owed employees if the employee worked during the 90 days
before the employer's business ends. This bill makes the wage
claims, if properly filed, secured interests which are given
priority over unsecured claims in a bankruptcy proceeding.