

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 1973

 Session of 1993

INTRODUCED BY BELFANTI, GIGLIOTTI, MCGEEHAN, KASUNIC, JAROLIN,  
OLASZ, LEDERER, STABACK, DALEY, WILLIAMS, LAUGHLIN, JOSEPHS,  
FAJT, VEON, TRELLO, MICHLOVIC AND GRUITZA, JUNE 28, 1993

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
MARCH 7, 1994

## AN ACT

1 Amending the act of July 14, 1961 (P.L.637, No.329), entitled  
2 "An act relating to the payment of wages or compensation for  
3 labor or services; providing for regular pay days; conferring  
4 powers and duties upon the Department of Labor and Industry,  
5 including powers and duties with respect to the civil  
6 collection of wages; providing civil and criminal penalties  
7 for violations of the act; providing for their collection and  
8 disposition and providing for additional civil damages,"  
9 providing for duty of successor employer to pay back wages;  
10 ~~and~~ further providing for enforcement; PROVIDING FOR LIENS; <—  
11 AND MAKING A REPEAL.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. The act of July 14, 1961 (P.L.637, No.329), known  
15 as the Wage Payment and Collection Law, is amended by adding a  
16 section to read:

17 Section 6.1. Duty to Pay Back Wages at the Sale of a  
18 Business.--(a) Any employer who transfers the title of his  
19 business or sells, in bulk, fifty-one percent (51%) or more of  
20 the assets of his business, is obligated to pay in full all  
21 wages due and owing to any employes affected by the transfer of

the title or the sale of said assets as of the date of transfer of the title or the sale of said assets of the business on or before the date of the transfer or sale. This obligation may be discharged by one or all of the following as may be required:

(1) full payment by certified check;

(2) the placement of the amount of required moneys in an escrow account held by an attorney or certified public accountant approved by the department; or

(3) a legally binding agreement for the assumption of the liability by the purchaser or transferee. The discharge of this obligation shall be evidenced by a certificate issued by the department or a certified agent thereof. The certificate shall be recorded with the sales or transfer transaction, as well as any set-offs or counter-claims against wages covered by this section claimed by the employer. The employer shall give the department ten days' notice of the transfer or sale prior to the completion of the transfer or sale of the property.

(b) Any wages not paid as required by subsection (a) shall be a statutory lien upon the title and assets of the business transferred or sold, and an enforceable claim under this act. The lien in the amount of any wages not paid as required by subsection (a) shall attach to the title and assets of the business prior to its transfer or sale and shall transfer with the title and assets of the business and become the liability of a successor purchaser or transferee, unless discharged as required in subsection (a).

(c) As used in this section, the term "certified agent" means an attorney, a certified public accountant or other individual approved by the department in accordance with regulation.

1       Section 2.   Section 8 of the act, amended July 14, 1977  
2   (P.L.82, No.30), is amended to read:

3       Section 8.   Enforcement.--(a)   The Secretary of Labor and  
4   Industry shall have the duty, but not the exclusive right, to  
5   enforce and administer the provisions of this act, to  
6   investigate any alleged violations of this act and to institute  
7   prosecutions and actions as provided hereunder. Nothing in this  
8   act shall authorize the secretary to initiate a civil action for  
9   unpaid wages which are subject to disposition under grievance  
10   and arbitration procedures of a collective bargaining agreement.

11       (b)   The Department of Labor and Industry shall have the  
12   power to make rules and regulations for the administration of  
13   this act.

14       (c)   Every employer shall keep open to inspection by the  
15   secretary or his authorized representative, all payroll records  
16   or other records or documents relative to the enforcement of  
17   this act. Such inspection may be made by the secretary or his  
18   authorized representative at any reasonable time. Every employer  
19   shall permit the secretary or any authorized representative to  
20   interrogate any employe in the place of employment and during  
21   work hours with respect to such records or documents. Where such  
22   records are maintained at a central record keeping office  
23   outside of the Commonwealth, such records shall be made  
24   available for inspection at the place of employment within seven  
25   calendar days following verbal or written notice from the  
26   secretary or his authorized representative. Where a microfilm or  
27   any other method is authorized for record keeping purposes, the  
28   employer shall make available to the secretary or his authorized  
29   representative, the equipment which is necessary to facilitate  
30   review of the records.

1     (d) If a company files a bankruptcy petition under 11 U.S.C.  
2 Ch. 11 (relating to reorganization), the company shall file with  
3 the court a bond or other assurance relating to the payment of  
4 wages of salaried and nonsalaried employees of the company. The  
5 department shall monitor payments or wages by a company which  
6 has filed a petition under 11 U.S.C. Ch. 11.

7     SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

8     SECTION 9. CLAIM FOR WAGES A LIEN.--(A) ALL WAGES THAT MAY  
9 BE DUE OR HEREAFTER BECOME DUE FOR LABOR AND SERVICES RENDERED  
10 BY ANY EMPLOYEE OF AN EMPLOYER FOR ANY PERIOD NOT EXCEEDING SIX  
11 MONTHS PRECEDING THE SALE OR TRANSFER OF THE REAL OR PERSONAL  
12 PROPERTY, WORKS, MINES, MANUFACTORIES OR BUSINESS OR OTHER  
13 PROPERTY OF THE EMPLOYER, BY EXECUTION OR OTHERWISE, ON ACCOUNT  
14 OF DEATH, OR INSOLVENCY, SHALL BE A LIEN UPON THE REAL OR  
15 PERSONAL PROPERTY, MINE, MANUFACTORY, BUSINESS OR OTHER PROPERTY  
16 TO THE EXTENT OF THE INTEREST OF THE EMPLOYER IN THE PROPERTY,  
17 AND SHALL BE PREFERRED AND FIRST PAID OUT OF THE PROCEEDS OF THE  
18 SALE OF THE REAL AND PERSONAL PROPERTY, MINE, MANUFACTORY,  
19 BUSINESS OR OTHER PROPERTY, EXCEPT THAT:

20     (1) THIS SECTION SHALL NOT BE SO CONSTRUED AS TO IMPAIR  
21 EXISTING CONTRACTS OR LIENS OF RECORD VESTED PRIOR TO ITS  
22 PASSAGE; AND

23     (2) NO SUCH CLAIM SHALL BE A LIEN UPON ANY REAL ESTATE,  
24 UNLESS IT IS FILED IN THE PROTHONOTARY'S OFFICE OF THE COUNTY IN  
25 WHICH THE REAL ESTATE IS SITUATED WITHIN THREE MONTHS AFTER IT  
26 BECOMES DUE AND OWING, IN THE SAME MANNER AS MECHANICS' LIENS  
27 ARE FILED.

28     (B) IN ALL CASES NOW PENDING OR WHICH MAY HEREAFTER BE  
29 BROUGHT BEFORE ANY COURT IN THIS COMMONWEALTH FOR THE RECOVERY  
30 OF WAGES PURSUANT TO THIS SECTION, IT SHALL BE THE DUTY OF THE

1 PROTHONOTARY PREPARING THE LIST OF CIVIL CASES TO PLACE ALL  
2 CLAIMS FOR WAGES OF LABOR FIRST ON THE LIST, AND THE COURT SHALL  
3 PROCEED TO TRY ALL SUCH CASES AS THEY OCCUR ON THE LIST:  
4 PROVIDED, THAT A STATEMENT OF THE PLAINTIFF'S CLAIM BE FILED IN  
5 SUCH CASES SHOWING THAT THE CLAIM IS FOR LABOR. AS USED IN THIS  
6 SECTION, THE TERM "WAGES" INCLUDES ALL EARNINGS, REGARDLESS OF  
7 WHETHER DETERMINED ON TIME, PIECE, COMMISSION OR OTHER METHOD OF  
8 CALCULATION, WHETHER PAYABLE FROM THE EMPLOYER'S FUNDS OR FROM  
9 MONEYS WITHHELD FROM THE EMPLOYE BY THE EMPLOYER.

10 (C) IN ALL CASES OF EXECUTIONS, LANDLORD'S WARRANTS,  
11 ATTACHMENTS AND WRITS OF A SIMILAR NATURE HEREAFTER TO BE ISSUED  
12 AGAINST ANY EMPLOYER, IT SHALL BE LAWFUL FOR THE EMPLOYEES TO  
13 GIVE NOTICE IN WRITING OF THEIR CLAIM OR CLAIMS, AND THE AMOUNT  
14 THEREOF, TO THE OFFICERS EXECUTING EITHER OF SUCH WRITS, AT ANY  
15 TIME BEFORE THE ACTUAL SALE OF THE PROPERTY LEVIED ON; AND THE  
16 OFFICERS SHALL PAY TO THE EMPLOYEES, OUT OF THE PROCEEDS OF SALE,  
17 THE AMOUNT EACH IS JUSTLY AND LEGALLY ENTITLED TO RECEIVE.

18 (D) IN ALL CASES OF THE DEATH, INSOLVENCY OR ASSIGNMENT OF  
19 ANY EMPLOYER, OR OF EXECUTIONS ISSUED AGAINST THEM, THE LIEN OF  
20 PREFERENCE UNDER SUBSECTION (A), WITH THE LIKE LIMITATIONS AND  
21 POWERS, SHALL EXTEND TO ALL PROPERTY OF THE EMPLOYER.

22 (E) NO MORTGAGE, OR OTHER INSTRUMENT BY WHICH A LIEN IS  
23 CREDITED, SHALL OPERATE TO IMPAIR OR POSTPONE THE LIEN AND  
24 PREFERENCE GIVEN AND SECURED TO WAGES UNDER SUBSECTION (A),  
25 EXCEPT THAT NO LIEN OF MORTGAGE OR JUDGMENT ENTERED BEFORE THE  
26 LABOR WAS PERFORMED, SHALL BE EFFECTED OR IMPAIRED THEREBY.

27 SECTION 4. THE ACT OF APRIL 9, 1872 (P.L.47, NO.40),  
28 ENTITLED "AN ACT FOR THE BETTER PROTECTION OF THE WAGES OF  
29 MECHANICS, MINERS, LABORERS AND OTHERS," IS REPEALED.

30 Section 3 5. This act shall take effect in 180 days.

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