Testimony Regarding Maryland Senate Bill 758
Before the Senate Judicial Proceedings Committee
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Catherine Ruckelshaus, Legal Co-Director
National Employment Law Project[1]

Lien for Unpaid Wages - Establishment

Hon. Brian E. Frosh, Chair, and members of the Maryland Senate Judicial Proceedings Committee: Thank you for this opportunity to submit written testimony on behalf of Maryland Senate Bill 758, a law that would provide for a collection tool that would aid workers seeking to recover unpaid wages. I submit this testimony on behalf of the National Employment Law Project (NELP).

NELP is a non-profit research and advocacy organization that works to ensure good jobs and economic security for our nation's workers. For over 40 years, NELP has specialized in labor standards enforcement and access to good jobs. We have a long history serving families hardest hit by economic downturns by ensuring that workers are properly paid and treated on the job. NELP regularly works with community-based groups, state labor standards agencies and worker advocates to ensure that our nation's basic fair pay laws are enforced and maintain the workplace conditions they were intended to protect.

Introduction

Senate Bill 758 would create a procedure for establishing a lien on an employer's property to secure a payment of unpaid wages owed to an employee. Because some employers in certain of our growth service sector industries persistently underpay or fail to pay their employees, enforcement of our basic minimum wage and overtime laws is paramount. Retail, home health care, construction, delivery, building services, hospitality and restaurants are just a few of the labor-intensive jobs where wage theft remains a persistent problem. Workers face barriers to retrieving their unpaid wages, and those who are able to file an enforcement action seeking payment are often stymied by their employer's refusal to pay. SB 758 provides workers with a needed tool to assist in recovering their hard-earned wages in instances where their employer refuses to pay.

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[1] 75 Maiden Lane, Suite 601, New York, NY 10038. cruckelshaus@nelp.org

This tool would be especially useful for workers in low-wage industries who often live paycheck to paycheck, and need to get their wages paid in a timely manner.

This proposal is necessary and good policy, for three reasons:

1. **Wage theft is a mounting and persistent problem in many of our growth sectors, and is not easily remedied.**

2. **SB 758 would help send a message to non-paying employers that the minimum wage and overtime protections are to be enforced, and that cheating workers out of their hard-earned wages will not pay. It would also help the state, which loses money when employers chisel wages from their employees.**

3. **Wage liens are a simple and tested tool that encourage employers to comply with pay requirements efficiently.**

I. SB 758 Would Help Stem the Mounting and Persistent Problem of Wage Theft in Many of Our Growth Job Sectors.

It is by now well-known that pay violations are shockingly high, particularly in low-wage industries.[2] A 2009 report surveying nearly 4,500 low-wage workers documented widespread violations of labor and employment laws, including minimum wage, overtime, and meal break violations.[3] Twenty-six percent of workers surveyed in that report were paid less than the minimum wage in the previous week, and 76 percent of workers who worked more than 40 hours a week were not paid the legally required overtime rate of pay. .

These violations are similarly widespread in Maryland. A recent Baltimore Sun exposé *Wage theft prevails in post-recession economy*, chronicles stories of worker underpayments and difficulties recovering unpaid wages for workers in retail, home care, and construction jobs. In 2007, CASA of Maryland reported surveys of

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[2] *See Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States*, National Employment Law Project (January 2012) (compiling dozens of studies from across the country and across industries), *available at* http://www.nelp.org/page//Justice/2012/WinningWageJusticeSummaryofResearchonWageTheft.pdf.

[3] Annette Bernhardt, *et. al.*, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, Center for Urban Economic Development at the University of Illinois-Chicago, Nat'l Employment Law Project & UCLA Institute for Research on Labor and Employment (September 2009), *available at* http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1.

domestic workers and day laborers showing that 75% of domestic workers and 58% of day laborers experienced wage theft.[4]

Many workers—even after overcoming the fear of asserting their right to be paid, filing a wage claim or suit, gathering evidence, and receiving a winning judgment—are never able to collect their unpaid wages. This result both demoralizes workers and undermines state labor protections. Employers file bankruptcy. They hide their assets. They shut down operations and reorganize as a "new" entity. Some simply cannot be found.

When employers have disappeared or hidden assets, a court judgment can easily become a meaningless piece of paper. Similarly, state labor agencies are commonly without the necessary resources to efficiently track down employer assets and force payment. While some collection agencies will enforce judgments, this often comes at the price of a hefty piece of the recovery. Employers are able to slip away far too easily, leaving workers with empty pockets. Workers need security early in the claim process that will hold employer assets and allow for future payment.

II. **SB 758 would help send a message to non-paying employers that the minimum wage and overtime protections are to be enforced, and that cheating workers out of their hard-earned wages will not pay. It would also help the state, which loses money when employers chisel wages from their employees.**

The consequences of wage theft are severe – for workers, for local economies and law-abiding businesses, and for taxpayers. Workers in low-wage industries in the three cities of New York, Chicago and Los Angeles lose over $56 million per week in unpaid wages.[5] That means bills go unpaid, housing is unstable, and families have less food on their tables.

Local economies also suffer when wage theft becomes a way of doing business. Well-meaning businesses often can't compete with wage cheats that shave their operating costs by breaking the law. And the less money wage earners bring home, the less they have to spend at local businesses, dealing a further blow to local economies.[6]

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[4] http://www.casademaryland.org/storage/documents/wagetheft.pdf

[5] Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (New York: Center for Urban Economic Development at UIC, National Employment Law Project and UCLA Institute for Research on Labor and Employment, 2009), available at www.nelp.org/page/-brokenlaws/BrokenLawsReport2009pdf.

[6] See e.g. Kai Filion, *A Stealthy Stimulus: How boosting the minimum wage is helping to stimulate the economy* (July 2009) available at http://epi.bluestatedigital.com/page/-/IssueBrief255_Final.pdf (highlighting the economic stimulative effect when low-wage

When workers go without pay, tax revenues are shorted as well. Employers that cheat workers also rob state, local and federal budgets of payroll taxes and contributions to the unemployment and workers compensation systems, hampering our nation's economic recovery. In New York State alone, $427 million in revenue is lost per year due to wage theft.[7]

III. Wage Liens are a Simple and Tested Tool that Encourage Employers to Comply with Pay Requirements Efficiently.

A wage lien can be an effective tool to recover wages quickly, especially if the owner needs to sell property or use it to guarantee a loan. All states, including Maryland, have some form of a "mechanic's lien," which covers work performed or materials furnished in connection with the construction or repair of structures or land improvements. Such liens are available to those workers whose work involves improvements to real property, such as construction workers. Maryland has 23 lien laws already on the books, protecting a wide range of individuals.

At least five states have wage lien laws, providing good experience and success with the mechanism: Alaska AS § 35.35.440; Idaho IC § 45-620; New Hampshire N.H. rev. Stat. 275:51, Texas V.T.C.A., Labor Code § 61-081, Washington state RWCA 49.48.086, and Wisconsin W.S.A. § 109.09.

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earners have more money in their pockets by finding $5.5 billion in consumer spending generated by modest federal minimum wage increase).

[7] Amy Traub and Andrew Friedman, "Workers Deserved to be Paid," Albany Times Union, April 5, 2010, available at http://www.drummajorinstitute.org/library/article.php?ID=7387.