

Date of Hearing: July 15, 2025

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

SB 597 (Cortese) – As Amended July 10, 2025

PROPOSED CONSENT

SENATE VOTE: 38-0

SUBJECT: LABOR-RELATED LIABILITIES: DIRECT CONTRACTOR AND SUBCONTRACTOR

KEY ISSUE: SHOULD THE LEGISLATURE RECAST THE JOINT AND SEVERAL LIABILITY PROVISIONS FOUND AT LABOR CODE SECTION 218.8 TO ADHERE MORE CLOSELY TO THE MECHANIC'S LIEN STATUTE IN ORDER TO AVOID POSSIBLE FEDERAL PREEMPTION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT?

SYNOPSIS

As reflected by the numerous bills considered by this Legislature every year related to the topic, California's workers, particularly construction workers, face significant rates of wage theft. According to the most recent report issued by the Bureau of Field Enforcement, the Department of Industrial Relations (DIR) issued \$1,842,768.64 in wage assessments in the construction industry during the 2020 – 2021 fiscal year. Existing law provides mechanisms for workers to recover unpaid wages. Additionally, Labor Code Section 218.8 imposes joint liability on contractors and subcontractors at any tier for any unpaid wages owed including amounts owed for fringe benefits such as pensions. Statutes that reference health plans run the risk of being preempted by the federal Employee Retirement Income Security Act (ERISA). Last year a superior court determined that a union trust fund's claim to recover payments owed on behalf of workers to the union trust were preempted by ERISA.

In an attempt to avoid preemption, this bill modifies the liability provisions found at Section 218.8 to adhere more closely to existing mechanic's lien statutes. This bill is sponsored by the Western States Council of Sheet Metal Workers. It is further supported by a coalition of trade unions. There is no known opposition. This bill was previously heard by the Assembly Committee on Labor and Employment where it was approved on consent.

SUMMARY: Updates existing law to impose joint liability, for contracts entered into on or after January 1, 2026, on direct contractors for indebtedness for labor incurred by a subcontractor at any level, as specified. Specifically, **this bill:**

- 1) Limits the applicability of Labor Code Section 218.8 (described in the EXISTING LAW section of this analysis) to contracts entered into before January 1, 2026.
- 2) Maintains the provisions of Labor Code Section 218.8 for contracts entered into on or after January 1, 2026, subject to the following changes:
 - a) Beginning with contracts entered into on or after January 1, 2026, makes a direct contractor making or taking a contract in the state for the erection, construction,

alteration, or repair of a building, structure, or other private work, liable for any indebtedness, including indebtedness for the performance of labor described in subdivision (b) of Section 8024 of the Civil Code, incurred by a subcontractor at any tier acting under, by, or for the direct contractor included in the subject of the contract between the direct contractor and the owner. Limits the direct contractor's liability to payments for labor required by the subcontractor's agreement with the laborer or the subcontractor's collective bargaining agreement with the labor organization representing the laborer.

- b) Extends the direct contractor's liability to any indebtedness for labor described in a), penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor.
- c) Prohibits a direct contractor or any other person from evading, or committing any act that negates, the requirements of this section. Establishes that this section does not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by any indebtedness for labor described in this subdivision by that subcontractor or by a subcontractor at any tier working under that subcontractor, including liability for associated penalties and liquidated damages.
- d) Authorizes the Labor Commissioner to enforce against a direct contractor the liability created by this section pursuant to Section 98 or 1197.1 or through a civil action.
- e) Authorizes specified laborers, as defined in subdivision (c) of Section 8024 of the Civil Code, to bring a civil action against a direct contractor to enforce the liability for any unpaid wage, fringe, or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor pursuant to this section.
- f) Prohibits an action pursuant to this section from being based on the employer's misclassification of the craft of a worker.
- g) Makes the remedies created by this section cumulative of any other available remedies.
- h) Exempts a direct contractor from liability pursuant to claims brought by the Labor Commissioner, a laborer as defined, or a joint labor-management cooperation committee with respect to fringe or other benefit contributions, if they comply with the following:
 - i) If a direct contractor has been provided documentation that the subcontractor has been notified by the trust, plan, fund, or program that the subcontractor has failed to make timely required contribution payments for a private construction project, the direct contractor may make the contribution payments for performance of labor for that project in compliance with all of the following:
 - (1) The direct contractor makes a payment using a joint check made payable to the subcontractor and the trust, plan, fund, or program for any fringe or other benefit payment or contribution;

- (2) The subcontractor provides the name, type, number, and address of the trust, plan, fund or program to the direct contractor;
 - (3) The direct contractor notifies the trust, plan, fund, or program that it has paid the subcontractor with a joint check.
- i) Defines the following for purposes of this section:
- i) “Direct contractor” means a contractor that has a direct contractual relationship with an owner or any other person or entity engaging contractors or subcontractors for the erection, construction, alteration, or repair of a building, structure, or other private work on behalf of the owner;
 - ii) “Subcontractor” has the same meaning as provided in Civil Code section 8046;
- 3) Grants a joint-labor management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 USC Section 175a) standing to sue a construction contractor for failure to make health care expenditures required by Government Code Sections 65912.131, 65913.4, and 65913.16.

EXISTING LAW:

- 1) Establishes joint labor management committees (JLMCs) pursuant to the Labor Management Cooperation Act of 1978. (29 U.S.C. Section 175a.)
- 2) Establishes Taft-Hartley trust funds, which are employee pension or welfare benefit trusts jointly administered by equal numbers of representatives of employees and employers, as specified. (29 U.S.C. Section 186 (c)(5) - (c)(8).)
- 3) Establishes, under the Employee Retirement Income Security Act of 1974 (ERISA), minimum standards for most voluntarily established retirement and health plans offered by private-sector employers to protect the rights of plan participants and beneficiaries. (29 U.S.C. Section 1001-1461.)
- 4) Requires every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement, to the extent not inconsistent with law, to make such contributions in accordance with the terms and conditions of such plan or such agreement. (29 U.S.C. Section 1145.)
- 5) Establishes the Department of Labor Standards Enforcement (DLSE), under the direction of the Labor Commissioner, within the Department of Industrial Relations (DIR) and sets forth its powers and duties regarding the enforcement of labor laws. (Labor Code Section 79 *et seq.* Unless otherwise noted all further statutory references are to the Labor Code.)
- 6) Requires, for contracts entered into on or after January 1, 2022, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, to assume, and be liable for, any debt owed to a wage claimant or third party on the wage claimant’s behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant’s performance of labor

included in the subject of the contract between the direct contractor and the owner. (Section 218 (a)(1).)

- 7) Extends the direct contractor's liability to penalties, liquidated damages, and interest owed by the subcontractor on account of the performance of the labor covered by the contract, unless specified requirements are met. (Section 218.8 (a)(2).)
- 8) Provides that, if a worker employed by a subcontractor on a private construction project is not paid the wage, fringe or other benefit payment or contribution owed by the subcontractor, the direct contractor of the project is not liable for any associated penalties or liquidated damages unless the direct contractor had knowledge of the subcontractor's failure to pay the specified wage, fringe or other benefit payment or contribution, or the direct contractor fails to comply with all of the following requirements:
 - a) The contractor must monitor the payment by the subcontractor of wage, fringe or other benefit payment or contribution to the employees or the labor trust fund, by periodic review of the subcontractor's payroll records, as specified.
 - b) Upon becoming aware of the failure of the subcontractor to pay wages, the contractor must diligently take corrective action to halt or rectify the failure.
 - c) Prior to making final payment to the subcontractor, the contractor must obtain an affidavit from the subcontractor affirming that all workers have been properly paid. (Section 218.8 (a)(3).)
- 9) Provides that 6) through 8) above do not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by the nonpayment of wages, fringe or other benefit payments, or contributions by that subcontractor or by a subcontractor at any tier working under that subcontractor, including liability for associated penalties and liquidated damages. (Section 218.8 (a)(5).)
- 10) Authorizes the Labor Commissioner to enforce against a direct contractor the liability for unpaid wages, liquidated damages, interest, and penalties as specified. (Section 218.8 (b)(1).)
- 11) Authorizes a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf to bring a civil action against a direct contractor to enforce the liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor pursuant to 6) through 8) above. (Section 218.8 (b)(2).)
- 12) Authorizes a JLMC to bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor on a private work pursuant to 6) through 8) above. (Section 218.8 (b)(3).)
- 13) Defines "per diem wages," for purposes of any statute applicable to public works, as employer payments for, among other things:

- a) Health and welfare.
 - b) Pension.
 - c) Subsistence.
 - d) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
 - e) Specifies that employer payments include the rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program. (Section 1773.1.)
- 14) Defines “laborer” to include a person or entity to which a portion of a laborer’s compensation for a work of improvement, including, but not limited to, employer payments (defined as contributions made to a trustee or third person for benefits like health and welfare, pension, and apprenticeship programs and implementing regulations), is paid by agreement with that laborer or the collective bargaining agent of that laborer. (Civil Code Section 8024 (b).)
- 15) Provides that a “laborer” as defined that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for a work of improvement, shall have standing to enforce any rights or claims of the laborer, as specified, to the extent of the compensation agreed to be paid to the person or entity for labor on that improvement. (Civil Code Section 8024 (c).)
- 16) Authorizes a direct contractor, subcontractor, or laborer to file a mechanic’s lien to enforce a claim of wages, including fringe benefits, as specified. (Civil Code Sections 8400, 8416, and 8430.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: As reflected by the numerous bills considered by this Legislature every year related to the topic, California’s workers face, particularly construction workers, significant rates of wage theft. Under the Labor Code, an employer engages in wage theft any time they withhold any amount of money owed to a worker, including paying under minimum wage, withholding tips, and refusing rest breaks. (Labor Code Section 1182.12, Section 351, Section 226.7.) According to the most recent report issued by the Bureau of Field Enforcement, the Department of Industrial Relations (DIR) issued \$1,842,768.64 in wage assessments in the construction industry during the 2020 – 2021 fiscal year. (Department of Industrial Relations California Labor Commissioner’s Office, *2020 – 2021 Bureau of Field Enforcement Fiscal Year Report*, p. 4 available at: https://www.dir.ca.gov/dlse/BOFE_LegReport2021.pdf.) According to the author:

Wage theft in the California construction economy has been described as “rampant” by the California Bureau of Field Enforcement at the California Department of Industrial Relations. Since 2022 the courts have received countless wage theft cases, but amendments to Labor code unintentionally left workers underpaid and discouraged from speaking out against their employers for fear of retaliation. SB 597 bolsters statutory remedies against general contractors to eliminate ERISA preemption and incentivizes general contractors to monitor their subcontractors’ compliance. Furthermore, this bill only applies to work performed on

private construction projects on or after January 1, 2026. SB 597 protects workers and ensures the courts have the tools they need to review cases.

California’s existing statutory framework for unpaid wages and benefits contributions. Labor Code Section 218.7, enacted via AB 1704 (Thurmond) Chap. 804, Stats. 2017, made a general contractor jointly liable for any unpaid wages, fringe benefits, or other benefit payments or contributions due to a subcontractor on private projects. Section 218.7 applies to contracts entered into between 2018 and 2021. In 2021, the Legislature approved SB 727 (Leyva) Chap. 338, Stats. 2021, that enacted Section 218.8. For contracts entered into beginning in 2022, Section 218.8 imposes similar liabilities as those provided for in Section 218.7, but extends the liability to include penalties, liquidated damages, and interest owed by the subcontractor under specified circumstances. Under both statutes, joint labor-management cooperation committees (JLMCCs) are authorized bring claims to collect on the liability incurred by either direct contractors or subcontractors. The intent of both was to curb the practice of subcontractors escaping liability for a failure to pay their workers appropriately by incentivizing direct contractors to engage in contracts with subcontractors who are more likely to comply with the requirements of the contract and labor law.

Construction workers who suffer wage theft may also file a mechanics lien against their employer. A mechanics lien functions as a security interest for workers on a construction project. In the event a property owner fails to provide money owed to a contractor, subcontractor, laborer, or other worker on a project, any one of those entities may then collect against the lien. Existing law authorizes direct contractors, subcontractors, material suppliers, equipment lessors, laborers, and design professionals to file a mechanics lien. (Civil Code Section 8400.) Section 8024 defines “laborer” to mean “a person who, acting as an employee, performs labor upon, or bestows skill or other necessary services on, a work of improvement,” and subdivision (b) “includes a person or entity to which a portion of a laborer’s compensation for a work of improvement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of the laborer.” (Civil Code Section 8024 (a) – (b).) Labor Code Section 1773.1 in turn defines “wages” for public works projects to include payments to health and welfare and pension payments. (Civil Code Section 1773.1 (a).) Read together, these provisions grant laborers and any entity that receives a portion of the pay owed to a laborer including for health or pension benefits, standing to file a mechanics lien to recover payments owed to the worker.

The Employee Retirement Income Security Act of 1974 (ERISA). ERISA, codified at 29 U.S.C. Section 1001 *et seq.* is the federal law that regulates most voluntary retirement and health plans for private employers. ERISA also grants plan beneficiaries the right to sue for benefits. ERISA includes a preemption clause which states: “Except as provided [...] the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in Section 1003(a) of this title and not exempt under section 1003(b) of this title.” (29 U.S.C. Section 1144 (a).) Since ERISA’s enactment in 1974, a number of state laws attempting to regulate voluntary benefit plans have been struck down as preempted.

In *California Division of Labor Standards Enforcement v. Dillingham Construction*, the United States Supreme Court held that a state law is preempted by ERISA if it makes reference to, or has a connection with, such a plan. (*California Division of Labor Standards Enforcement v.*

Dillingham Construction (1997) 519 U.S. 316.) In a case before the Ninth Circuit Court of Appeals, the court addressed whether a payment bond claim was preempted by ERISA. In the case, plaintiffs were employees working on a public works project with defendants, the general contractor and various subcontractors. The plaintiffs were joined by their union's trust fund. The defendants posted a bond to guarantee payments for the workers on the project, as required by the relevant collective bargaining agreement. When one subcontractor failed to remit payments to the pension trust fund and the workers' pensions, the fund made claims against the bond and issued a stop notice on the project until payments were made in full. The defendant moved to dismiss the suit arguing the claim was preempted by ERISA. On appeal to the Ninth Circuit the court found that California's payment bond remedy was not preempted by ERISA, because it "does not require the establishment of a separate benefit plan, and imposes no new reporting, disclosure, funding, or vesting requirements for ERISA plans." California's statute similarly does not tell employers how to write ERISA benefit plans or how to determine ERISA beneficiary status, and does not condition requirements on how ERISA benefit plans are written. (*Southern California IBEW-NECA Trust Funds v. Standard Industrial Electric Company* (2001) 247 F.3d 920.)

Two years after the Ninth Circuit's decision, the California Supreme Court faced a similar question regarding the state's mechanics lien laws. Plaintiff-laborers recorded a mechanic's lien for unpaid contributions to their union's trust funds. When they sued to foreclose on the lien, the defendant-owner demurred and the trial court found that the lien was preempted under ERISA. On appeal to the California Supreme Court, the court held that the mechanic's lien law at issue is a "law of general application and does not itself refer to ERISA plans[,] [n]or does Section 3110 have a 'connection with' ERISA plans. [...] This mechanic's lien law permits laborers and other persons, who may include participants in ERISA plans or the plans themselves, to obtain a lien to secure a payment for their labor and materials. [...] Section 3110's effect on ERISA plans, however, is indirect at most because it does not compel plans to function in a certain way." (*Betancourt v. Storke Housing Investors* (2003) 31 Cal. 4th 1157, 1167.) Thus, laborers and their trusts seem to be able to utilize mechanic's liens to enforce against contractors' and owners' unpaid benefits contributions without running afoul of federal law.

In 2024, the Santa Clara County Superior Court issued an order on a motion for judgment on the pleadings in a case between the Sheet Metal Workers Pension Trust of Northern California and KB Home. In the case, the Sheet Metal Workers sought to collect unpaid pension contributions on behalf of their union members as required by their collective bargaining agreement with their employer, Lefco, another general contracting company that did business with KB Home. The Sheet Metal Workers brought the action under Labor Code Sections 218.7 and 218.8, on the grounds that KB Home, as the direct contractor, contracted with Lefco, as the subcontractor and employer of the Sheet Metal Workers' members. However, KB Home asserted that they were not direct signatories to ERISA and therefore could not be held liable under Section 218.7 or 218.8 for ERISA-regulated payments owed by Lefco. The court agreed with the defendants, reasoning that the trust's claims directly related to, and conflict with, defined federal provisions on unpaid benefits liability, and impermissibly extended liability to parties who would not be liable under ERISA. Because the case was ultimately settled and therefore the 2024 decision was never appealed, the ruling stands.

While it should be noted that a superior court decision does not have authority over California law, it nonetheless points to a potential interpretation of existing California law that the author and sponsors aim to preempt.

In order to preempt the potential preemption argument, *this bill* modifies existing enforcement mechanisms to collect unpaid contributions to workers' benefits to adhere more closely with mechanic's lien laws. In order to do so the bill limits the existing structure in Labor Code Section 218.8 to contracts entered into before January 1, 2026. Beginning on January 1, 2026, new proposed Section 218.9 would govern any new contracts under substantially the same framework as Section 218.8 with three key points of divergence. First, rather than impose joint and several liability on a general contractor for any "debt owed to a wage claimant or third party on the wage claimant's behalf," including "any unpaid wage, fringe, or other benefit payment contribution," the new section modifies this language slightly to impose the liability on any indebtedness incurred by a subcontractor at any tier, including "indebtedness for the performance of labor described in subdivision (b) of Section 8024 of the Civil Code." By referencing Section 8024, SB 597 incorporates the definition of both laborers and any entity to whom the owner or contractor owes a portion of the payment for purposes of fulfilling a contractual obligation, including payments to pensions or health plans, without directly referencing such obligations. This language brings the section in alignment with the state's existing mechanic's lien statute. As the California Supreme Court has already held that the state's mechanic's lien statutes is *not* preempted by ERISA, it is possible this new approach likewise withstands the same challenge.

The bill updates existing law in a few additional ways. First, it limits the direct contractor's joint liability to payments for labor required by the subcontractor's agreement with the worker or their collective bargaining unit. Second, it clarifies that any claim brought pursuant to the joint liability provision cannot be based on a claim that the employer misclassified the worker's craft. Misclassification of the craft of a worker refers to a contractor or owner's failure to appropriately compensate the worker based on the employer's assumption that the worker's specialized skills were incorrect. Labor Code Section 1771.2 has a similar provision authorizing a JLMC to bring a claim against an employer for failure to pay workers employed on public works.

Third, the bill creates a new safe harbor for director contractors who implement a "joint-check" system. Under the "joint-check" system, a direct contractor issues a single check that is payable to *both* the subcontractor and trust, fund, or other employee benefit program for their owed contribution. Both parties must sign it before cashing it, making it practically impossible for one party to fail to remit the owed portion to the other. In order to trigger the safe harbor, a direct contractor must notify the trust or benefit plan that it has paid the subcontractor with a joint check and the subcontractor must then provide the direct contractor with the name, type, number, and address of the trust, plan, fund, or program.

As discussed, wage theft is prevalent throughout the construction industry and can impact not just workers' direct wages, but their benefit contributions as well. Unfortunately, many workers are not able to bring claims against their employers to collect their full amounts owed, thus making provisions such as Labor Code Section 218.8 and union trust funds vital to workers' economic wellbeing. While there is no guarantee that the changes proposed by SB 597 will ultimately survive legal challenge and avoid ERISA preemption, based on existing case law it seems possible that it may and in any case is worth the attempt.

ARGUMENTS IN SUPPORT: This bill is sponsored by the Western States Council of Sheet Metal Workers. It is further supported by a coalition of trade unions. In support of the bill the sponsor submits:

Under current law, direct contractors are liable for unpaid wages and benefits owed by subcontractors on private construction projects. However, a 2024 ruling by the Santa Clara Superior Court found that portions of existing law were preempted by the Employee Retirement Income Security Act (ERISA), undermining the ability of trust funds to recover unpaid benefit contributions. This decision has created uncertainty and weakened protections for workers in the construction industry.

SB 597 addresses this issue by modifying the statutory remedy against general contractors to ensure it remains enforceable and effective. The bill conforms its language to California's existing mechanics lien law, which courts have ruled is not preempted by ERISA, thereby preserving the ability of workers and trust funds to recover compensation owed for work performed. Additionally, the bill clarifies that direct contractor liability applies to any entity engaging contractors or subcontractors for a project, preventing efforts to evade accountability.

By reinforcing the responsibility of general contractors, SB 597 incentivizes greater oversight of subcontractors' compliance with wage and benefit obligations, reducing the risk of wage theft and ensuring that workers receive the compensation they have rightfully earned. Furthermore, this bill will help maintain a level playing field for responsible contractors who adhere to fair labor standards, promoting integrity and accountability within the construction industry.

REGISTERED SUPPORT / OPPOSITION:

Support

Western States Council Sheet Metal, Air, Rail and Transportation (sponsor)
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Building Industry Association
California Federation of Labor Unions, Afl-cio
California Safety and Legislative Board, Smart – Transportation Division (smart – Td)
California State Association of Electrical Workers
California State Pipe Trades Council
District Council 16, International Union of Painters and Allied Trades
District Council 36, International Union of Painters and Allied Trades
District Council of Iron Workers of the State of California and Vicinity
International Brotherhood of Boilermakers, Western States Section
Santa Clara County Wage Theft Coalition
State Building and Construction Trades Council

Opposition

None on file

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334