

Case Number S185827

SUPREME COURT  
**FILED**

MAY 10 2011

Frederick K. Ohlrich Clerk

Deputy

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**Anthony Kirby, et al.,**  
*Plaintiffs and Appellants*

vs.

**Immoos Fire Protection, Inc.,**  
*Defendant and Respondent*

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Appeal from a Decision of the Third Appellate District,  
Case Number C062306

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**APPELLANTS' SUPPLEMENTAL MOTION FOR  
JUDICIAL NOTICE IN SUPPORT OF REPLY BRIEF ON  
THE MERITS; MEMORANDUM OF POINTS AND  
AUTHORITIES; SUPPLEMENTAL DECLARATION OF  
ELLYN MOSCOWITZ; PROPOSED ORDER**

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Attorneys for Plaintiffs and Appellants  
**ANTHONY KIRBY AND RICK LEECH, JR.**

Case Number S185827

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**ANTHONY KIRBY AND RICK LEECH, JR.**

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**APPELLANTS' SUPPLEMENTAL MOTION FOR JUDICIAL  
NOTICE IN SUPPORT OF REPLY BRIEF ON THE MERITS**

**TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF  
JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF  
THE CALIFORNIA SUPREME COURT; RESPONDENT IMMOOS  
FIRE PROTECTION, INC. AND THEIR ATTORNEYS OF  
RECORD:**

PLEASE TAKE NOTICE that Plaintiffs and Appellants Anthony Kirby and Rick Leech, Jr. (“Appellants” or “Kirby”) hereby move this Supreme Court pursuant to California Evidence Code sections 450 et seq., and California Rules of Court, 8.252 and 8.520, to take judicial notice of the legislative history materials listed below.

This Supplemental Motion for Judicial Review in Support of Appellants’ Reply Brief on the Merits (“Supplemental Motion”) follows Appellants’ Motion for Judicial Notice in support of Appellants’ Opening Brief on the Merits, including Notice of Motion, the accompanying Memorandum of Points and Authorities, and the Declaration of Ellyn Moscovitz, filed on January 18, 2011 (“Original Motion”).

The Supplemental Motion is made on the grounds that (1) Respondent Immoos Fire Protection, Inc.’s (“Immoos”) Answer Brief on the Merits (“Answer”) contains new arguments based on the legislative histories of Labor Code sections 226.7, 1194, and 218.5. Kirby’s response in the Reply to those arguments relies on the materials listed below. The interplay between three Labor Code sections 218.5, 1194, and 226.7 is at issue in both questions presented in this appeal. The proper and reasonable harmonization of these three provisions necessarily involves an analysis of these highly relevant materials; and (2) Evidence Code section 452 authorizes the Court to take judicial notice of these materials. The express identifiers for these materials follow the sequence from the Original

Motion, which included Exhibits A through P. Hence, the Supplemental Motion includes the following materials, starting with Exhibit Q:

- Exhibit Q: Assembly Bill No. 633 (1999-2000 Reg. Sess.) as introduced February 19, 1999.
- Exhibit R: Assembly Committee on Labor and Employment, (April 7, 1999) on Assembly Bill No. 633 (1999-2000 Reg. Sess.), as amended March 25, 1999.
- Exhibit S: Statutes of 1999, Chapter 554, Assembly Bill No. 633.
- Exhibit T: Assembly Bill No. 1652 (1999-2000 Reg. Sess.) as amended September 8, 1999.
- Exhibit U: Assembly Bill No. 1652, Assembly Final Hist. (1999-2000 Reg. Sess.).
- Exhibit V: Assembly Bill No. 2509 (1999-2000 Reg. Sess.) as introduced February 24, 2000.
- Exhibit W: Assembly Committee on Labor and Employment (April 12, 2000) on Assembly Bill No. 2509 (1999-2000 Reg. Sess.), introduced February 24, 2000.
- Exhibit X: Assembly Bill No. 2509 (1999-2000 Reg. Sess.) as amended June 26, 2000.
- Exhibit Y: Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amend July 6, 2000.
- Exhibit Z: Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 7, 2000.
- Exhibit AA: Public Hearing before State of California Department of Industrial Relations, Industrial Welfare Commission (May 5, 2000).

- Exhibit BB: Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000.
- Exhibit CC: Assembly Bill No. 2857 (1999-2000 Reg. Sess.), as amended August 25, 2000.
- Exhibit DD: Concurrence in Senate Amendments, Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000.
- Exhibit EE: Assembly Bill No. 2857 (1999-2000 Reg. Sess.), as amended August 30, 2000.
- Exhibit FF: Assembly Bill No. 2857, Assembly Final Hist. (1999-2000 Reg. Sess.).
- Exhibit GG: Assembly Bill No. 2509, Assembly Final Hist. (1999-2000 Reg. Sess.).
- Exhibit HH: Senate Rule Committee, Third Reading on Assembly Bill No. 2857 (1999-2000 Reg. Sess.), as amended August 25, 2000.
- Exhibit II: Senate Rule Committee Assembly Bill Analysis, Third Reading on Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000.
- Exhibit JJ: Concurrence in Senate, Assembly Bill No. 1652 (1999-2000 Reg. Sess.), as amended September 9, 1999.
- Exhibit KK: Assembly Committee on Labor and Employment (June 26, 1986) on Sen. Bill No. 2570, as amended June 17, 1986.

True and correct copies of Exhibits Q through KK are attached. (See Supplemental Declaration of Ellyn Moscovitz.)

This Supplemental Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities in support of the Supplemental Motion, Supplemental Declaration of Ellyn Moscovitz, and such other matters as may properly come before the Court.

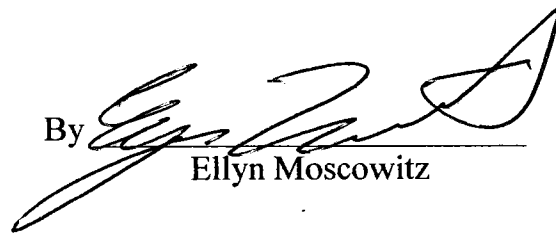
Dated: May 10, 2011

Respectfully submitted,

**LAW OFFICES OF  
ELLYN MOSCOWITZ, P.C.**  
Ellyn Moscovitz  
Jennifer Lai

**LAW OFFICES OF  
SCOT D. BERNSTEIN,  
A Professional Corporation**  
Scot Bernstein

By



Ellyn Moscovitz

Attorneys for Plaintiffs and Appellants  
Anthony Kirby and Rick Leech, Jr.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Evidence Code sections 452 and 459 and California Rule of Court 8.252, Appellants Anthony Kirby and Rick Leech, Jr. (“Appellants” or “Kirby”) hereby move the Supreme Court to take judicial notice of the materials set forth in the Notice of Motion, Exhibits Q through KK. True and correct copies of Exhibits Q through KK are attached. (See Supplemental Declaration of Ellyn Moscovitz.)

### **ARGUMENT**

Appellants request that this Court take judicial notice of exhibits Q through KK. These exhibits should be judicially noticed under Evidence Code section 452(c).

Appellants incorporate by reference the Memorandum of Points and Authorities filed in support of the Original Motion.

Exhibits Q through KK provide the administrative and legislative history of Labor Code sections 218.5, 1194, 226.7. (Cal. Labor Code §§ 218.5, 1194, 226.7.) Specifically, these exhibits consist of documents from the histories of Assembly Bill No. 1652 and Assembly Bill No. 633, both of 1999. (See Exs.Q-U, JJ.) These exhibits also include documents from the histories of Assembly Bill 2509 and Assembly Bill 2857, both of 2000 (See Exs. V-Z, BB-II.)

The exhibits further include one document from the history of Senate Bill No. 2570 of 1986 (See Ex. KK) as well as a transcript of hearing conducted by the Industrial Welfare Commission on May 5, 2000, a hearing that is relevant to the histories of all three Labor Code provisions at issue. (See Ex. AA.)

Judicial notice may be taken under Evidence Code section 452(c) of “[o]fficial acts of the legislative, executive and judicial departments of the



United States, or any state of the United States.” (*Post v. Prati* (1979) 90 Cal.App.3d 626, 634; *Delany v. Baker* (1999) 20 Cal.4th 23, 30.)

The appeal at bar concerns the interpretation of Labor Code sections 218.5, 1194, 226.7, and exhibits Q through KK are relevant to demonstrate the intent of the Legislature with regard to those statutes. (Cal. Labor Code §§ 218.5, 1194, 226.7.) The Court’s primary objective when construing or interpreting statutes is determining the legislative intent of the enactment. “In the construction of a statute the intention of the Legislature...is to be pursued, if possible.” (Code Civ. Proc. § 1859.) The “touchstone of statutory interpretation” is the “probable intent of the Legislature.” (*California Teacher’s Assn. v. Governing Board of Rialto Unified School District* (1997) 14 Cal.4th 627, 632.) A “variety of extrinsic aids, including ...legislative history,” is relevant to statutory interpretation. (*Lopez v. Superior Court* (2010) 50 Cal. 4th 1055, 1063.)

Courts have relied on a range of legislative materials underlying a statute’s enactment to discern legislative intent. (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927 [Law Revision Commission Reports, Committee Reports]; *Cynthia D v. Superior Court* (1993) 5 Cal.4th 242, 250, fn. 7 [Previous drafts of a statute]; *Martin v. Szeto* (2004) 32 Cal.4th 445, 450 [Legislative Committee Bill Reports]; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 934 [Enrolled Bill Reports]; *Pacific Gas & Electric Co. v. Department of Water Resources* (2003) 112 Cal.App.4th 477, 482-483 [Legislative Counsel’s Digests].) The legislative history contained in exhibits Q through KK encompasses all of the above types of legislative materials courts have looked to, and should therefore aid the Court in its interpretation of the statutes at issue in this appeal.

**CONCLUSION**

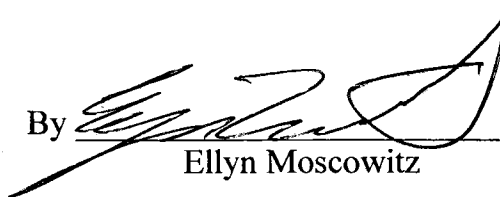
For the foregoing reasons, Appellants respectfully request that the Court take judicial notice of exhibits Q through KK.

Dated: May 10, 2011

Respectfully submitted,

**LAW OFFICES OF  
ELLYN MOSCOWITZ, P.C.**  
Ellyn Moscovitz  
Jennifer Lai

**LAW OFFICES OF  
SCOT D. BERNSTEIN,  
A Professional Corporation**  
Scot Bernstein

By   
Ellyn Moscovitz

Attorneys for Plaintiffs and Appellants  
Anthony Kirby and Rick Leech, Jr.

## **SUPPLEMENTAL DECLARATION OF ELLYN MOSCOWITZ**

I, Ellyn Moscowitz, declare as follows:

1. I am an attorney licensed to practice before this Court. I am counsel of record for Appellants and Plaintiffs Anthony Kirby and Rick Leech, Jr. in the above-captioned appeal before the California Supreme Court.

2. I have personal knowledge of the facts stated herein, and if called as a witness I would testify competently thereto.

3. I make this declaration in support of the attached Supplemental Motion for Judicial Notice.

4. Attached as Exhibit Q is a true and correct copy of the Assembly Bill No. 633 (1999-2000 Reg. Sess.) as introduced February 19, 1999. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 3.

5. Attached as Exhibit R is a true and correct copy of the Assembly Committee on Labor and Employment, (April 7, 1999) on Assembly Bill No. 633 (1999-2000 Reg. Sess.), as amended March 25, 1999. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 3.

6. Attached as Exhibit S is a true and correct copy of the Statutes of 1999, Chapter 554, Assembly Bill No. 633. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 3.

7. Attached as Exhibit T is a true and correct copy of the Assembly Bill No. 1652 (1999-2000 Reg. Sess.) as amended September 8, 1999. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

8. Attached as Exhibit U is a true and correct copy of the Assembly Bill No. 1652, Assembly Final Hist. (1999-2000 Reg. Sess.) . I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

9. Attached as Exhibit V is a true and correct copy of the Assembly Bill No. 2509 (1999-2000 Reg. Sess.) as introduced February 24, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

10. Attached as Exhibit W is a true and correct copy of the Assembly Committee on Labor and Employment (April 12, 2000) on Assembly Bill No. 2509 (1999-2000 Reg. Sess.), introduced February 24, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

11. Attached as Exhibit X is a true and correct copy of the Assembly Bill No. 2509 (1999-2000 Reg. Sess.) as amended June 26, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

12. Attached as Exhibit Y is a true and correct copy of the Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended July 6, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

13. Attached as Exhibit Z is a true and correct copy of the Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 7, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

14. Attached as Exhibit AA is a true and correct copy of the Public Hearing before State of California Department of Industrial Relations, Industrial Welfare Commission (May 5, 2000). Under my direction, my associate Jennifer Lai obtained this document online at the Industrial Welfare Commission's official website at: <http://www.dir.ca.gov/iwc/PUBHRG6302000.pdf>.

15. Attached as Exhibit BB is a true and correct copy of the Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

16. Attached as Exhibit CC is a true and correct copy of the Assembly Bill No. 2857 (1999-2000 Reg. Sess.), as amended August 25, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 5.

17. Attached as Exhibit DD is a true and correct copy of the Concurrence in Senate Amendments, Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

18. Attached as Exhibit EE is a true and correct copy of the Assembly Bill No. 2857 (1999-2000 Reg. Sess.), as amended August 30, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 5.

19. Attached as Exhibit FF is a true and correct copy of Assembly Bill No. 2857, Assembly Final Hist. (1999-2000 Reg. Sess.). I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 5.

20. Attached as Exhibit GG is a true and correct copy of the Assembly Bill No. 2509, Assembly Final Hist. (1999-2000 Reg. Sess.). I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

21. Attached as Exhibit HH is a true and correct copy of the Senate Rule Committee, Third Reading on Assembly Bill No. 2857 (1999-2000 Reg. Sess.), as amended August 25, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 5.

22. Attached as Exhibit II is a true and correct copy of the Senate Rule Committee Assembly Bill Analysis, Third Reading on Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

23. Attached as Exhibit JJ is a true and correct copy of the Concurrence in Senate, Assembly Bill No. 1652 (1999-2000 Reg. Sess.), as amended September 9, 1999. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 4.

24. Attached as Exhibit KK is a true and correct copy of the Assembly Committee on Labor and Employment (June 26, 1986) on Sen. Bill No. 2570, as amended June 17, 1986. I obtained this document from Maria A. Sanders of Legislative Intent Service, Inc. A true and correct copy of Maria A. Sanders' declaration regarding this document is attached hereto as Exhibit 2.

25. Attached as Exhibit 1 is a declaration of Maria A. Sanders of Legislative Intent Service, Inc. supporting all documents regarding of Senate Bill 955 of 1991.

26. Attached as Exhibit 2 is a declaration of Maria A. Sanders of Legislative Intent Service, Inc. supporting all documents regarding Senate Bill 2570 of 1986, including attached exhibit KK.

27. Attached as Exhibit 3 is a declaration of Maria A. Sanders of Legislative Intent Service, Inc. supporting all documents regarding Assembly Bill 633 of 1999, including attached exhibits Q through S.

28. Attached as Exhibit 4 is a declaration of Maria A. Sanders of Legislative Intent Service, Inc. supporting all documents regarding Assembly Bill 1652 of 1999 and Assembly Bill 2509 of 2000, including exhibits T through Z, BB, DD, GG, JJ, and II.

29. Attached as Exhibit 5 is a declaration of Maria A. Sanders of Legislative Intent Service, Inc. supporting all documents regarding Assembly Bill 2857, including exhibits CC, EE, FF, and HH.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Oakland, California, on May 10, 2011.

  
Ellyn Moscovitz



**[PROPOSED ORDER]**

Good cause appearing, therefore,

**IT IS HEREBY ORDERED** that the Supreme Court will take judicial notice of the following documents:

- Exhibit Q: Assembly Bill No. 633 (1999-2000 Reg. Sess.) as introduced February 19, 1999.
- Exhibit R: Assembly Committee on Labor and Employment, (April 7, 1999) on Assembly Bill No. 633 (1999-2000 Reg. Sess.), as amended March 25, 1999.
- Exhibit S: Statutes of 1999, Chapter 554, Assembly Bill No. 633.
- Exhibit T: Assembly Bill No. 1652 (1999-2000 Reg. Sess.) as amended September 8, 1999.
- Exhibit U: Assembly Bill No. 1652, Assembly Final Hist. (1999-2000 Reg. Sess.).
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- Exhibit AA: Public Hearing before State of California Department of Industrial Relations, Industrial Welfare Commission (May 5, 2000).
- Exhibit BB: Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000.
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- Exhibit GG: Assembly Bill No. 2509, Assembly Final Hist. (1999-2000 Reg. Sess.).
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- Exhibit II: Senate Rule Committee Assembly Bill Analysis, Third Reading on Assembly Bill No. 2509 (1999-2000 Reg. Sess.), as amended August 25, 2000.
- Exhibit JJ: Concurrence in Senate, Assembly Bill No. 1652 (1999-2000 Reg. Sess.), as amended September 9, 1999.

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Exhibit KK: Assembly Committee on Labor and Employment  
(June 26, 1986) on Sen. Bill No. 2570, as amended  
June 17, 1986.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Chief Justice or  
Associate Justice of the  
California Supreme Court



**ASSEMBLY BILL**

**No. 633**

**Introduced by Assembly Member Steinberg**

February 19, 1999

An act to amend Section 720.160 of the Code of Civil Procedure, to amend Sections 98.6, 98.7, 203.1, 206, 218.5, 226, 1174.5, 1194, 1194.2, 2675, 2675.5, 2676, and 2680 of, to add Sections 218.6, 226.7, 245, 2673.1, 2680.1, 2680.2, 2683, and 2684 to, and to repeal Section 2677 of, the Labor Code, relating to labor.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as introduced, Steinberg. Labor: violations: garment manufacturing.

Existing law provides that any person who believes that he or she has been discharged or has suffered discrimination in violation of the employee protections under the jurisdiction of the Labor Commissioner may file a complaint within 30 days of the violation. Existing law prohibits an employer from discharging or otherwise discriminating against any employee because he or she has filed a bona fide complaint or claim or instituted any proceeding under the jurisdiction of the Labor Commissioner.

This bill would extend the time limit to file a complaint to one year and also prohibit discharge or discrimination against the employee for making any complaint to his or her employer's representative or for cooperating with any federal or state enforcement agencies or private firms conducting audits.

Existing law provides that for an employer in the building and construction industry who pays an employee wages or fringe benefits with an instrument drawn on insufficient funds, those wages or fringe benefits continue as a penalty until they are paid or an action is commenced.

This bill would apply this provision to all employers and provide that an aggrieved employee may seek recovery of the penalty by filing a complaint with the Labor Commissioner or bringing a civil action.

Existing law provides that where the Labor Commissioner has determined the validity of any employee's claim for wages, the claim is due and payable within 10 days of receipt of notice that the wages are due. Any employer with the ability to pay that does not shall pay treble the amount of the damages accruing to the employee as a result of the failure to pay.

This bill would provide that the nonpaying employer shall be liable to the employee for treble damages or treble the amount of the unpaid wages, whichever is greater, plus costs and reasonable attorney's fees. The bill would also apply this provision to a case where the employee's claim is enforceable by the final judgment of a court that has not been timely appealed. The bill would also provide that where an employer has successfully brought a claim against an employer for violation of specific provisions, 30% of the money recovered shall be paid to the employee, 40% to the Labor Commissioner, and 30% to the General Fund. The plaintiff employee would also be entitled to reasonable attorney's fees and costs. The bill would also provide that the court shall award interest on the due and unpaid wages from the date that they were payable.

Existing law requires employers to provide specified information to each employee when paid, including gross wages earned, total hours worked, and any deductions. Any employee suffering injury as a result of a knowing or intentional failure to comply with this provision is entitled to actual damages or \$100, whichever is greater.

This bill would also require the employer to provide information concerning the number of piecework units earned if the employee is paid on a piecework basis and

provide that any aggrieved employee is entitled to damages or \$100 for each pay period in which a violation occurs, up to \$5,000, and that the employee may recover by filing a complaint with the Labor Commissioner or by bringing a civil action.

Existing law requires every person engaged in the business of garment manufacturing to register with the Labor Commissioner and to pay an initial registration fee of \$150 and an annual renewal fee of \$100.

This bill would also require registration of every person who contracts to have garment manufacturing performed by another person and every person who purchases garments from another person engaged in garment manufacturing carrying a label owned by the purchaser and would increase the initial registration fee to \$300 and the annual renewal fee to \$200. The bill would provide that any person who contracts to have garment manufacturing performed by another person and any person who purchases garments from another person engaged in garment manufacturing carrying a label owned by the purchaser would be civilly liable for specified labor law violations and would authorize the commissioner or any aggrieved employee to bring a civil action for enforcement.

Existing law requires the commissioner to deposit \$25 of each registrant's annual registration fee into a separate account and requires that the funds in the separate account be disbursed only to persons damaged by a registrant where damages exceed the limits of a registrant's bond.

This bill would increase the amount of each registrant's annual registration fee deposited into the separate account to \$75. The bill would additionally authorize the commissioner to disburse the funds to persons damaged by a garment manufacturer, jobber, contractor, or subcontractor.

Existing law authorizes the Division of Labor Standards Enforcement of the Department of Industrial Relations to confiscate any garment or wearing apparel assembled or partially assembled by a person who has not complied with the garment manufacturing registration requirements and requires the division to notify the manufacturer and

contractor of the removal and the location of the confiscated goods.

This bill would also authorize the division to confiscate garments or wearing apparel from garment manufacturers if employees performing garment manufacturing have not been paid all wages due and owing. The bill would revise the procedures used by the division for disposing of or destroying confiscated goods. The bill would also authorize the division to remove and confiscate apparel from any mercantile establishment selling to consumers if employees performing garment manufacturing have not been paid all wages due and owing. The division would be required to give notice to and to release the confiscated goods to the mercantile establishment upon the payment of the wages in full.

Existing law provides that any person engaged in the business of garment manufacturing who does not register with the commissioner is guilty of a misdemeanor.

This bill would require additional persons to register with the commissioner, thereby expanding the class of persons to which an existing crime applies. The bill would also authorize the commissioner to affix an "unlawfully manufactured" tag on apparel manufactured in violation of specified labor laws and would make an unauthorized removal of that tag a misdemeanor. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 720.160 of the Code of Civil
- 2 Procedure is amended to read:
- 3 720.160. (a) If the creditor files with the levying
- 4 officer an undertaking that satisfies the requirements of

1 this section within the time allowed under subdivision (b)

2 of Section 720.140:

3 (1) The levying officer shall execute the writ in the

4 manner provided by law unless the third person files an

5 undertaking to release the property pursuant to Chapter

6 (commencing with Section 720.610).

7 (2) After sale, payment, or delivery of the property

8 pursuant to the writ, the property is free of all claims of

9 the third person for which the creditor has given the

10 undertaking.

11 (b) Subject to Sections 720.770 and 996.010, unless the

12 creditor elects to file an undertaking in a larger amount,

13 the amount of the undertaking filed by the creditor under

14 this section shall be in the amount of:

15 (1) Except as provided in paragraph (2), seven

16 thousand five hundred dollars (\$7,500), or twice the

17 amount of the execution lien as of the date of levy or other

18 enforcement lien as of the date it was created, whichever

19 is the lesser amount.

20 (2) In a limited civil case, two thousand five hundred

21 dollars (\$2,500), or twice the amount of the execution lien

22 as of the date of levy or other enforcement lien as of the

23 date it was created, whichever is the lesser amount.

24 (c) An undertaking given by the creditor under this

25 chapter shall:

26 (1) Be made in favor of the third person.

27 (2) Indemnify the third person against any loss,

28 liability, damages, costs, and attorney's fees, incurred by

29 reason of the enforcement proceedings.

30 (3) Be conditioned on a final judgment that the third

31 person owns or has the right of possession of the property.

32 (d) If the creditor is a public entity exempt from

33 giving an undertaking or *wage claim*, the public entity or

34 *wage claimant* shall, in lieu of filing the undertaking, file

35 with the levying officer a notice stating that the public

36 entity or *wage claimant* opposes the claim of the third

37 person. When so filed, the notice is deemed to satisfy the

38 requirement of this section that an undertaking or *wage*

39 *claim* be filed.

1 SEC. 2. Section 98.6 of the Labor Code is amended to  
2 read:

3 98.6. (a) No person shall discharge or in any manner  
4 discriminate against any employee because ~~such~~ *that*  
5 employee has filed any bona fide complaint or claim or  
6 instituted or caused to be instituted any proceeding  
7 under or relating to his or her rights, ~~which are~~ under the  
8 jurisdiction of the Labor Commissioner, *or has made any*  
9 *oral or written complaint or claim to his or her employer's*  
10 *representative relating to violations of, or asserting any*  
11 *rights afforded him or her under, the Labor Code, or has*  
12 *testified or is about to testify in any such proceeding or*  
13 *has cooperated with an investigation of his or her*  
14 *employer by federal or state government enforcement*  
15 *agencies or private firms conducting payroll audits, or*  
16 *because of the exercise by such the employee on behalf*  
17 *of himself or herself or others of any rights afforded him*  
18 *or her.*

19 (b) Any employee who is discharged, threatened with  
20 discharge, demoted, suspended, or in any other manner  
21 discriminated against in the terms and conditions of such  
22 employment because ~~such~~ *that* employee has made a  
23 bona fide complaint or claim to the division pursuant to  
24 this part shall be entitled to reinstatement and  
25 reimbursement for lost wages and work benefits caused  
26 by such acts of the employer. Any employer who willfully  
27 refuses to hire, promote, or otherwise restore an  
28 employee or former employee who has been determined  
29 to be eligible for ~~such~~ rehiring or promotion by a  
30 grievance procedure, arbitration, or hearing authorized  
31 by law, is guilty of a misdemeanor.

32 SEC. 3. Section 98.7 of the Labor Code is amended to  
33 read:

34 98.7. (a) Any person who believes that he or she has  
35 been discharged or otherwise discriminated against in  
36 violation of any provision of this code under the  
37 jurisdiction of the Labor Commissioner may file a  
38 complaint with the division within ~~30 days~~ *one year* after  
39 the occurrence of the violation. The ~~30-day~~ *one year*  
40 period may be extended for good cause. The complaint

1 shall be investigated by a discrimination complaint  
2 investigator in accordance with this section. The Labor  
3 Commissioner shall establish procedures for the  
4 investigation of discrimination complaints. A summary of  
5 the procedures shall be provided to each complainant  
6 and respondent at the time of initial contact. The Labor  
7 Commissioner shall inform complainants charging a  
8 violation of Section 6310 or 6311, at the time of initial  
9 contact, of his or her right to file a separate, concurrent  
10 complaint with the United States Department of Labor  
11 within 30 days after the occurrence of the violation.

12 (b) Each complaint of unlawful discharge or  
13 discrimination shall be assigned to a discrimination  
14 complaint investigator who shall prepare and submit a  
15 report to the Labor Commissioner based on an  
16 investigation of the complaint. The Labor Commissioner  
17 may designate the chief deputy or assistant Labor  
18 Commissioner or the chief counsel to receive and review  
19 the reports. The investigation shall include, where  
20 appropriate, interviews with the complainant,  
21 respondent, and any witnesses who may have  
22 information concerning the alleged violation, and a  
23 review of any documents which may be relevant to the  
24 disposition of the complaint. The identity of witnesses  
25 shall remain confidential unless the identification of the  
26 witness becomes necessary to proceed with the  
27 investigation or to prosecute an action to enforce a  
28 determination. The investigation report submitted to the  
29 Labor Commissioner or designee shall include the  
30 statements and documents obtained in the investigation,  
31 and the findings of the investigator concerning whether  
32 a violation occurred. The Labor Commissioner may hold  
33 an investigative hearing whenever the Labor  
34 Commissioner determines, after review of the  
35 investigation report, that a hearing is necessary to fully  
36 establish the facts. In the hearing the investigation report  
37 shall be made a part of the record and the complainant  
38 and respondent shall have the opportunity to present  
39 further evidence. The Labor Commissioner shall issue,  
40 serve, and enforce any necessary subpoenas.





1 (e) If the Labor Commissioner determines a violation  
 2 has occurred, he or she shall notify the complainant and  
 3 respondent and direct the respondent to cease and desist  
 4 from the violation and take such action as is deemed  
 5 necessary to remedy the violation, including, where  
 6 appropriate, rehiring or reinstatement, reimbursement  
 7 of lost wages and interest thereon, payment of reasonable  
 8 attorney's fees associated with any hearing held by the  
 9 Labor Commissioner in investigating the complaint, and  
 10 the posting of notices to employees. If the respondent  
 11 does not comply with the order within 10 working days  
 12 following notification of the Labor Commissioner's  
 13 determination, the Labor Commissioner shall bring an  
 14 action promptly in an appropriate court against the  
 15 respondent. If the Labor Commissioner fails to bring an  
 16 action in court promptly, the complainant may bring an  
 17 action against the Labor Commissioner in any  
 18 appropriate court for a writ of mandate to compel the  
 19 Labor Commissioner to bring an action in court against  
 20 the respondent. If the complainant prevails in his or her  
 21 action for a writ, the court shall award the complainant  
 22 court costs and reasonable attorney's fees,  
 23 notwithstanding any other provision of law. Regardless of  
 24 any delay in bringing an action in court, the Labor  
 25 Commissioner shall not be divested of jurisdiction. In any  
 26 such action, the court may permit the claimant to  
 27 intervene as a party plaintiff to the action and shall have  
 28 jurisdiction, for cause shown, to restrain the violation and  
 29 to order all appropriate relief. Appropriate relief  
 30 includes, but is not limited to, rehiring or reinstatement  
 31 of the complainant, reimbursement of lost wages and  
 32 interest thereon, and such other compensation or  
 33 equitable relief as is appropriate under the circumstances  
 34 of the case. The Labor Commissioner shall petition the  
 35 court for appropriate temporary relief or restraining  
 36 order unless he or she determines good cause exists for  
 37 not doing so.

38 (d) If the Labor Commissioner determines no  
 39 violation has occurred, he or she shall notify the  
 40 complainant and respondent and shall dismiss the

1 complaint. The Labor Commissioner may direct the  
 2 complainant to pay reasonable attorney's fees associated  
 3 with any hearing held by the Labor Commissioner if the  
 4 Labor Commissioner finds the complaint was frivolous,  
 5 unreasonable, groundless, and was brought in bad faith.  
 6 The complainant may, after notification of the Labor  
 7 Commissioner's determination to dismiss a complaint,  
 8 bring an action in an appropriate court, which shall have  
 9 jurisdiction to determine whether a violation occurred,  
 10 and if so, to restrain the violation and order all  
 11 appropriate relief to remedy the violation. Appropriate  
 12 relief includes, but is not limited to, rehiring or  
 13 reinstatement of the complainant, reimbursement of lost  
 14 wages and interest thereon, and such other compensation  
 15 or equitable relief as is appropriate under the  
 16 circumstances of the case. When dismissing a complaint,  
 17 the Labor Commissioner shall advise the complainant of  
 18 his or her right to bring an action in an appropriate court  
 19 if he or she disagrees with the determination of the Labor  
 20 Commissioner, and in the case of an alleged violation of  
 21 Section 6310 or 6311, to file a complaint against the state  
 22 program with the United States Department of Labor.

23 (e) The Labor Commissioner shall notify the  
 24 complainant and respondent of his or her determination  
 25 under subdivision (c) or (d), not later than 60 days after  
 26 the filing of the complaint. Determinations by the Labor  
 27 Commissioner under subdivision (c) or (d) may be  
 28 appealed by the complainant or respondent to the  
 29 Director of Industrial Relations within 10 days following  
 30 notification of the determination. The appeal shall set  
 31 forth specifically and in full detail the grounds upon  
 32 which the appealing party considers the Labor  
 33 Commissioner's determination to be unjust or unlawful,  
 34 and every issue to be considered by the director. The  
 35 director may consider any issue relating to the initial  
 36 determination and may modify, affirm, or reverse the  
 37 Labor Commissioner's determination. The director's  
 38 determination shall be the determination of the Labor  
 39 Commissioner. The director shall notify the complainant



1 and respondent of his or her determination within 10 days  
2 of receipt of the appeal.

3 (f) The rights and remedies provided by this section  
4 do not preclude an employee from pursuing any other  
5 rights and remedies under any other provisions of law.

6 SEC. 4. Section 203.1 of the Labor Code is amended  
7 to read:

8 203.1. If an employer in the building and construction  
9 industry pays an employee in the regular course of  
10 employment or in accordance with Sections 201 and 202  
11 any wages or fringe benefits, or both, by check, draft, or  
12 voucher, which check, draft or voucher is subsequently  
13 refused payment because the employer or maker has no  
14 account with the bank, institution, or person on which  
15 drawn or insufficient funds to his or her account at the  
16 time of presentation, so long as the same check, draft, or  
17 voucher is presented within 30 days of receipt by the  
18 employee of the check, draft or voucher, such those  
19 wages or fringe benefits, or both, shall continue as a  
20 penalty from the their due date thereof at the same rate  
21 until paid or until an action therefor is commenced, but  
22 such. However, those wages and fringe benefits shall not  
23 continue for more than 30 days, provided, however, that  
24 the said penalty shall not apply if the employer can  
25 establish to the satisfaction of the Labor Commissioner or  
26 an appropriate court of law that the said violation of this  
27 section was unintentional. Any aggrieved employee may  
28 seek recovery of the penalty provided for in this section  
29 by filing a complaint pursuant to subdivision (a) of  
30 Section 98 or by bringing a civil action.

31 SEC. 5. Section 206 of the Labor Code is amended to  
32 read:

33 206. (a) In case of a dispute over wages, the employer  
34 shall pay, without condition and within the time set by  
35 this article, all wages, or parts thereof, conceded by him  
36 or her to be due, leaving to the employee all remedies he  
37 or she might otherwise be entitled to as to any balance  
38 claimed.

39 (b) If, after an investigation and hearing, the Labor  
40 Commissioner has determined the validity of any

1 employee's claim for wages or a court has issued a final  
2 judgment which has not been timely appealed, the claim  
3 is due and payable within 10 days after receipt of notice  
4 by the employer that such the wages are due. Any  
5 employer having the ability to pay who willfully fails to  
6 pay such the wages within 10 days shall, in addition to any  
7 other applicable penalty, pay treble the amount of any  
8 damages accruing to the employee as a direct and  
9 foreseeable consequence of such the failure to pay or  
10 treble the amount of wages owed, whichever is greater,  
11 plus costs and reasonable attorney's fees in collecting the  
12 wages determined to be owed or awarded.

13 SEC. 6. Section 218.5 of the Labor Code is amended  
14 to read:

15 218.5. (a) In any action brought for the nonpayment  
16 of wages, fringe benefits, or health and welfare or pension  
17 fund contributions, the court shall award reasonable  
18 attorney's fees and costs to the prevailing party if any  
19 party to the action requests attorney's fees and costs upon  
20 the initiation of the action. This section shall not apply to  
21 an action brought by the Labor Commissioner. This  
22 section shall not apply to a surety issuing a bond pursuant  
23 to Chapter 9 (commencing with Section 7000) of Division  
24 3 of the Business and Professions Code or to an action to  
25 enforce a mechanics lien brought under Chapter 2  
26 (commencing with Section 3109) of Title 15 of Part 4 of  
27 Division 3 of the Civil Code.

28 (b) Unless the division has already exercised  
29 jurisdiction under Section 217, any employee bringing an  
30 action for wages or penalty due under Section 218 may  
31 include a cause of action to recover civil penalties under  
32 Section 210, 225.5, 226.3, 1174.5, or 1197.1 on behalf of the  
33 State of California and the Labor Commissioner. The  
34 money recovered therein shall be paid as follows: 30  
35 percent to the private plaintiffs; 40 percent to the Labor  
36 Commissioner for enforcement of this article and Part 4  
37 of Chapter 1; and 30 percent into the State Treasury to the  
38 credit of the General Fund. The plaintiff employee who  
39 prevails in recovering the civil penalties shall be entitled  
40 to reasonable attorney's fees and costs.



1 SEC. 7. Section 218.6 is added to the Labor Code, to  
2 read:

3 218.6. In any action brought for the nonpayment of  
4 wages, the court shall award interest on all due and  
5 unpaid wages at the legal rate of interest as specified in  
6 subdivision (b) of Section 3289 of the Civil Code. The  
7 interest shall run from the date that the wages were due  
8 and payable as provided in Part 1 (commencing with  
9 Section 200) of Division 2.

10 SEC. 8. Section 226 of the Labor Code is amended to  
11 read:

12 226. (a) Every employer shall semimonthly, or at the  
13 time of each payment of wages, furnish each of his or her  
14 employees either as a detachable part of the check, draft,  
15 or voucher paying the employee's wages, or separately  
16 when wages are paid by personal check or cash, an  
17 itemized statement in writing showing: ~~(1) gross all of the~~  
18 following:

19 (1) Gross wages earned; ~~(2) total.~~

20 (2) Total hours worked by each employee whose  
21 compensation is based on an hourly wage; ~~(3) all~~

22 (3) The number of piecework units earned if paid on  
23 a piecework basis.

24 (4) All deductions, provided, that all deductions made  
25 on written orders of the employee may be aggregated  
26 and shown as one item; ~~(4) net~~

27 (5) Net wages earned; ~~(5) the.~~

28 (6) The inclusive dates of the period for which the  
29 employee is paid; ~~(6) the.~~

30 (7) The name of the employee and his or her social  
31 security number; ~~and (7) the.~~

32 (8) The name and address of the legal entity which is  
33 the employer.

34 The deductions made from cash payments of wages  
35 shall be recorded in ink or other indelible form, properly  
36 dated, showing the month, day, and year, and a copy of  
37 the statement, or a record of the deductions, shall be kept  
38 on file by the employer for at least three years at the place  
39 of employment or at a central location within the State of  
40 California.

1 An employer who is required by this code or any  
2 regulation adopted pursuant to this code to keep the  
3 information required by this section shall afford current  
4 and former employees the right to inspect or copy the  
5 records pertaining to that current or former employee,  
6 upon reasonable request to the employer. The employer  
7 may take reasonable steps to assure the identity of a  
8 current or former employee. If the employer provides  
9 copies of the records, the actual cost of reproduction may  
10 be charged to the current or former employee.

11 This section shall not apply to any employer of any  
12 person employed by the owner or occupant of a  
13 residential dwelling whose duties are incidental to the  
14 ownership, maintenance, or use of the dwelling,  
15 including the care and supervision of children, or whose  
16 duties are personal and not in the course of the trade,  
17 business, profession, or occupation of the owner or  
18 occupant.

19 (b) Any employee suffering injury as a result of a  
20 knowing and intentional failure by an employer to  
21 comply with subdivision (a) shall be entitled to recover  
22 all actual damages or one hundred dollars (\$100),  
23 whichever is greater, for each pay period in which a  
24 violation occurs, up to five thousand dollars (\$5,000), plus  
25 costs and reasonable attorney attorney's fees. Any  
26 aggrieved employee may seek recovery of the damages  
27 or the penalty provided by this section by filing a  
28 complaint pursuant to subdivision (a) of Section 98 or by  
29 bringing a civil action.

30 (c) This section shall not apply to the state, or any city,  
31 county, city and county, district, or any other  
32 governmental entity.

33 SEC. 9. Section 226.7 is added to the Labor Code, to  
34 read:

35 226.7. (a) No employer shall require any employee to  
36 work during any meal or rest period mandated by an  
37 applicable order of the Industrial Welfare Commission.

38 (b) An employer who violates this section shall be  
39 subject to both of the following:

1 (1) A civil penalty of fifty dollars (\$50) per employee  
2 per violation.

3 (2) Payment to the aggrieved employee of an amount  
4 equal to twice his or her average hourly rate for the full  
5 length of the meal or rest period in which he or she was  
6 required to perform any work. An employee paid on a  
7 piecework basis shall be entitled to an amount equal to  
8 twice the amount of piecework units earned during such  
9 periods, but in no event shall the amount be less than the  
10 applicable state minimum wage for the full length of the  
11 time period in which any work was performed.

12 (c) Any employee aggrieved by violation of this  
13 section may do either of the following:

14 (1) Seek recovery of payments authorized by this  
15 section through a complaint filed pursuant to subdivision  
16 (a) of Section 98.

17 (2) Bring a civil action. The court shall grant a  
18 prevailing plaintiff reasonable attorney's fees and costs.

19 SEC. 10. Section 245 is added to the Labor Code, to  
20 read:

21 245. Whenever the Labor Commissioner makes an  
22 award against an employer pursuant to this chapter, the  
23 Labor Commissioner shall also make an order requiring  
24 the employer to post a notice at the place of employment  
25 where the affected employees are or were employed  
26 containing a description of the nature of the violation, a  
27 declaration by the employer stating that it will not engage  
28 in those unlawful acts in the future, and the address and  
29 telephone number of the Labor Commissioner. The  
30 notice, on a form approved by the Labor Commissioner,  
31 shall be posted conspicuously for a period of not less than  
32 60 days. The notice shall bear the seal of the State of  
33 California and of the Labor Commissioner and the  
34 signature of the employer or a representative or agent of  
35 the employer. The cost of producing and posting the  
36 notice shall be borne by the employer. The failure or  
37 refusal of an employer to post the notice in accordance  
38 with this subdivision shall subject the employer to a civil  
39 penalty, to be assessed and collected by the Labor  
40 Commissioner, in the amount of five hundred dollars

1 (\$500) for each instance in which the employer fails or  
2 refused to post a notice as required by this subdivision and  
3 the employer shall be required to properly post the  
4 notice.

5 SEC. 11. Section 1174.5 of the Labor Code is amended  
6 to read:

7 1174.5. (a) Any person employing labor who willfully  
8 fails to maintain the records required by subdivision (c)  
9 of Section 1174 or accurate and complete records  
10 required by subdivision (d) of Section 1174 or the wage  
11 orders of the Industrial Welfare Commission, or to allow  
12 any member of the commission or employees of the  
13 division to inspect records pursuant to subdivision (b) of  
14 Section 1174, shall be subject to a civil penalty of five  
15 hundred dollars—(\$500) one hundred dollars (\$100) per  
16 employee per payroll in which records are not  
17 maintained, up to a period of three years.

18 SEC. 12. Section 1194 of the Labor Code is amended  
19 to read:

20 1194. (a) Notwithstanding any agreement to work  
21 for a lesser wage, any employee receiving less than the  
22 legal minimum wage or the legal overtime compensation  
23 applicable to the employee is entitled to recover in a civil  
24 action the unpaid balance of the full amount of this  
25 minimum wage or overtime compensation, including  
26 interest thereon, reasonable attorney's fees, and costs of  
27 suit. Unless the division has already exercised jurisdiction  
28 under Section 217, any employee bringing an action for  
29 wages or penalty due under Section 218 may include a  
30 cause of action to recover civil penalties under Section  
31 210, 225.5, 226.3, 1174.5, or 1197.1 on behalf of the State of  
32 California and the Labor Commissioner. The money  
33 recovered therein shall be paid as follows: 30 percent to  
34 the private plaintiffs; 40 percent to the Labor  
35 Commissioner for enforcement of this article and Part 4  
36 of Chapter 1; and 30 percent into the State Treasury to the  
37 credit of the General Fund. The plaintiff employee who  
38 prevails in recovering the civil penalties shall be entitled  
39 to reasonable attorney's fees and costs.

1 (b) The amendments made to this section by Chapter  
 2 825 of the Statutes of 1991 shall apply only to civil actions  
 3 commenced on or after January 1, 1992.  
 4 SEC. 13. Section 1194.2 of the Labor Code is amended  
 5 to read:

6 1194.2. (a) In any action under Section 1193.6 or  
 7 Section 1194 to recover wages because of the payment of  
 8 a wage less than the minimum wage fixed by an order of  
 9 the commission, an employee shall be entitled to recover  
 10 liquidated damages in an amount equal to the wages  
 11 unlawfully unpaid and interest thereon. ~~Nothing in this~~  
 12 ~~subdivision shall be construed to authorize the recovery~~  
 13 ~~of liquidated damages for failure to pay overtime~~  
 14 ~~compensation.~~

15 (b) Notwithstanding subdivision (a), if the employer  
 16 demonstrates to the satisfaction of the court that the act  
 17 or omission giving rise to the action was in good faith and  
 18 that the employer had reasonable grounds for believing  
 19 that the act or omission was not a violation of any  
 20 provision of the Labor Code relating to minimum wage  
 21 or overtime compensation, or an order of the commission,  
 22 the court may, in its discretion, refuse to award liquidated  
 23 damages or award any amount of liquidated damages not  
 24 exceeding the amount specified in subdivision (a).

25 (c) Failure to pay any wages to an employee, including  
 26 promised wages above the minimum wage, constitutes a  
 27 failure to pay at least minimum wages, and employees  
 28 shall be entitled to recover, in addition to the full amount  
 29 of wages owed, liquidated damages in an amount equal  
 30 to: (1) minimum wages where only straight time wages  
 31 are due, and (2) promised wages as well as overtime  
 32 compensation where overtime hours were worked.

33 (d) Any aggrieved employee may seek recovery of  
 34 liquidated damages provided for in this section by filing  
 35 a complaint pursuant to subdivision (a) of Section 98 or  
 36 by bringing a civil action. The court shall grant a  
 37 prevailing plaintiff in such an action reasonable  
 38 attorney's fees and costs.

39 (e) This section only shall apply to civil actions  
 40 commenced on or after January 1, 1992.

1 SEC. 14. Section 2673.1 is added to the Labor Code, to  
 2 read:

3 2673.1. (a) Any person who contracts to have  
 4 garment manufacturing performed by another person  
 5 and any person who purchases garments from another  
 6 person engaged in garment manufacturing carrying a  
 7 label owned, in whole or part, by the purchaser, shall be  
 8 civilly liable, with respect to the garment manufacturing  
 9 performed, to the same extent as the other persons or  
 10 their contractors or subcontractors for any violation of  
 11 Part 1 (commencing with Section 200), Part 2  
 12 (commencing with Section 510), Part 4 (commencing  
 13 with Section 1171), or Part 10 (commencing with Section  
 14 2650) of this division, Division 4 (commencing with  
 15 Section 3200), or Division 5 (commencing with Section  
 16 6300) committed by the other persons or their  
 17 contractors or subcontractors, and shall be subject to the  
 18 same civil penalties assessed against the other persons or  
 19 their contractors or subcontractors for violations of those  
 20 provisions.

21 (b) The commissioner or any employee aggrieved by  
 22 a violation of any provision enumerated in subdivision (a)  
 23 may bring a civil action to enforce this section.

24 (c) Nothing in this section limits the application of  
 25 penalties provided in Section 2678.

26 SEC. 15. Section 2675 of the Labor Code is amended  
 27 to read:

28 2675. (a) For purposes of enforcing this part and  
 29 Sections 204, 209, 212, 221, 222, 222.5, 223, 226, 227, and  
 30 227.5, Chapter 2 (commencing with Section 300) and  
 31 Article 2 (commencing with Section 400) of Chapter 3 of  
 32 Part 1 of this division, Sections 1195.5, 1197, 1197.5, and  
 33 1198, Division 4 (commencing with Section 3200) and  
 34 Division 4.7 (commencing with Section 6200), every  
 35 person engaged in the business of garment  
 36 manufacturing every person who contracts to have  
 37 garment manufacturing performed by another person,  
 38 and every person who purchases garments from another  
 39 person engaged in garment manufacturing garments

1 carrying a label-owned, in whole or part, by the purchaser  
2 shall register with the commissioner.

3 The commissioner shall not permit any person to  
4 register, nor shall the commissioner allow any person to  
5 renew registration, until all the following conditions are  
6 satisfied:

7 (1) The person has executed a written application  
8 therefor in a form prescribed by the commissioner,  
9 subscribed and sworn by the person, and containing:

10 (A) A statement by the person of all facts required by  
11 the commissioner concerning the applicant's character,  
12 competency, responsibility, and the manner and method  
13 by which the person proposes to engage in the business  
14 of garment manufacturing if the registration is issued.

15 (B) The names and addresses of all persons, except  
16 bona fide employees on stated salaries, financially  
17 interested, either as partners, associates, or profit sharers,  
18 in the proposed business of garment manufacturing,  
19 together with the amount of their respective interests,  
20 except that in the case of a publicly traded corporation a  
21 listing of principal officers shall suffice.

22 (2) The commissioner, after investigation, is satisfied  
23 as to the character, competency, and responsibility of the  
24 person.

25 (3) In the case of a person who has been cited and  
26 penalized within the prior three years under this part, the  
27 person has deposited or has on file a surety bond in the  
28 sum and form that the commissioner deems sufficient and  
29 adequate to insure ~~ensure~~ future compliance, not to  
30 exceed five thousand dollars (\$5,000). The bond shall be  
31 payable to the people of California and shall be for the  
32 benefit of any employee of a registrant damaged by the  
33 registrant's failure to pay wages and fringe benefits, or for  
34 the benefit of any employee of a registrant damaged by  
35 a violation of Section 2677.5.

36 (4) The person has documented that a current  
37 workers' compensation insurance policy is in effect for  
38 the employees of the person seeking registration.

39 (5) The person has paid an initial registration fee to the  
40 commissioner not to exceed ~~one~~ three hundred fifty

1 dollars ~~(\$150)~~ (\$300), or in the case of renewal of  
2 registration, a fee not to exceed ~~one~~ two hundred dollars  
3 ~~(\$100)~~ (\$200).

4 (b) At the time a certificate of registration is originally  
5 issued or renewed, the commissioner shall provide  
6 related and supplemental information regarding business  
7 administration and applicable labor laws. This related and  
8 supplemental information, as much as reasonably  
9 possible, shall be provided in the primary language of the  
10 garment manufacturer. The information shall include all  
11 subject matter on which persons seeking registration are  
12 examined pursuant to subdivision (c), and shall be  
13 available to persons seeking registration prior to taking  
14 this examination.

15 (c) Effective January 1, 1991, persons seeking  
16 registration under this section for the first time, and  
17 persons seeking to renew their registration pursuant to  
18 subdivision (f), shall comply with all of the following  
19 requirements:

20 (1) Demonstrate, by an oral or written examination, or  
21 both, knowledge of the pertinent laws and administrative  
22 regulations concerning garment manufacturing as the  
23 commissioner deems necessary for the safety and  
24 protection of garment workers.

25 (2) Demonstrate, by an oral or written examination, or  
26 both, knowledge of state laws and regulations relating to  
27 occupational safety and health which shall include, but  
28 not be limited to, the following:

29 (A) Section 3203 of Title 8 of the California Code of  
30 Regulations (Injury Prevention Program).

31 (B) Section 3220 of Title 8 of the California Code of  
32 Regulations (Emergency Action Plan).

33 (C) Section 3221 of Title 8 of the California Code of  
34 Regulations (Fire Prevention Plan).

35 (D) Section 6151 of Title 8 of the California Code of  
36 Regulations which provides for the placement, use,  
37 maintenance, and testing of portable fire extinguishers  
38 provided for the use of employees.

39 (3) Sign a statement which provides that he or she  
40 shall do all of the following:



1 (A) Comply with those regulations specified in  
 2 paragraph (2) which establish minimum standards for  
 3 securing safety in all places of employment.  
 4 (B) Ensure that all employees are made aware of the  
 5 existence of these regulations and any other applicable  
 6 laws and are instructed in how to implement the Injury  
 7 Prevention Program, Emergency Action Plan, and Fire  
 8 Prevention Plan, specified in paragraph (2), in the  
 9 workplace.  
 10 (C) Ensure that all employees are instructed in the use  
 11 of portable fire extinguishers.  
 12 (D) Post the Injury Prevention Program, Emergency  
 13 Action Plan, and Fire Prevention Plan, specified in  
 14 paragraph (2), in a prominent location in the workplace.  
 15 (d) The Division of Occupational Safety and Health  
 16 shall assist the Division of Labor Standards Enforcement  
 17 in developing the examination which shall include, but  
 18 not be limited to, the state's occupational safety and  
 19 health laws specified in paragraph (2) of subdivision (c).  
 20 (e) The commissioner shall charge a fee to persons  
 21 taking the examinations required by subdivision (c)  
 22 which is sufficient to pay for costs incurred in  
 23 administering the examinations.  
 24 (f) A person seeking renewal of registration shall be  
 25 required to take both of the examinations, and sign the  
 26 statement, specified in subdivision (c). However, once a  
 27 renewal of registration has been granted based on these  
 28 examinations, subsequent examinations shall only be  
 29 required at the discretion of the commissioner if, in the  
 30 preceding year, the registrant has been found to be in  
 31 violation of subdivision (a) or any of the sections  
 32 enumerated in that subdivision.  
 33 (g) Proof of registration shall be by an official Division  
 34 of Labor Standards Enforcement registration form.  
 35 Every person, as set forth in Section 2671, shall post the  
 36 registration form where it may be read by employees  
 37 during the workday.  
 38 (h) At least 90 days prior to the expiration of each  
 39 registrant's registration, the ~~Labour~~ Commissioner  
 40 commissioner shall mail a renewal notice to the last

1 known address of the registrant. The notice shall include  
 2 all necessary application forms and complete instructions  
 3 for registration renewal. However, omission of the ~~Labour~~  
 4 Commissioner commissioner to provide notice in  
 5 accordance with this subdivision shall not excuse a  
 6 registrant from making timely application for renewal of  
 7 registration, shall not be a defense in any action or  
 8 proceeding involving failure to renew registration, and  
 9 shall not subject the ~~Labour Commissioner~~ commissioner  
 10 to any legal liability under this section.  
 11 SEC. 16. Section 2675.5 of the Labor Code is amended  
 12 to read:  
 13 2675.5. (a) The commissioner shall deposit  
 14 twenty-five seventy-five dollars ~~(\$25)~~ (\$75) of each  
 15 registrant's annual registration fee, required pursuant to  
 16 paragraph (5) of subdivision (a) of Section 2675, into one  
 17 separate account. Funds from the separate account shall  
 18 be disbursed by the commissioner only to persons  
 19 determined by the commissioner to have been damaged  
 20 by the failure to pay wages and benefits by any registrant,  
 21 when the damage exceeds the limits of the registrant's  
 22 bond garment manufacturer, jobber, contractor, or  
 23 subcontractor after exhausting a bond, if any, to ensure  
 24 the payment of wages and benefits. Any disbursed funds  
 25 subsequently recovered by the commissioner shall be  
 26 returned to the separate account.  
 27 (b) The remainder of each registrant's registrant's  
 28 annual registration fee not deposited into the special  
 29 account pursuant to subdivision (a) shall be applied to  
 30 costs incurred by the commissioner in administering the  
 31 provisions of Section 2675 and this section.  
 32 SEC. 17. Section 2676 of the Labor Code is amended  
 33 to read:  
 34 2676. Any person engaged in the business of garment  
 35 manufacturing, any person who contracts to have  
 36 garment manufacturing performed by another person, or  
 37 any person who purchases garments from another person, or  
 38 engaged in garment manufacturing carrying a label  
 39 owned, in whole or in part, by the purchaser who is not

1 registered is guilty of a misdemeanor, except as provided  
2 in subdivision (d) of Section 2678.

3 SEC. 18. Section 2677 of the Labor Code is repealed.  
4 ~~2677. Any person engaged in the business of garment  
5 manufacturing who contracts with any other person  
6 similarly engaged who has not registered with the  
7 commissioner or does not have a valid bond on file with  
8 the commissioner, as required by Section 2675, shall be  
9 deemed an employer, and shall be jointly liable with such  
10 other person for any violation of Section 2675 and the  
11 sections enumerated in that section.~~

12 SEC. 19. Section 2680 of the Labor Code is amended  
13 to read:

14 2680. Any garment or wearing apparel, assembled or  
15 partially assembled by or on behalf of any person who has  
16 not complied with the registration requirements of this  
17 part, or any person who, in violation of Part 1  
18 (commencing with Section 200) or Part 4 (commencing  
19 with Section 1171), has not paid all wages due and owing  
20 to his or her employees performing garment  
21 manufacturing during a period of 180 days prior to an  
22 investigation by the Division of Labor Standards  
23 Enforcement, may be confiscated by the Division of  
24 Labor Standards Enforcement division. ~~Such~~ If the goods  
25 are confiscated because of noncompliance with  
26 registration requirements, the confiscated garments or  
27 wearing apparel shall be placed in the custody of the  
28 division, which shall be charged with the responsibility of  
29 destroying or disposing of them pursuant to regulations  
30 adopted under Section 2672, provided that ~~such~~ the goods  
31 shall not enter the mainstream of commerce and shall not  
32 be offered for sale. ~~The~~ If the goods are confiscated  
33 because of the nonpayment of wages, the division shall,  
34 by registered mail and telephone, give notice of ~~such~~ the  
35 removal and the location where the confiscated goods are  
36 held in custody to the known manufacturer and  
37 contractor and shall release the confiscated goods to them  
38 upon the payment of the wages in full. If the wages  
39 remain unpaid for a period of two weeks after the notice,  
40 the confiscated goods shall be destroyed or disposed of in

1 the same manner as provided for goods confiscated  
2 because of noncompliance with registration  
3 requirements.

4 SEC. 20. Section 2680.1 is added to the Labor Code, to  
5 read:

6 2680.1. If any article of apparel or component thereof  
7 is manufactured by any employee who was employed in  
8 violation of any provision enumerated in Section 2673.1,  
9 the commissioner may affix a tag not more than six inches  
10 in length bearing the words "unlawfully manufactured"  
11 on the article of apparel or component thereof. Any  
12 person other than the commissioner, the commissioner's  
13 authorized representative, or the consumer purchasing  
14 an article of apparel or component with an unlawfully  
15 manufactured tag who removes, alters, defaces, or  
16 otherwise interferes with that tag is guilty of a  
17 misdemeanor.

18 SEC. 21. Section 2680.2 is added to the Labor Code, to  
19 read:

20 2680.2. The Division of Labor Standards Enforcement  
21 may remove and confiscate, from any mercantile  
22 establishment that sells to consumers, any article of  
23 apparel or component thereof, in the manufacture of  
24 which any employee has not been paid all wages due and  
25 owing to him or her for performing garment  
26 manufacturing in violation of Part 1 (commencing with  
27 Section 200) or Part 4 (commencing with Section 1171).  
28 An article of apparel or component confiscated under this  
29 section shall be placed in the custody of the division and  
30 the division shall, by registered mail and telephone, give  
31 notice to the mercantile establishment of the removal  
32 and the location where the confiscated goods are held in  
33 custody. The division may release the confiscated goods  
34 to the mercantile establishment upon the payment of the  
35 wages in full. If the wages remain unpaid for a period of  
36 two weeks after notice, the confiscated goods shall be  
37 destroyed or disposed of in the same manner as provided  
38 in Section 2680 for goods confiscated because of  
39 noncompliance with registration requirements.





1 SEC. 22. Section 2683 is added to the Labor Code, to  
2 read:

3 2683. The 10 largest shareholders, as determined by  
4 the fair value of their beneficial interest as of the  
5 beginning of the period during which the unpaid services  
6 referred to in Section 2680 are performed, of every  
7 corporation, no shares of which are listed on a national  
8 securities exchange or regularly quoted in an  
9 over-the-counter market by one or more members of a  
10 national or affiliated securities association, shall jointly  
11 and severally be personally liable for all debts, wages, or  
12 salaries due and owing its laborers who perform garment  
13 manufacturing as defined by subdivision (b) of Section  
14 2671 for that corporation.

15 SEC. 23. Section 2684 is added to the Labor Code, to  
16 read:

17 2684. A successor to any employer engaged in the  
18 business of garment manufacturing, as defined by  
19 subdivision (b) of Section 2671, who owes wages to his or  
20 her former employee or employees is liable for those  
21 wages if the successor meets any of the following criteria:

22 (a) Uses substantially the same facilities or workforce  
23 to produce substantially the same products for  
24 substantially the same type of customers as the  
25 predecessor employer.

26 (b) Shares in the ownership, management, control of  
27 labor relations, or interrelations of business operations  
28 with the predecessor employer.

29 (c) Has in its employ in a managerial capacity any  
30 person who directly or indirectly controlled the wages,  
31 hours, or working conditions of the affected employees of  
32 the predecessor employer.

33 (d) Is an immediate family member of any owner,  
34 partner, officer, or director of the predecessor employer  
35 or of any person who had a financial interest in the  
36 predecessor employer.

37 SEC. 24. No reimbursement is required by this act  
38 pursuant to Section 6 of Article XIII B of the California  
39 Constitution because the only costs that may be incurred  
40 by a local agency or school district will be incurred

1 because this act creates a new crime or infraction,  
2 eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section  
4 17556 of the Government Code, or changes the definition  
5 of a crime within the meaning of Section 6 of Article  
6 XIII B of the California Constitution.





Date of Hearing: April 7, 1999

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT  
Darrell Steinberg, Chair  
AB 633 (Steinberg) – As Amended: March 25, 1999

**SUMMARY:** Revises statutes relating to the enforcement of wage and hour laws including wage collection and enforcement procedures before the Labor Commissioner (Commissioner) and the courts, civil penalties and damages for violations of wage and hour laws, and legal actions by employees to enforce wage and hour laws. Revises statutes relating to registration of garment contractors, manufacturers, and retailers, the liability of such entities for violations of specified labor laws, and the collection of unpaid wages of workers employed in the garment industry. Specifically, this bill:

With respect to enforcement of wages and hour laws generally:

- 1) Provides that a wage claimant who is a judgment creditor is exempt from filing an undertaking prior to enforcing a wage judgement through specified proceedings.
- 2) Requires an employer seeking de novo court review of a wage order, decision, or award of the Commissioner to post an undertaking in the amount of the order, decision, or award.
- 3) Requires the Commissioner, when acting on behalf of a judgment creditor, to make reasonable collection efforts unless the judgment creditor requests in writing that the Commissioner take no action.

Defines "reasonable collection efforts" to include, but not be limited to specified actions including recording an abstract of judgment, filing a judgment lien on personal property with the Secretary of State, and recovering from specified bonds and separate accounts required by law.

Provides that a court hearing a de novo review of a Commissioner's wage claim order, decision, or award shall have the same jurisdiction as any other original proceeding filed in that court.

- 4) Prohibits an employer from discharging or otherwise discriminating against an employee for making a complaint to the employer or for cooperating with an investigation of federal, state, or private auditors with respects to the employee's rights under the jurisdiction of the Commissioner.

Extends the time limit for filing complaints of such discharge or discrimination from 30 days to one year.

- 5) Applies to all employers a provision of current law applying only to the building and construction industry that imposes up to 30 days waiting time penalties where wages (or fringe benefits) are paid with a check for which payment is refused due to insufficient funds.

Deletes the current provision that the penalties do not apply if the violation was unintentional.

- 6) Provides that an employer who, having the ability to pay, willfully fails to pay a final wage determination of the Commissioner or court judgment, which is not timely appealed, is subject to a penalty. Establishes the penalty as the greater of either (1) treble the amount of any damages to the employee



or (2) treble the amount of wages owed; plus costs and reasonable attorney's fees in collecting the wages determined to be owed or awarded.

- 7) Provides that an employee in an action for wages or penalties due, including violations of minimum wage and overtime laws, may also seek to recover civil penalties under specified sections on behalf of the State of California and the Commissioner. This provision does not apply if the Division of Labor Standards Enforcement (DLSE) has already exercised jurisdiction.

Provides for the allocation of civil penalties recovered by an employee pursuant to this section to be distributed as follows: 30% to the private plaintiffs; 40% to the Commissioner for enforcement of wage and hour laws; and 30% to the general fund.

- 8) Provides that in an action for nonpayment of wages, a court shall award interest on all due and unpaid wages from the date that the wages were due and payable in an action.
- 9) Requires an employer to provide each employee at the time of wage payment information concerning the number of piecework units earned and the applicable piece rate if the employee is paid on a piecework basis in addition to the information currently required to be provided.

Provides that an aggrieved employee is entitled to damages or \$100 for each pay period in which a violation occurs up to a maximum of \$5,000, and that the employee may recover by filing a complaint with the Commissioner or by bringing a civil action.

- 10) Provides that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC).

Provides for a civil penalty of \$50 per employee per violation and payment to the aggrieved employee of an amount equal to twice the employee's hourly rate for the full length of the meal or rest period in which the employee was required to perform any work. Employees paid on a piecework basis are entitled to twice the amount of piecework units earned during such periods, but in no event less than the applicable state minimum wage for the full length of the time period in which any work was performed.

Provides that an aggrieved employee may seek recovery of payments through a complaint to the Commissioner or bring a civil action, in which a court shall grant a prevailing plaintiff reasonable attorney's fees and costs.

- 11) Provides that a bond which may be required by the Commission to be deposited by an employer convicted of a violation of specified wage and hour laws, shall if required, be conditioned on the payment of any judgement for wages, interest, penalties, or other demands within the jurisdiction of the Commissioner that remain outstanding.
- 12) Provides that the Commissioner shall, when making an award against an employer for violation of specified wage and hour laws, also order the employer to post a notice for 60 days at the place of employment. Requires the notice to describe the nature of the violation, and to contain a declaration by the employer stating that it will not engage in those unlawful acts in the future along with the



address and telephone number of the Commissioner. Provides a civil penalty of \$500 for failure to post the required notice.

- 13) Provides that an employer shall keep payroll records showing, among other information, the number of piece rates units earned and any applicable piece rate if paid on a piece rate basis, by and wages paid to employees.

Provides that an employer who willfully fails to maintain specified employment records shall be subject to a civil penalty of \$100 per employee per payroll in which records are not maintained, up to a period of three years.

- 14) Provides that in an action for failure to pay minimum wages or overtime compensation, the employee shall be entitled to recover, in addition the full amount of wages owed, liquidated damages. Calculates the liquidated damages as an amount equal to minimum wages where only straight time wages are due and promised wages as well as overtime compensation where overtime hours were worked. Provides that an aggrieved employee may seek recovery of such liquidated damages by filing a complaint with the Commissioner or by bringing civil action, in which the court shall grant a prevailing plaintiff reasonable attorney's fees and costs.

With respect to enforcement of wage and hour laws in garment manufacturing:

- 1) Provides that any person who contracts to have garment manufacturing performed by another person and any person who sells garments carrying a label owned, in whole or in part, by the seller or licensed to the seller, shall be jointly liable with the person employing the employees who manufactured the garments for specified labor law violations.

Provides that the Commissioner or any employee aggrieved by a violation of such labor laws may bring a civil action for enforcement of these laws.

Repeals the provision of existing law providing that persons engaged in the business of garment manufacturing who contract with another person engaged in such manufacturing is jointly liable for violations of specified labor laws by the contractor if the contractor has not registered or does not have a valid bond on file with the Commissioner.

- 2) Requires the registration with the Commissioner of any person who contracts to have garment manufacturing performed by another person and any person who sells garments carrying a label owned, in whole or in part, by the seller or licensed to the seller.

Changes the initial registration fee from \$150 to \$300 and the renewal registration fee from \$100 to \$200.

Increases the amount of the annual registration fee deposited into a separate account from \$25 to \$75 and authorizes the commissioner to disburse funds from the account to persons damaged by the failure to pay wages and benefits by any garment manufacturer, jobber, contractor, or subcontractor, after exhausting any available bond.

Provides that the failure to register as required is a misdemeanor.



- 3) Authorizes DLSE to confiscate garments from garment manufacturers if all wages due and owing have not been paid to employees performing the garment manufacturing during a period of 180 days prior to an investigation by DLSE.

Revises the procedures used by DLSE for disposing of or destroying confiscated goods.

Authorizes DLSE to confiscate apparel from any mercantile establishment selling to consumers apparel in the manufacture of which an employee has not been paid all wages due and owing. Requires the DLSE to give notice to and to release the confiscated goods to the mercantile establishment upon the payment of the wages in full.

- 4) Authorizes the Commissioner to affix a tag on any article of apparel or component thereof manufactured by any employee who was employed in violation of specified labor laws stating that the article was "unlawfully manufactured." Provides that it is a misdemeanor for any person except a consumer or the Commissioner to remove, alter, or deface the tag.
- 5) Provides that the 10 largest shareholders of a non publicly traded corporation, as specified, shall jointly and severally be personally liable for all debts, wages or salaries due and owing to laborers who perform garment manufacturing for the corporation.
- 6) Provides that an employee shall have a lien upon the assets of his or her employer for any sum for services performed in garment manufacturing and that the lien shall prevail over all other claims, except as specified.
- 7) Provides that a successor to any employer engaged in the business of garment manufacturing who owes wages to the former employees is liable for those wages if the successor meets specified criteria including use of substantially the same facilities, sharing in ownership or management, or employing managers from the predecessor employer.

EXISTING LAW:

With respect to enforcement of wage and hours generally:

- 1) Requires a judgement creditor, except a public entity, to file an undertaking prior to enforcing a judgement through specified proceedings.
- 2) Allows an employer to obtain a de novo review in court of an order, decision, or award of the Commissioner without posting of an undertaking.
- 3) Authorizes the Commissioner to make every reasonable effort to ensure that wage judgments are satisfied, but does not further define "reasonable effort".
- 4) Prohibits an employer from discharging or otherwise discriminating against an employee for making a bona fide complaint or claim or instituted any proceeding under the jurisdiction of the Commissioner.

Establishes a 30-day time period for filing complaints of such discharge or discrimination.



- 5) Provides, in the building and construction industry, up to 30 days waiting time penalties where wages (or fringe benefits) are paid with a check for which payment is refused due to insufficient funds. Provides that the penalties do not apply if the violation was unintentional.
- 6) Provides that an employer who, having the ability to pay, willfully fails to pay a final wage determination of the Commissioner or court judgment, which is not timely appealed, is subject to a penalty of the greater of treble the amount of any damages to the employee.
- 7) Provides that an employee may bring an action for nonpayment of wages, and the prevailing party in such an action shall be awarded reasonable attorney's fees and costs.
- 8) Requires an employer to provide each employee at the time of wage payment specified information concerning the hours worked and wages earned. Provides that an aggrieved employee is entitled to damages or \$100, whichever is greater.

Requires employers to maintain specific wage and hour records. Employers who fail to maintain the required records are subject to a civil penalty of \$500.

- 9) Requires, under wage orders of the IWC, meal and rest periods.
- 10) Provides that a bond required by the Commissioner to be deposited by an employer convicted of a violation of specified wage and hour laws be conditioned on the payment of any judgement for wages, interest, penalties, or other demands within the jurisdiction of the Commissioner that remain outstanding.

With respect to enforcement of wage and hour laws in garment manufacturing:

- 1) Requires the registration with the Commissioner of any person who manufactures garments.

Establishes initial registration fees at \$150 and renewal registration fees at \$100.

Requires \$25 of the annual registration fee to be deposited into a separate account and authorizes the Commissioner to disburse funds from the account to persons damaged by the failure to pay wages and benefits by any garment manufacturer, jobber, contractor, or subcontractor, after exhausting any available bond.

Provides that the failure to register as required is a misdemeanor.

- 2) Provides that persons engaged in the business of garment manufacturing who contract with another person engaged in such manufacturing is jointly liable for violations of specified labor laws by contractor if the contractor has not registered or does not have a valid bond on file with the Commissioner.
- 3) Authorizes DLSE to confiscate garments from garment manufacturers if all wages due and owing have not been paid to employees performing the garment manufacturing during a period of 180 days prior to an investigation by DLSE.



Establishes procedures for disposing of or destroying confiscated goods.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) This bill enacts major changes in wage and hour law enforcement. Some of the provisions apply to employers generally, other are specific to garment manufacturing. Some of the key changes in existing law with respect to enforcement of wage and hour laws generally can be identified as follows:
  - a) Itemized wage statements: requires piece-rate information; increases penalties for failure to provide and maintain information.
  - b) Bounced paychecks: extends waiting-time penalties from building trades to all workers; removes the "unintentional" defense.
  - c) Mandatory breaks and meal periods: specifies penalties for violation.
  - d) Overtime violations: provides for liquidated damages, which are currently available for minimum wage violations.
  - e) Civil penalties: permits an employee to sue for civil penalties on behalf of state; allocates penalties.
  - f) Appeals of Commissioner's decisions: requires employer to post undertaking.
  - g) Enforcement of wage judgement: increases damages and interest; requires Commissioner to take specified actions; waives employee posting of undertaking.
  - h) Posted notice of violation: requires employer to post notice of violation in workplace.
  - i) Retaliation issues: extends the time period for complaints from 30 days to one year and covers complaints to employer and cooperation with investigations.
  
- 2) Some of the key changes in existing law with respect to enforcement of wage and hour laws in garment manufacturing can be identified as follows:
  - a) Joint liability for labor law violations: extended to some manufacturers and some retailers.
  - b) Registration: duty to register expanded to include some retailers; registration fees increased.
  - c) Confiscation of goods: extended from factory floor to retailers for unpaid wages.
  - d) Tagging of goods: produced in violation of labor laws.
  - e) Successor liability: established for unpaid wages





- f) Shareholder liability: established for unpaid wages for 10 largest shareholders of non-public corporation.
- g) Wage lien: established on assets of entity owing wages.

With respect to enforcement of wage and hour laws generally:

1) Supporters state that:

- a) California has a large and growing "underground economy" of employers who are chronic violators of wage and hour, safety, and tax laws. Such employers pay cash under the table or with checks that bounce, fail to report and pay employment taxes, work their employees long hours without rest breaks, and avoid paying wage judgments issued against them. They cheat workers out of billions of dollars in wages owed to them under minimum wage and overtime laws.
- b) California's underground economy supplants an estimated \$60 billion in legal business transactions. According to executive orders concerning the expanding underground economy issued by Governor's Deukmejian and Wilson, the state's loss of income taxes alone increased from \$2 billion in 1986 to \$3 billion in 1993.
- c) Current laws are too weak to deter employers in the underground economy from cheating their workers. If caught, many employers simply pay the wages withheld. Because the penalties for nonpayment of wages are small, essentially these employers suffer no other consequences. There are no monetary penalties for not paying workers overtime, issuing checks that bounce, or denying workers rest and meal periods. The fine for an employer's failure to maintain proper payroll records is limited to \$500.
- d) Private enforcement is needed in addition to government enforcement, because DLSE does not have adequate resources to investigate and prosecute employers who violate these laws.

2) Opponents state that:

- a) The bill contains onerous bounty provisions that permit an employee to initiate an action to recover civil penalties on behalf of the state and collect a percentage of the recover, plus get their attorney fees paid. This will cause a dramatic, unnecessary expansion of time consuming litigation.
- b) The most effective and efficient way for employees to resolve labor disputes is through the labor law agencies. Additional resources should be provided for enforcement of wage and hour laws through these agencies.
- c) The bill would permit the Commissioner to collect attorney fees in addition to the treble wages and court costs from employers. The Commissioner is funded by the taxpayers to perform this function and should not receive additional funds for what it is already being paid to do.
- d) The 30-day time period for filing a discrimination complaint should be retained because issues are still fresh in the memory and witnesses and documentation are still available. In cases involving



termination of employment, early filing frequently helps facilitate the complainant's return to work with the same employer.

- e) The bill would have a huge negative impact on California employers.

With respect to enforcement of wage and hour laws in garment manufacturing:

1) Supporters state that:

- a) Sweatshops where workers, primarily immigrants and women, must often work 60 to 70 hours a week to earn wages that are at or below poverty levels, have proliferated in California's \$30 billion garment industry.
- b) Sweatshops are encouraged by the structure of the garment industry, which has driven contract prices so low that contractors cannot pay minimum wages or overtime to their workers. Retailers squeeze manufacturers, who in turn squeeze their contractors, who are forced to "sweat" profits out of their workers, cut corners and operate unsafe workplaces.
- c) Retailers and manufacturers create the sweatshops; but shield themselves from legal responsibility for the illegal conditions on the grounds that the workers are employed by an independent contractor. One in three contractors close down each year. When back pay is assessed against them, they often go out of business leaving workers unpaid.
- d) The 1980 law imposing joint liability for use of unlicensed contractors, special government enforcement efforts such as the Targeted Industry Partnership Program, and the private industry monitoring have not worked. According to the U.S. Department of Labor, overall compliance with labor laws went from 22% in 1994 to only 39% in 1998 in Los Angeles.

2) Opponents state that:

- a) Retailers and manufacturers should not be held jointly liable for the labor law violations of the independent contractors with whom they do business unless they contract with an unlicensed contractor. They should be able to rely on the state's licensing process to identify legitimate contractors.
- b) The state can better protect employees of contractors by improving the education of contractors, increasing enforcement resources, and tightening licensing standards. Many unlicensed garment contractors hold city business licenses. The state could use city business license records to catch unlicensed garment contractors.
- c) The fashion industry effectively uses codes of conduct and private monitoring to police its contractors.
- d) The enactment of this measure will drive garment manufacturing out of California.

REGISTERED SUPPORT / OPPOSITION:



Support

American Federation of State, County and Municipal Employees  
California Immigrant Welfare Collaborative  
California Professional Firefighters  
California Teamsters Public Affairs Council  
Californians for Justice Education Fund  
Equal Rights Advocates  
Gray Panthers of Northern California  
Korean Immigrant Workers Advocates  
Labor Council for Latin American Advancement  
Las Familias Del Pueblo  
Mexican American Legal Defense and Educational Fund  
Pacific Association of Building Service Contractors  
Service Employees International Union  
South Bay AFL-CIO Labor Council  
Sweatshop Watch

Opposition

California Manufacturers Association  
California Retailers Association

Analysis Prepared by: Ralph Lightstone / L. & E. / (916)319-2091





Existing law governing workers' compensation requires every employer except the state to secure the payment of compensation in one or more of several specified ways, including the procurement of workers' compensation insurance.

Existing law makes it a misdemeanor, punishable by imprisonment in the county jail not to exceed 6 months, or by a fine of \$1,000, or both for an employer to fail to secure the payment of compensation when the employer knew, or because of his or her knowledge or experience should be reasonably expected to have known, of the obligation to secure the payment of compensation.

This bill would instead make the willful failure to secure the payment of compensation a misdemeanor, punishable by either a fine of up to \$10,000 or imprisonment in the county jail not to exceed one year, or both. By changing the definition of, and increasing the punishment for, a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3700.5 of the Labor Code is amended to read:

3700.5. The failure to secure the payment of compensation as required by this article by one who knew, or because of his or her knowledge or experience should be reasonably expected to have known, of the obligation to secure the payment of compensation, is a misdemeanor punishable by imprisonment in the county jail for up to one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

## LABOR—GARMENT MANUFACTURING—GENERAL AMENDMENTS

### CHAPTER 554

A.B. No. 683

AN ACT to amend Sections 2671, 2675, 2675.5, 2676, 2677, and 2680 of, and to add Sections 2672.1, and 2684 to, the Labor Code, relating to labor, and making an appropriation therefor.

[Filed with Secretary of State September 29, 1999.]

### LEGISLATIVE COUNSEL'S DIGEST

AB 683, Stambaugh. Labor: garment manufacturing.

Existing law requires every person engaged in the business of garment manufacturing, as defined, to register with the Labor Commissioner and to pay an initial registration fee of \$150 and an annual renewal fee of \$100. Existing law imposes certain other requirements on garment manufacturers, and provides for administration and enforcement of the garment manufacturing provisions by the Labor Commissioner.

This bill would substantially revise the existing law on state regulation of garment manufacturing. The bill would revise the definition of garment manufacturing to authorize the Department of Industrial Relations to adopt regulations to include additional operations and practices in the apparel industry that are consistent with the garment manufacturing registration provisions. The bill would also authorize the department to adopt and amend

3126

Additions or changes indicated by underlining; deletions by ~~deletions~~.

by ~~deletions~~ amendments.

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regulations to clarify and refine that statutory definition. The bill would add a new definition of "contractor" and revise the definition of "person." The bill would revise the existing law for setting the registration and renewal fees for persons in garment manufacturing to require the fees to be set in the aggregate to recover costs of administration of the law and to be based on an applicant's annual volume, but to be not less than \$250 nor more than \$1,000, in the case of a contractor, or \$2,500, in the case of other registrants.

Existing law requires the commissioner to deposit \$25 of each registrant's annual registration fee into a separate account and requires that the funds in the separate account be disbursed only to persons damaged by a registrant where damages exceed the limits of a registrant's bond.

This bill would increase the amount of each registrant's annual registration fee deposited into the separate account to \$75, thereby making an appropriation. The bill would revise these provisions to authorize the commissioner to disburse the funds to persons damaged by failure of a garment manufacturer, jobber, contractor, or subcontractor to pay wages or benefits. The bill would provide that a person engaged in garment manufacturing who contracts with an unregistered or unbonded person for garment manufacturing shall be deemed an employer of the contractor's employees and shall be jointly liable with the contractor for the payment of wages to the contractor's employees, and would specify the process by which this liability may be enforced.

Nothing in existing law makes garment manufacturers liable for guaranteeing payment of wages to employees of their contractors.

This bill would impose that liability to the extent of requirements for payment of the minimum wage and overtime compensation. The bill would prescribe a claims procedure by which an aggrieved employee may enforce a claim for unpaid wages against the contractor and the garment manufacturer contracting with the contractor. The bill would require the Labor Commissioner to investigate these claims, hold meet-and-confer conferences and hearings, and issue decisions and awards, as specified. The bill would also authorize the Labor Commissioner to enforce this guarantee in the same manner as proceeding against the employer, with or without a complaint being filed, subject to the procedures specified in the bill. The bill would authorize the Labor Commissioner to revoke the registration of any garment manufacturer that fails to pay a wage award issued pursuant to the bill. The bill would make the successor of a garment manufacturer primarily engaged in sewing or assembly of garments for other persons, and that owes wages, also liable for payment of those wages under specified circumstances, but this provision would not apply to the wage guarantee obligation established by the bill. The bill would make conforming related changes.

Existing law authorizes the Division of Labor Standards Enforcement of the Department of Industrial Relations to confiscate any garment or wearing apparel assembled or partially assembled by a person who has not complied with the garment manufacturing registration requirements and requires the division to notify the manufacturer and contractor of the removal and the location of the confiscated goods.

This bill would, with a specified exception, authorize the division to confiscate the means of production, including equipment and property, from unregistered garment manufacturers if the garment manufacturer is a contractor that has been subject to a previous confiscation within the prior 5 years. The bill would require the proceeds of sales of the equipment or property to be deposited into a Back Wages and Taxes Account, which the bill would create in the General Fund, and would authorize the Labor Commissioner, upon appropriation, to use moneys in the account to pay back wages owed to garment workers and taxes.

Existing law does not make the successor, to an employer primarily engaged in sewing or assembly of garments for other persons engaged in the business of garment manufacturing, liable for unpaid wages owed to the predecessor's employees.

This bill would impose that liability under prescribed conditions.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2671 of the Labor Code is amended to read:

Additions or changes indicated by underlining; deletions by ~~deletions~~.

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2671. As used in this part:

(a) "Person" means any individual, partnership, corporation, limited liability company, or association, and includes, but is not limited to, employers, manufacturers, jobbers, wholesalers, contractors, \* \* \* subcontractors, and any other person or entity engaged in the business of garment manufacturing.

"Person" does not include any person who manufactures garments by himself or herself, without the assistance of a contractor, employee, or others; any person who engages solely in that part of the business engaged solely in cleaning, alteration, or tailoring; any person who engages in the activities herein regulated as an employee with wages as his or her sole compensation; or any person as provided by regulation.

(b) "Garment manufacturing" means sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or any persons contracting to have \* \* \* those operations performed and other operations and practices in the apparel industry as may be identified in regulations of the Department of Industrial Relations consistent with the purposes of this part. The Department of Industrial Relations shall adopt, and may from time to time amend, regulations to clarify and refine this definition to be consistent with current and future industry practices, but the regulations shall not limit the scope of garment manufacturing, as defined in this subdivision.

(c) "Commissioner" means the Labor Commissioner.

(d) "Contractor" means any person who, with the assistance of employees or others, is primarily engaged in sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for another person. "Contractor" includes a subcontractor that is primarily engaged in those operations.

SEC. 2. Section 2673.1 is added to the Labor Code, to read:

2673.1. (a) To ensure that employees are paid for all hours worked, a person engaged in garment manufacturing, as defined in Section 2671, who contracts with another person for the performance of garment manufacturing operations shall guarantee payment of the applicable minimum wage and overtime compensation, as required by law, that are due from that other person to its employees that perform those operations.

(b) Where the work of two or more persons is being performed at the same worksite during the same payroll period, the liability of each person under this guarantee shall be limited to his or her proportionate share, as determined by the Labor Commissioner pursuant to paragraph (3) or (4) of subdivision (d).

(c) Employees may enforce this guarantee solely by filing a claim with the Labor Commissioner against the contractor and the guarantor or guarantors, if known, to recover unpaid wages. Guarantors whose identity or existence is unknown at the time the claim is filed may be added to the claim pursuant to paragraph (2) of subdivision (d).

(d) Claims filed with the Labor Commissioner for payment of wages pursuant to subdivision (c) shall be subject to the following procedure:

(1) Within 10 business days of receiving a claim pursuant to subdivision (c), the Labor Commissioner shall give written notice to the employee, the contractor, and persons that may be guarantors of the nature of the claim and the date of the meet-and-confer conference on the claim. Within 10 business days of receiving the claim, the Labor Commissioner shall issue a subpoena duces tecum requiring the contractor to submit to the Labor Commissioner those books and records as may be necessary to investigate the claim and determine the identity of any potential guarantors for the payment of the wage claim, including, but not limited to, invoices for work performed for any and all persons during the period included in the claim. Compliance with such a request for books and records, within 10 days of the mailing of the notice, shall be a condition of continued registration pursuant to Section 2676. At the request of any party, the Labor Commissioner shall provide to that party copies of all books and records received by the Labor Commissioner in conducting its investigation.

(2) Within 30 days of receiving a claim pursuant to subdivision (c), the Labor Commissioner shall send a notice of the claim, and of the meet-and-confer conference to any other persons who may be guarantors with respect to the claim.

(3) Within 60 days of receiving a claim pursuant to subdivision (c), the Labor Commissioner shall hold a meet-and-confer conference with the employee, the contractor, and all known potential guarantors to attempt to resolve the claim. Prior to the meet-and-confer conference, the Labor Commissioner shall conduct and complete an investigation of the claim, shall make a finding and assessment of the amount of wages owed, and shall conduct an investigation and determine each guarantor's proportionate share of liability. The investigation shall include, but not be limited to, interviewing the employee and his or her witnesses and making a finding and assessment of back wages due, if any, to the employee. An employee's claim of hours worked and back wages due shall be presumed valid and shall be the Labor Commissioner's assessment, unless the contractor provides specific, compelling, and reliable written evidence to the contrary and is able to produce records pursuant to subdivision (d) of Section 1174 or Section 2673 that are accurate and contemporaneous, itemized wage deduction statements pursuant to Section 228, bona fide complete and accurate payroll records, and evidence of the precise hours worked by the employee for each pay period during the period of the claim. If the Labor Commissioner finds falsification by the contractor of payroll records submitted for any pay period of the claim, any other payroll records submitted by the contractor shall be presumed false and disregarded.

The Labor Commissioner shall present his or her findings and assessment of the amount of wages owed and each guarantor's proportionate share thereof to the parties at the meet-and-confer conference and shall make a demand for payment of the amount of the assessment. If no resolution is reached, the Labor Commissioner shall, at the meet-and-confer conference, set the matter for hearing pursuant to paragraph (4). The Labor Commissioner's assessment, pursuant to this paragraph, of the amount of back wages due is solely for purposes of the meet-and-confer conference and shall not be admissible or be given any weight in the hearing conducted pursuant to paragraph (4). If the Labor Commissioner has not identified any potential guarantors after investigation and the matter is not resolved at the conclusion of the meet-and-confer conference, the Commissioner shall proceed against the contractor pursuant to Section 98.

(4) The hearing shall commence within 30 days of, and shall be completed within 45 days of, the date of the meet-and-confer conference. The hearing may be bifurcated, addressing first the question of liability of the contractor and the guarantor or guarantors, and immediately thereafter the proportionate responsibility of the guarantors. The Labor Commissioner shall present his or her proposed findings of the guarantor's proportionate share at the hearing. Any party may present evidence at the hearing to support or rebut the proposed findings. Except as provided in this paragraph, the hearing shall be held in accordance with the procedure set forth in subdivisions (b) to (h), inclusive, of Section 98. It is the intent of the Legislature that these hearings be conducted in an informal setting preserving the rights of the parties.

(5) Within 15 days of the completion of the hearing, the Labor Commissioner shall issue an order, decision, or award with respect to the claim and shall file the order, decision, or award in accordance with Section 98.1.

(e) An employee shall be entitled to recover, from the contractor, liquidated damages in an amount equal to the wages unlawfully withheld, as set forth in Section 1194.2, and liquidated damages in an amount equal to unpaid overtime compensation due. A guarantor under subdivision (a) shall be liable for its proportionate share of those liquidated damages if the guarantor has acted in bad faith, including, but not limited to, failure to pay or unreasonably delaying payment to its contractor, unreasonably reducing payment to its contractor where it is established that the guarantor knew or reasonably should have known that the price set for the work was insufficient to cover the minimum wage and overtime pay owed by the contractor, asserting frivolous defenses, or unreasonably delaying or impeding the Labor Commissioner's investigation of the claim.

(f) If either the contractor or guarantor refuses to pay the assessment, and the employee prevails at the hearing, the party that refuses to pay shall pay the employee's reasonable attorney's fees and costs. If the employee rejects the assessment of the Labor Commissioner



and prevails at the hearing, the employer shall pay the employee's reasonable attorney's fees and costs. The guarantor shall be jointly and severally liable for the contractor's share of the attorney's fees and costs awarded to an employee only if the Labor Commissioner determines that the guarantor acted in bad faith, including, but not limited to, failure to pay, unreasonably delaying payment to the contractor, unreasonably reducing payment to the contractor where it is established that the guarantor knew or reasonably should have known that the price set for the work was insufficient to cover the applicable minimum wage and overtime pay owed by the contractor, asserting frivolous defenses, or unreasonably delaying or impeding the Labor Commissioner's investigation of the claim.

(g) Any party shall have the right to judicial review of the order, decision, or award of the Labor Commissioner made pursuant to paragraph (f) of subdivision (d) as provided in Section 98.2. As a condition precedent to filing an appeal, the contractor or the guarantor, whichever appeals, shall post a bond with the Commissioner in an amount equal to one and one-half times the amount of the award. No bond shall be required of an employee filing an appeal pursuant to Section 98.2. At the employee's request, the Labor Commissioner shall represent the employee in the judicial review as provided in Section 98.4.

(h) If the contractor or guarantor appeals the order, decision, or award of the Labor Commissioner and the employee prevails on appeal, the court shall order the contractor or guarantor, as the case may be, to pay the reasonable attorney's fees and costs of the employee incurred in pursuing his or her claim. If the employee appeals this order, decision, or award of the Labor Commissioner and the contractor or guarantor prevails on appeal, the court may order the employee to pay the reasonable attorney's fees and costs of the contractor employer or guarantor only if the court determines that the employee acted in bad faith in bringing the claim.

(i) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provision of state or federal law. If a finding and assessment is not issued as specified and within the time limits in paragraph (3) of subdivision (d), the employee may bring a civil action for the recovery of unpaid wages pursuant to any other rights and remedies under any other provision of the laws of this state unless, prior to the employee bringing the civil action, the guarantor files a petition for writ of mandate within 10 days of the date the assessment should have been issued. If findings and assessments are not made, or a hearing is not commenced or an order, decision, or award is not issued within the time limits specified in paragraphs (4) and (5) of subdivision (d), any party may file a petition for writ of mandate to compel the Labor Commissioner to issue findings and assessments, commence the hearing, or issue the order, decision, or award. All time requirements specified in this section shall be mandatory and shall be enforceable by a writ of mandate.

(j) The Labor Commissioner may enforce the wage guarantees described in this section in the same manner as a proceeding against the contractor. The Labor Commissioner may, with or without a complaint being filed by an employee, conduct an investigation as to whether all the employees of persons engaged in garment manufacturing are being paid minimum wage or overtime compensation and, with or without the consent of the employees affected, commence a civil action to enforce the wage guarantee. Prior to commencing such a civil action and pursuant to rules of practice and procedure adopted by the Labor Commissioner, the commissioner shall provide notice of the investigation to each guarantor and employee, issue findings and an assessment of the amount of wages due, hold a meet-and-confer conference with the guarantors and employees to attempt to resolve the matter, and provide for a hearing.

(k) Except as expressly provided in this section, this section shall not be deemed to create any new right to bring a civil action of any kind for unpaid minimum wages, overtime pay, penalties, wage assessments, attorney's fees, or costs against a registered garment manufacturer based on its use of any contractor that is also a registered garment manufacturer.

(l) The payment of the wage guarantee provided in this section shall not be used as a basis for finding that the registered garment manufacturer making the payment is a joint employer, coemployer, or single employer of any employees of a contractor that is also a registered garment manufacturer.

(m) The Labor Commissioner may, in his or her discretion, revoke the registration under this part of any registrant that fails to pay, on a timely basis, any wages awarded pursuant to this section, after the award has become final.

SEC. 3. Section 2675 of the Labor Code is amended to read:

2675. (a) For purposes of enforcing this part and Sections 204, 209, 212, 221, 222, 222.5, 223, 226, 227, and 227.5, Chapter 2 (commencing with Section 800) and Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of this division, Sections 1196.5, 1197, 1197.5, and 1198, Division 4 (commencing with Section 3200) and Division 4.7 (commencing with Section 6200), every person engaged in the business of garment manufacturing, shall register with the commissioner.

The commissioner shall not permit any person to register, nor shall the commissioner allow any person to renew registration, until all the following conditions are satisfied:

(1) The person has executed a written application therefor in a form prescribed by the commissioner, subscribed and sworn by the person, and containing:

(A) A statement by the person of all facts required by the commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the person proposes to engage in the business of garment manufacturing if the registration is issued.

(B) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the proposed business of garment manufacturing together with the amount of their respective interests, except that in the case of a publicly traded corporation a listing of principal officers shall suffice.

(2) The commissioner, after investigation, is satisfied as to the character, competency, and responsibility of the person.

(3) In the case of a person who has been cited and penalized within the prior three years under this part, the person has deposited or has on file a surety bond in the sum and form that the commissioner deems sufficient and adequate to ensure future compliance, not to exceed five thousand dollars (\$5,000). The bond shall be payable to the people of California and shall be for the benefit of any employee of a registrant damaged by the registrant's failure to pay wages and fringe benefits, or for the benefit of any employee of a registrant damaged by a violation of Section 2677.5.

(4) The person has documented that a current workers' compensation insurance policy is in effect for the employees of the person seeking registration.

(5) The person has paid an initial or renewal registration fee to the commissioner \* \* \*. The fee for initial registration and for each registration renewal shall be established in an amount determined by the Labor Commissioner to be sufficient to defray the costs of administering this part and shall be based on the applicant's annual volume, but shall be not less than two hundred fifty dollars (\$250) and shall be not more than one thousand dollars (\$1,000) for contractors and two thousand five hundred dollars (\$2,500) for all other registrants.

(6) At the time a certificate of registration is originally issued or renewed, the commissioner shall provide related and supplemental information regarding business administration and applicable labor laws. This related and supplemental information, as much as reasonably possible, shall be provided in the primary language of the garment manufacturer. The information shall include all subject matter on which persons seeking registration are examined pursuant to subdivision (c), and shall be available to persons seeking registration prior to taking this examination.

(c) Effective January 1, 1991, persons seeking registration under this section for the first time, and persons seeking to renew their registration pursuant to subdivision (f), shall comply with all of the following requirements:

(1) Demonstrate, by an oral or written examination, or both, knowledge of the pertinent laws and administrative regulations concerning garment manufacturing as the commissioner deems necessary for the safety and protection of garment workers.

(2) Demonstrates, by an oral or written examination, or both, knowledge of state laws and regulations relating to occupational safety and health which shall include, but not be limited to, the following:

- (A) Section 3203 of Title 8 of the California Code of Regulations (Injury Prevention Program).  
 (B) Section 3220 of Title 8 of the California Code of Regulations (Emergency Action Plan).  
 (C) Section 3221 of Title 8 of the California Code of Regulations (Fire Prevention Plan).  
 (D) Section 6151 of Title 8 of the California Code of Regulations which provides for the placement, use, maintenance, and testing of portable fire extinguishers provided for the use of employees.

(3) Sign a statement which provides that he or she shall do all of the following:

- (A) Comply with those regulations specified in paragraph (2) which establish minimum standards for securing safety in all places of employment.  
 (B) Ensure that all employees are made aware of the existence of these regulations and any other applicable laws and are instructed in how to implement the Injury Prevention Program, Emergency Action Plan, and Fire Prevention Plan, specified in paragraph (2), in the workplace.  
 (C) Ensure that all employees are instructed in the use of portable fire extinguishers.  
 (D) Post the Injury Prevention Program, Emergency Action Plan, and Fire Prevention Plan, specified in paragraph (2), in a prominent location in the workplace.  
 (E) The Division of Occupational Safety and Health shall assist the Division of Labor Standards Enforcement in developing the examination which shall include, but not be limited to, the state's occupational safety and health laws specified in paragraph (2) of subdivision (c).  
 (F) The commissioner shall charge a fee to persons taking the examinations required by subdivision (c) which is sufficient to pay for costs incurred in administering the examinations.  
 (G) A person seeking renewal of registration shall be required to take both of the examinations, and sign the statement, specified in subdivision (c). However, once a renewal of registration has been granted based on these examinations, subsequent examinations shall only be required at the discretion of the commissioner if, in the preceding year, the registrant has been found to be in violation of subdivision (a) or any of the sections enumerated in that subdivision.

(g) Proof of registration shall be by an official Division of Labor Standards Enforcement registration form. Every person, as set forth in Section 2671, shall post the registration form where it may be read by employees during the workday.

(h) At least 90 days prior to the expiration of each registrant's registration, the commissioner shall mail a renewal notice to the last known address of the registrant. The notice shall include all necessary application forms and complete instructions for registration renewal. However, omission of the commissioner to provide notices in accordance with this subdivision shall not excuse a registrant from making timely application for renewal of registration, shall not be a defense in any action or proceeding involving failure to renew registration, and shall not subject the commissioner to any legal liability under this section.

SEC. 4. Section 2675.5 of the Labor Code is amended to read:

2675.5. (a) The commissioner shall deposit seventy-five dollars (\$75) of each registrant's annual registration fee, required pursuant to paragraph (b) of subdivision (a) of Section 2675, into one separate account. Funds from the separate account shall be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and benefits by any garment manufacturer, jobber, contractor, or subcontractor after exhausting a bond. If any, to ensure the payment of wages and benefits. Any disbursed funds subsequently recovered by the commissioner shall be returned to the separate account.

(b) The remainder of each registrant's annual registration fee not deposited into the special account pursuant to subdivision (a) shall be applied to costs incurred by the commissioner in administering the provisions of Section 2675 and this section.

SEC. 5. Section 2677 of the Labor Code is amended to read:

2677. (a) Any person engaged in the business of garment manufacturing who contracts with any other person similarly engaged who has not registered with the commissioner or does not have a valid bond on file with the commissioner, as required by Section 2676, shall be deemed an employer, and shall be jointly liable with such other person for any violation of Section 2675 and the sections enumerated in that section.

(b) Any employee of a person or persons engaged in garment manufacturing who are not registered as required by this part may bring a civil action against any person deemed to be an employer pursuant to subdivision (a) to recover any wages, damages, or penalties to which the employee may be entitled because of a violation by the unregistered person or persons of any provision specified in subdivision (a) of Section 2676, or may file a claim with the Labor Commissioner pursuant to Section 2673.1. In any civil action brought pursuant to this subdivision, the court shall grant a prevailing plaintiff's reasonable attorney's fees and costs.

SEC. 6. Section 2680 of the Labor Code is amended to read:

2680. (a) Any garment or wearing apparel, assembled or partially assembled by or on behalf of any person who has not complied with the registration requirements of this part, may be confiscated by the Division of Labor Standards Enforcement. \* \* \* Garments and wearing apparel confiscated pursuant to this section shall be placed in the custody of the division, which shall be charged with the responsibility of destroying or disposing of them pursuant to regulations adopted under Section 2672, provided that the goods shall not enter the mainstream of commerce and shall not be offered for sale. The division shall, by registered mail \* \* \* and telephonic, give notice of the removal and the location where the confiscated goods are held in custody to the known manufacturer and contractor.

(b) If the person from whom garments or wearing apparel are confiscated pursuant to subdivision (a) was providing the confiscated garments or wearing apparel as a contractor and has previously, within the immediately preceding five-year period, had garments or wearing apparel confiscated pursuant to subdivision (a), the Labor Commissioner may, in addition to the remedies set forth in subdivision (a), confiscate the means of production, including all manufacturing equipment and the property where the current unregistered garment manufacturing operations have taken place. This subdivision does not apply where nonregistration of the contractor was due to delayed renewal of registration.

(c) The proceeds from the sale of any equipment or property under subdivision (b) shall be deposited into a single account in the General Fund, to be known as the Back Wages and Taxes Account. At the Labor Commissioner's discretion, and upon appropriation by the Legislature, funds from that account may be disbursed to pay back wages owed to garment workers, including, but not limited to, workers of the unregistered contractor whose violation caused the confiscation, and for the payment of taxes.

SEC. 7. Section 2684 is added to the Labor Code, to read:

2684. (a) The Legislature finds and declares that persons who are primarily engaged in sewing or assembly of garments for other persons engaged in garment manufacturing frequently close down their sewing shops to avoid paying their employees' wages and subsequently reopen under the conditions described in subdivision (b), and are more likely to do so than are other types of persons engaged in garment manufacturing.

(b) A successor to any employer that is primarily engaged in sewing or assembly of garments for other persons engaged in the business of garment manufacturing, as defined by subdivision (b) of Section 2671, that owes wages to the predecessor's former employee or employees is liable for those wages if the successor meets any of the following criteria:

- (1) Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer.
- (2) Shares in the ownership, management, control of labor relations, or interrelations of business operations with the predecessor employer.
- (3) Has in its employ in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.



(4) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer.

This section does not impose liability upon a successor for the guarantees of unpaid minimum wages and overtime compensation set forth in subdivision (a) or (b) of Section 2873.1.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

RETIREMENT—STATE EMPLOYEES—FORMULAS

CHAPTER 555

S.B. No. 400

AN ACT to amend Sections 20391, 20392, 20393, 20395, 20397, 20398, 20405.1, 20405.3, 20407, 20409, 20677, 20683, 20687, 20822, 21070, 21071, 21072, 21073, 21073.5, 21077, 21139, 21337, 21363, 21363.5, 21362, 21363, 21363.5, 21369, 21372, 21373, 21374, 21403, 21407, 21572, 21573, and 21581 of, and to add Sections 20353.5, 21070.5, 21070.6, 21073.1, 21073.7, 21251.13, 21328, 21354.1, 21382.2, 21363.1, and 21369.1 to, to repeal Sections 21363.6 and 21573.5 of, and to add and repeal Section 21574.7 of, the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Filed with Secretary of State September 29, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 400, Ortiz. Public Employees' Retirement System: benefits.

(1) Under the Public Employees' Retirement Law, retirement allowances for school members are calculated, in part, based on the highest average compensation earnable during a consecutive 3-year period.

This bill would instead base that calculation on the highest average compensation earnable during a consecutive 12-month period.

(2) The Public Employees' Retirement Law defines "state peace officer/firefighter" in terms of employees employed by specified state departments in specified job classifications and provides higher retirement benefit formulas and higher employer and employee contribution rates for state peace officer/firefighter members than for state miscellaneous members. This bill would add the Sergeants-at-Arms of each house of the State Legislature, excluding the Chief Sergeant-at-Arms, within the state peace officer/firefighter membership category.

(3) The Public Employees' Retirement Law establishes retirement formulas, known as the Second Tier and the modified First Tier, that are applicable to specified members of the system.

This bill would provide that state miscellaneous and state industrial members hired or returning to state service, as specified, on or after January 1, 2000, shall be subject to First Tier benefits unless they elect to be subject to Second Tier benefits; authorize members subject to Second Tier benefits to elect to become subject to First Tier benefits and contribution rates, thereby making an appropriation; and provide that members subject to modified First Tier benefits shall become subject to First Tier benefits, as specified. The bill would also establish the means for members subject to Second Tier benefits, who are employed by the state on or after January 1, 2000, to elect to have their former Second Tier service converted to First Tier service.

3134 Additions or changes indicated by underlines; deletions by asterisks . . . .



(4) The Public Employees' Retirement Law prescribes a 2% at age 60 retirement formula for state miscellaneous, university, state industrial and school members.

This bill would make that formula inapplicable to those members employed by the state on or after January 1, 2000, except as specified, and would instead prescribe a 2% at age 55 retirement formula, as specified. The bill would also provide a 1 to 6%, inclusive, retirement allowances increase for certain retired state and school members, as specified, and make related technical changes.

(5) The Public Employees' Retirement Law prescribes a 2% at age 50 retirement formula for members of the California Highway Patrol and specified local safety members, a 2.5% at age 55 retirement formula for state peace officer/firefighter members and specified local safety members, and a 2% at age 55 retirement formula for state safety members and specified local safety members, all subject to maximum benefit limitations based on specified percentages of final compensation.

This bill would make those formulas inapplicable to those state members who are employed by the state on or after January 1, 2000, and would instead prescribe a 3% at age 50 retirement formula for members of the California Highway Patrol and a 3% at age 55 for state peace officer/firefighter members and certain local safety members, as specified; provide an enhanced retirement formula for state safety members, as specified; and make related technical changes. The bill would also modify the maximum benefit limitations, as specified.

(6) The Public Employees' Retirement Law, as amended by Chapter 3 of the Statutes of 1999, provides preretirement death benefits for the surviving spouse or children, or both, as specified, of state members and specified school members not covered by the Federal Social Security Act and provides that a surviving spouse becomes eligible for certain of these benefits when he or she attains the age of 62 years and meets other specified criteria. This bill would decrease the surviving spouse's eligibility age to 60 years, would modify the method for funding these benefits, and would repeal these benefits on January 1, 2010.

(7) The bill would provide that the operation and application of certain of its provisions would be subject to specified conditions and limitations.

(8) This bill would incorporate additional changes to Sections 20391, 20677, 21367, 21362, 21363, 21369, 21572, 21573, and 21581 of the Government Code proposed by AB 99, AB 292, AB 813, SB 294, SB 389, SB 900, and SB 401, as applicable, to take effect if this bill and those bills, as specified, are enacted and become effective on or before January 1, 2000, and this bill is enacted last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 20035.5 is added to the Government Code, to read:

20035.5. Notwithstanding Section 20037, "final compensation" for the purposes of determining any pension or benefit with respect to a school member who retires or dies on or after January 1, 2000, and with respect to benefits based on service with a school employer, means the highest annual compensation that was earnable by the school member during the consecutive 12-month period of employment immediately preceding the effective date of his or her retirement or the date of his or her last separation from service if earlier or during any other period of 12 consecutive months during his or her membership in this system that the member designates on the application for retirement.

SEC. 2. Section 20391 of the Government Code is amended to read:

20391. "State peace officer/firefighter member" means:

(a) All persons in the Board of Prison Terms, the Department of Consumer Affairs, the Department of Developmental Services, the Department of Health Services, the Department of Toxic Substances Control, the Horse Racing Board, the Department of Industrial Relations, the Department of Insurance, the Department of Mental Health, the Department of Motor Vehicles, the Department of Social Services employed with the class title of Special Investigator (Class Code 8563), Senior Special Investigator (Class Code 8560), and Investigator

3135 Additions or changes indicated by underlines; deletions by asterisks . . . .

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VOLUME 1  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1999-2000 REGULAR SESSION

# ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS,  
CONCURRENT RESOLUTIONS,  
JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1998

Recessed December 8, 1998	Reconvened January 4, 1999
Recessed March 25, 1999	Reconvened April 5, 1999
Recessed July 15, 1999	Reconvened August 16, 1999
Recessed September 10, 1999	Reconvened January 3, 2000
Recessed April 13, 2000	Reconvened April 24, 2000
Recessed July 6, 2000	Reconvened August 7, 2000

Adjourned September 1, 2000

Adjourned Sine Die November 30, 2000

Legislative Days .....	225
Calendar Days .....	725

HON. ROBERT M. HERTZBERG  
*Speaker*

HON. FRED KEELEY  
*Speaker pro Tempore*

HON. KEVIN SHELLEY  
*Majority Floor Leader*

HON. HELEN THOMSON  
*Assistant Speaker pro Tempore*

HON. SCOTT R. BAUGH  
*Minority Floor Leader*

Compiled Under the Direction of  
E. DOTSON WILSON  
*Chief Clerk*

AMY LEACH  
*History Clerk*

LIS-2





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AMENDED IN SENATE SEPTEMBER 8, 1999

AMENDED IN SENATE SEPTEMBER 3, 1999

AMENDED IN ASSEMBLY APRIL 19, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1652**

**Introduced by Assembly Member Steinberg**

March 9, 1999

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An act to amend Sections 98.2, 203.2, 226, 240, 1174, and 1174.5 of, and to add Sections 218.6, 226.7, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1652, as amended, Steinberg. Labor: violations.

Existing law provides that, for an employer in the building and construction industry who pays an employee wages or fringe benefits with an instrument drawn on insufficient funds, those wages or fringe benefits continue as a penalty until they are paid or an action is commenced.

This bill would apply this provision to all employers and would provide that an aggrieved employee may seek recovery of the penalty by filing a complaint with the Labor Commissioner or bringing a civil action.

The bill would require an employer who seeks review pursuant to certain provisions to post an undertaking in the amount of the order, decision, or award. The bill would require the Labor Commissioner to make reasonable collection efforts, as specified.



Existing law requires employers to provide specified information to each employee when paid, including gross wages earned, total hours worked, and all deductions. Any employee suffering injury as a result of a knowing or intentional failure to comply with this provision is entitled to actual damages or \$100, ~~whichever is greater~~ *\$50 for the initial pay period violation and \$100 per employee for each violation in the subsequent pay period.*

This bill, in addition, would require the employer to provide information concerning the number of piecework units earned if the employee is paid on a piecework basis, and would provide that any aggrieved employee is entitled to damages or ~~\$100 for each pay period in which a violation occurs, up to \$5,000~~ *\$50 for the initial pay period violation and \$100 per employee for each violation in the subsequent pay period,* and that the employee may recover by filing a complaint with the Labor Commissioner or by bringing a civil action.

This bill would prohibit any employer from requiring any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

Existing law requires employers to keep specified payroll records. An employer who willfully fails to maintain these records is subject to a civil penalty of \$500.

This bill would revise those payroll records requirements and provide that a willful failure to keep those records is subject to a civil penalty of ~~\$100~~ *\$50* per employee per payroll period, as specified.

Existing law authorizes the Labor Commissioner to require an employer who has not satisfied a judgment for the nonpayment of wages to deposit a specified bond.

This bill would condition that bond upon the payment by the employer of any judgment for wages, interest, penalties, or demands within the jurisdiction of the commissioner. The bill would also require the commissioner, whenever he or she makes an award against an employer, to require the employer to post a specified notice at the place of employment. Failure or refusal to post this notice would subject the employer to a civil penalty of \$500 for each instance.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

1 SECTION 1. Section 98.2 of the Labor Code is  
2 amended to read:

3 98.2. (a) Within 10 days after service of notice of an  
4 order, decision, or award the parties may seek review by  
5 filing an appeal to the municipal or superior court, in  
6 accordance with the appropriate rules of jurisdiction,  
7 where the appeal shall be heard de novo. A copy of the  
8 appeal request shall be served upon the Labor  
9 Commissioner by the appellant. For purposes of  
10 computing the 10-day period after service, Section 1013  
11 of the Code of Civil Procedure shall be applicable.

12 (b) Whenever an employer seeks review pursuant to  
13 this section, the employer shall post an undertaking in the  
14 amount of the order, decision, or award. The undertaking  
15 shall be obtained from a licensed surety or by deposit of  
16 the amount of the order, decision, or award in the  
17 reviewing court. The undertaking shall be on condition  
18 that if the order, decision, or award, or any part of it, is  
19 affirmed or the appeal is withdrawn or dismissed, the  
20 employer shall pay the amount that is affirmed. If the  
21 employer fails to pay that amount within 10 days, a  
22 portion of the undertaking equal to the affirmed amount  
23 shall be forfeited to the employee, plus any costs, interest,  
24 or other sum ordered by the reviewing court.

25 (c) If the party seeking review by filing an appeal to  
26 the municipal or superior court is unsuccessful in the  
27 appeal, the court shall determine the costs and reasonable  
28 attorney's fees incurred by the other parties to the appeal,  
29 and assess that amount as a cost upon the party filing the  
30 appeal.

31 (d) If no notice of appeal of the order, decision, or  
32 award is filed within the period set forth in subdivision  
33 (a), the order, decision, or award shall, in the absence of  
34 fraud, be deemed the final order.

35 (e) The Labor Commissioner shall file, within 10 days  
36 of the order becoming final pursuant to subdivision (d),  
37 a certified copy of the final order with the clerk of the  
38 municipal or superior court, in accordance with the



1 appropriate rules of jurisdiction, of the appropriate  
2 county unless a settlement has been reached by the  
3 parties and approved by the Labor Commissioner.  
4 Judgment shall be entered immediately by the court  
5 clerk in conformity therewith. The judgment so entered  
6 shall have the same force and effect as, and shall be  
7 subject to all of the provisions of law relating to, a  
8 judgment in a civil action, and may be enforced in the  
9 same manner as any other judgment of the court in which  
10 it is entered. Enforcement of the judgment shall receive  
11 court priority.

12 (f) (1) In order to ensure judgments are satisfied, in  
13 the case of any judgment entered pursuant to subdivision  
14 (e), the Labor Commissioner shall, acting on behalf of the  
15 judgment creditor, make reasonable collection efforts as  
16 provided by law, unless the judgment creditor requests,  
17 in writing, that the Labor Commissioner take no action.  
18 The Labor Commissioner or the judgment creditor may  
19 serve upon the judgment debtor personally or by  
20 first-class mail at the last known address of the judgment  
21 debtor listed with the division, a form similar to, and  
22 requiring the reporting of the same information as, the  
23 form approved or adopted by the Judicial Council for  
24 purposes of subdivision (b) of Section 117.19 of the Code  
25 of Civil Procedure to assist in identifying the nature and  
26 location of any assets of the judgment debtor.

27 (2) The judgment debtor shall complete the form and  
28 cause it to be delivered to the division at the address listed  
29 on the form within 35 days after the form has been served  
30 on the judgment debtor, unless the judgment has been  
31 satisfied. In case of willful failure by the judgment debtor  
32 to comply with this subdivision, the division or the  
33 judgment creditor may request the court to apply the  
34 sanctions provided in Section 708.170 of the Code of Civil  
35 Procedure.

36 (3) For the purposes of this subdivision, "reasonable  
37 collection efforts" include, but are not limited to, the  
38 following:



- 1 (A) Recording an abstract of judgment in any county  
2 in which the judgment debtor has an interest in real  
3 property.
- 4 (B) Filing a notice of judgment lien on personal  
5 property with the Secretary of State.
- 6 (C) Utilizing a sheriff's keeper where the judgment  
7 debtor is a retailer or otherwise collects cash, checks, or  
8 credit charges from the public.
- 9 (D) Requiring the posting of a bond pursuant to  
10 Section 240.
- 11 (E) Recovering from any available bond issued for the  
12 purpose of guaranteeing payment of wages and benefits.
- 13 (F) Requesting payment from the separate accounts  
14 established for employees pursuant to subdivision (d) of  
15 Section 1684 or Section 2675.5.
- 16 (G) Submitting a request to the Controller for  
17 offsetting pursuant to Section 12419.11 of the  
18 Government Code.
- 19 (g) Notwithstanding subdivision (e), the Labor  
20 Commissioner may stay execution of any judgment  
21 entered upon an order, decision, or award which has  
22 become final upon good cause appearing therefore and  
23 may impose the terms and conditions of the stay of  
24 execution. A certified copy of the stay of execution shall  
25 be filed with the clerk entering the judgment.
- 26 (h) When a judgment is satisfied in fact, otherwise  
27 than by execution, the Labor Commissioner may, upon  
28 the motion of either party or on its own motion, order  
29 entry of satisfaction of judgment. The clerk of the court  
30 shall enter a satisfaction of judgment upon the filing of a  
31 certified copy of the order.
- 32 (i) The Labor Commissioner shall make every  
33 reasonable effort to ensure that judgments are satisfied,  
34 including taking all appropriate legal action and  
35 requiring the employer to deposit a bond as provided in  
36 Section 240.
- 37 (j) The judgment creditor, or the Labor  
38 Commissioner as assignee of the judgment creditor, shall  
39 be entitled to court costs and reasonable attorney fees for





1 enforcing the judgment that is rendered pursuant to this  
2 section.

3 (k) The court shall have jurisdiction over the issues  
4 raised in the trial de novo to the same extent it would in  
5 any other original proceeding filed in that court,  
6 including the adjudication of contractual, statutory, or  
7 equitable claims arising from the same facts or  
8 circumstances.

9 SEC. 2. Section 203.1 of the Labor Code is amended  
10 to read:

11 203.1. If an employer pays an employee in the regular  
12 course of employment or in accordance with Sections 201  
13 and 202 any wages or fringe benefits, or both, by check,  
14 draft, or voucher, which is subsequently refused payment  
15 because the employer or maker has no account with the  
16 bank, institution or person on which drawn or insufficient  
17 funds to his or her account at the time of presentation, so  
18 long as the check, draft, or voucher is presented within 30  
19 days of receipt by the employee, those wages or fringe  
20 benefits, or both, shall continue as a penalty from their  
21 due date at the same rate until paid or until an action  
22 therefor is commenced. However, those wages and fringe  
23 benefits shall not continue for more than 30 days,  
24 provided, however, that the said penalty shall not apply  
25 if the employer can establish to the satisfaction of the  
26 Labor Commissioner or an appropriate court of law that  
27 the said violation of this section was unintentional. Any  
28 aggrieved employee may seek recovery of the penalty  
29 provided for in this section by filing a complaint pursuant  
30 to subdivision (a) of Section 98 or by bringing a civil  
31 action.

32 ~~SEC. 3. Section 218.6 is added to the Labor Code, to~~  
33 ~~read:~~

34 ~~218.6. In any action brought for the nonpayment of~~  
35 ~~wages, the court shall award interest on all due and~~  
36 ~~unpaid wages at the legal rate of interest as specified in~~  
37 ~~subdivision (b) of Section 3289 of the Civil Code. The~~  
38 ~~interest shall run from the date that the wages were due~~  
39 ~~and payable as provided in Part 1 (commencing with~~  
40 ~~Section 200) of Division 2.~~



1 ~~SEC. 4.~~

2 ~~SEC. 3.~~ Section 226 of the Labor Code is amended to  
3 read:

4 226. (a) Every employer shall semimonthly, or at the  
5 time of each payment of wages, furnish each of his or her  
6 employees either as a detachable part of the check, draft,  
7 or voucher paying the employee's wages, or separately  
8 when wages are paid by personal check or cash, an  
9 itemized statement in writing showing all of the  
10 following:

11 (1) Gross wages earned.

12 (2) Total hours worked by each employee.

13 (3) The number of piecework units earned and any  
14 applicable piece rate if paid on a piecework basis.

15 (4) All deductions, provided that all deductions made  
16 on written orders of the employee may be aggregated  
17 and shown as one item.

18 (5) Net wages earned.

19 (6) The inclusive dates of the period for which the  
20 employee is paid.

21 (7) The name of the employee and his or her social  
22 security number.

23 (8) The name and address of the legal entity which is  
24 the employer.

25 The deductions made from cash payments of wages  
26 shall be recorded in ink or other indelible form, properly  
27 dated, showing the month, day, and year, and a copy of  
28 the statement, or a record of the deductions, shall be kept  
29 on file by the employer for at least three years at the place  
30 of employment or at a central location within the State of  
31 California.

32 An employer who is required by this code or any  
33 regulation adopted pursuant to this code to keep the  
34 information required by this section shall afford current  
35 and former employees the right to inspect or copy the  
36 records pertaining to that current or former employee,  
37 upon reasonable request to the employer. The employer  
38 may take reasonable steps to assure the identity of a  
39 current or former employee. If the employer provides



1 copies of the records, the actual cost of reproduction may  
2 be charged to the current or former employee.

3 This section shall not apply to any employer of any  
4 person employed by the owner or occupant of a  
5 residential dwelling whose duties are incidental to the  
6 ownership, maintenance, or use of the dwelling,  
7 including the care and supervision of children, or whose  
8 duties are personal and not in the course of the trade,  
9 business, profession, or occupation of the owner or  
10 occupant.

11 (b) Any employee suffering injury as a result of a  
12 knowing and intentional failure by an employer to  
13 comply with subdivision (a) shall be entitled to recover  
14 all actual damages or ~~one hundred dollars (\$100)~~ *fifty*  
15 *dollars (\$50) for the initial pay period violation and one*  
16 *hundred dollars (\$100) per employee for each violation*  
17 *in the subsequent pay period, whichever is greater, for*  
18 ~~each pay period in which a violation occurs~~; up to five  
19 thousand dollars (\$5,000), plus costs and reasonable  
20 attorney's fees. Any aggrieved employee may seek  
21 recovery of the damages or the penalty provided by this  
22 section by filing a complaint pursuant to subdivision (a)  
23 of Section 98 or by bringing a civil action.

24 (c) This section shall not apply to the state, or any city,  
25 county, city and county, district, or any other  
26 governmental entity.

27 ~~SEC. 5.~~

28 *SEC. 4.* Section 226.7 is added to the Labor Code, to  
29 read:

30 226.7. (a) No employer shall require any employee to  
31 work during any meal or rest period mandated by an  
32 applicable order of the Industrial Welfare Commission.

33 (b) An employer who violates this section shall be  
34 subject to both of the following:

35 (1) A civil penalty of fifty dollars (\$50) per employee  
36 per violation.

37 (2) Payment to the aggrieved employee of an amount  
38 equal to twice his or her average hourly rate for the full  
39 length of the meal or rest period in which he or she was  
40 required to perform any work. An employee paid on a



1 piecework basis shall be entitled to an amount equal to  
2 twice the amount of piecework units earned during such  
3 periods, but in no event shall the amount be less than the  
4 applicable state minimum wage for the full length of the  
5 time period in which any work was performed.

6 (c) Any employee aggrieved by violation of this  
7 section may do either of the following:

8 (1) Seek recovery of payments authorized by this  
9 section through a complaint filed pursuant to subdivision  
10 (a) of Section 98.

11 (2) Bring a civil action. ~~The court shall grant a~~  
12 ~~prevailing plaintiff reasonable attorney's fees and costs.~~

13 (d) *The provisions of this section may be superseded*  
14 *by a collective bargaining agreement.*

15 ~~SEC. 6:~~

16 *SEC. 5.* Section 240 of the Labor Code is amended to  
17 read:

18 240. (a) If an employer has been convicted of a  
19 violation of any provision of this article, or if any  
20 judgment against an employer for nonpayment of wages  
21 remains unsatisfied for a period of 10 days after the time  
22 to appeal has expired, and no appeal is then pending, the  
23 Labor Commissioner may require the employer to  
24 deposit a bond in a sum that the Labor Commissioner may  
25 deem sufficient and adequate in the circumstances, to be  
26 approved by the Labor Commissioner. The bond shall be  
27 payable to the Labor Commissioner and shall be  
28 conditioned that the employer shall, for a definite future  
29 period, not exceeding six months, pay the employees in  
30 accordance with the provisions of this article, and shall be  
31 further conditioned upon the payment by the employer  
32 of any judgment for wages, interest, penalties, or other  
33 demands within the jurisdiction of the Labor  
34 Commissioner that remain outstanding or may be  
35 recovered against the employer pursuant to the  
36 provisions of this article.

37 (b) If within 10 days after demand for the bond, which  
38 may be made by mail, the employer fails to deposit the  
39 bond, the Labor Commissioner may bring an action in the  
40 name and on behalf of the people of the State of California



1 against the employer in a court of competent jurisdiction  
2 to compel the employer to furnish the bond or to cease  
3 doing business until the employer has done so. The  
4 employer has the burden of proving either that the bond  
5 is unnecessary or that the amount demanded is excessive.  
6 If the court finds that there is just cause for requiring the  
7 bond, and that the bond is reasonably necessary or proper  
8 to secure prompt payment of the wages of the employees  
9 of the employer and the employer's compliance with the  
10 provisions of this article or any other labor law, the court  
11 may enjoin the employer, whether an individual,  
12 partnership, corporation, company, trust, or association,  
13 and any other person or persons that may have been or  
14 may be concerned with or in any way participating in the  
15 failure to pay the wages resulting in the conviction or in  
16 the judgment, from doing business until the requirement  
17 is met, and make other and further orders appropriate to  
18 compel compliance with the requirement.

19 ~~SEC. 7.~~

20 *SEC. 6.* Section 245 is added to the Labor Code, to  
21 read:

22 245. Whenever the Labor Commissioner makes an  
23 award against an employer pursuant to this chapter, *upon*  
24 *finding that the employer has engaged in a pattern and*  
25 *practice of violating wage and hour laws*, the Labor  
26 Commissioner shall also make an order requiring the  
27 employer to post a notice at the place of employment  
28 where the affected employees are or were employed  
29 containing a description of the nature of the violation, a  
30 declaration by the employer stating that it will not engage  
31 in those unlawful acts in the future, and the address and  
32 telephone number of the Labor Commissioner. The  
33 notice, on a form approved by the Labor Commissioner,  
34 shall be posted conspicuously for a period of not less than  
35 60 days. The notice shall bear the seal of the State of  
36 California and of the Labor Commissioner and the  
37 signature of the employer or a representative or agent of  
38 the employer. The cost of producing and posting the  
39 notice shall be borne by the employer. The failure or  
40 refusal of an employer to post the notice in accordance



1 with this subdivision shall subject the employer to a civil  
2 penalty, to be assessed and collected by the Labor  
3 Commissioner, in the amount of five hundred dollars  
4 (\$500) for each instance in which the employer fails or  
5 refused to post a notice as required by this subdivision and  
6 the employer shall be required to properly post the  
7 notice.

8 ~~SEC. 8.~~

9 SEC. 7. Section 1174 of the Labor Code is amended to  
10 read:

11 1174. Every person employing labor in this state shall:

12 (a) Furnish to the commission, at its request, reports  
13 or information that the commission requires to carry out  
14 this chapter. The reports and information shall be verified  
15 if required by the commission or any member thereof.

16 (b) Allow any member of the commission or the  
17 employees of the Division of Labor Standards  
18 Enforcement free access to the place of business or  
19 employment of the person to secure any information or  
20 make any investigation that they are authorized by this  
21 chapter to ascertain or make. The commission may  
22 inspect or make excerpts, relating to the employment of  
23 employees, from the books, reports, contracts, payrolls,  
24 documents, or papers of the person.

25 (c) Keep a record showing the names and addresses of  
26 all employees employed and the ages of all minors.

27 (d) Keep at a central location in the state or at the  
28 plants or establishments at which employees are  
29 employed, payroll records showing the hours worked  
30 daily by, the number of piece rate units earned and any  
31 applicable piece rate if paid on a piece rate basis by, and  
32 the wages paid to, employees employed at the respective  
33 plants or establishments, which shall be kept in  
34 accordance with rules established for this purpose by the  
35 commission, but in any case shall be kept on file for not  
36 less than two years.

37 ~~SEC. 9.~~

38 SEC. 8. Section 1174.5 of the Labor Code is amended  
39 to read:



1 1174.5. (a) Any person employing labor who willfully  
2 fails to maintain the records required by subdivision (c)  
3 of Section 1174 or accurate and complete records  
4 required by subdivision (d) of Section 1174 or the wage  
5 orders of the Industrial Welfare Commission, or to allow  
6 any member of the commission or employees of the  
7 division to inspect records pursuant to subdivision (b) of  
8 Section 1174, shall be subject to a civil penalty of ~~one~~  
9 ~~hundred dollars (\$100)~~ *fifty dollars (\$50)* per employee  
10 per payroll *for the initial pay period in* for which records  
11 are not maintained *and one hundred dollars (\$100) per*  
12 *employee per payroll for each violation in the subsequent*  
13 *pay period*, up to a period of three years.

O



**Assembly Bill No. 1652**

\_\_\_\_\_  
Passed the Assembly    September 10, 1999

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_  
Passed the Senate    September 9, 1999

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_  
This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 1999, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*





## CHAPTER \_\_\_\_\_

An act to amend Sections 98.2, 203.2, 226, 240, 1174, and 1174.5 of, and to add Sections 226.7, and 245 to, the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1652, Steinberg. Labor: violations.

Existing law provides that, for an employer in the building and construction industry who pays an employee wages or fringe benefits with an instrument drawn on insufficient funds, those wages or fringe benefits continue as a penalty until they are paid or an action is commenced.

This bill would apply this provision to all employers and would provide that an aggrieved employee may seek recovery of the penalty by filing a complaint with the Labor Commissioner or bringing a civil action.

The bill would require an employer who seeks review pursuant to certain provisions to post an undertaking in the amount of the order, decision, or award. The bill would require the Labor Commissioner to make reasonable collection efforts, as specified.

Existing law requires employers to provide specified information to each employee when paid, including gross wages earned, total hours worked, and all deductions. Any employee suffering injury as a result of a knowing or intentional failure to comply with this provision is entitled to actual damages or \$50 for the initial pay period violation and \$100 per employee for each violation in the subsequent pay period.

This bill, in addition, would require the employer to provide information concerning the number of piecework units earned if the employee is paid on a piecework basis, and would provide that any aggrieved employee is entitled to damages or \$50 for the initial pay period violation and \$100 per employee for each violation in the subsequent pay period, and that the employee may



recover by filing a complaint with the Labor Commissioner or by bringing a civil action.

This bill would prohibit any employer from requiring any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

Existing law requires employers to keep specified payroll records. An employer who willfully fails to maintain these records is subject to a civil penalty of \$500.

This bill would revise those payroll records requirements and provide that a willful failure to keep those records is subject to a civil penalty of \$50 per employee per payroll period, as specified.

Existing law authorizes the Labor Commissioner to require an employer who has not satisfied a judgment for the nonpayment of wages to deposit a specified bond.

This bill would condition that bond upon the payment by the employer of any judgment for wages, interest, penalties, or demands within the jurisdiction of the commissioner. The bill would also require the commissioner, whenever he or she makes an award against an employer, to require the employer to post a specified notice at the place of employment. Failure or refusal to post this notice would subject the employer to a civil penalty of \$500 for each instance.

*The people of the State of California do enact as follows:*

SECTION 1. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the municipal or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable.



(b) Whenever an employer seeks review pursuant to this section, the employer shall post an undertaking in the amount of the order, decision, or award. The undertaking shall be obtained from a licensed surety or by deposit of the amount of the order, decision, or award in the reviewing court. The undertaking shall be on condition that if the order, decision, or award, or any part of it, is affirmed or the appeal is withdrawn or dismissed, the employer shall pay the amount that is affirmed. If the employer fails to pay that amount within 10 days, a portion of the undertaking equal to the affirmed amount shall be forfeited to the employee, plus any costs, interest, or other sum ordered by the reviewing court.

(c) If the party seeking review by filing an appeal to the municipal or superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the municipal or superior court, in accordance with the appropriate rules of jurisdiction, of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered shall have the same force and effect as, and shall be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) (1) In order to ensure judgments are satisfied, in the case of any judgment entered pursuant to subdivision



(e), the Labor Commissioner shall, acting on behalf of the judgment creditor, make reasonable collection efforts as provided by law, unless the judgment creditor requests, in writing, that the Labor Commissioner take no action. The Labor Commissioner or the judgment creditor may serve upon the judgment debtor personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (b) of Section 117.19 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

(2) The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(3) For the purposes of this subdivision, "reasonable collection efforts" include, but are not limited to, the following:

(A) Recording an abstract of judgment in any county in which the judgment debtor has an interest in real property.

(B) Filing a notice of judgment lien on personal property with the Secretary of State.

(C) Utilizing a sheriff's keeper where the judgment debtor is a retailer or otherwise collects cash, checks, or credit charges from the public.

(D) Requiring the posting of a bond pursuant to Section 240.

(E) Recovering from any available bond issued for the purpose of guaranteeing payment of wages and benefits.

(F) Requesting payment from the separate accounts established for employees pursuant to subdivision (d) of Section 1684 or Section 2675.5.



(G) Submitting a request to the Controller for offsetting pursuant to Section 12419.11 of the Government Code.

(g) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award which has become final upon good cause appearing therefore and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(h) When a judgment is satisfied in fact, otherwise than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(i) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(j) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the judgment that is rendered pursuant to this section.

(k) The court shall have jurisdiction over the issues raised in the trial de novo to the same extent it would in any other original proceeding filed in that court, including the adjudication of contractual, statutory, or equitable claims arising from the same facts or circumstances.

SEC. 2. Section 203.1 of the Labor Code is amended to read:

203.1. If an employer pays an employee in the regular course of employment or in accordance with Sections 201 and 202 any wages or fringe benefits, or both, by check, draft, or voucher, which is subsequently refused payment because the employer or maker has no account with the bank, institution or person on which drawn or insufficient



funds to his or her account at the time of presentation, so long as the check, draft, or voucher is presented within 30 days of receipt by the employee, those wages or fringe benefits, or both, shall continue as a penalty from their due date at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days, provided, however, that the said penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the said violation of this section was unintentional. Any aggrieved employee may seek recovery of the penalty provided for in this section by filing a complaint pursuant to subdivision (a) of Section 98 or by bringing a civil action.

SEC. 3. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing all of the following:

- (1) Gross wages earned.
- (2) Total hours worked by each employee.
- (3) The number of piecework units earned and any applicable piece rate if paid on a piecework basis.
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item.
- (5) Net wages earned.
- (6) The inclusive dates of the period for which the employee is paid.
- (7) The name of the employee and his or her social security number.
- (8) The name and address of the legal entity which is the employer.

The deductions made from cash payments of wages shall be recorded in ink or other indelible form, properly



dated, showing the month, day, and year, and a copy of the statement, or a record of the deductions, shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

An employer who is required by this code or any regulation adopted pursuant to this code to keep the information required by this section shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

This section shall not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(b) Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover all actual damages or fifty dollars (\$50) for the initial pay period violation and one hundred dollars (\$100) per employee for each violation in the subsequent pay period, whichever is greater, up to five thousand dollars (\$5,000), plus costs and reasonable attorney's fees. Any aggrieved employee may seek recovery of the damages or the penalty provided by this section by filing a complaint pursuant to subdivision (a) of Section 98 or by bringing a civil action.

(c) This section shall not apply to the state, or any city, county, city and county, district, or any other governmental entity.

SEC. 4. Section 226.7 is added to the Labor Code, to read:



226.7. (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) An employer who violates this section shall be subject to both of the following:

(1) A civil penalty of fifty dollars (\$50) per employee per violation.

(2) Payment to the aggrieved employee of an amount equal to twice his or her average hourly rate for the full length of the meal or rest period in which he or she was required to perform any work. An employee paid on a piecework basis shall be entitled to an amount equal to twice the amount of piecework units earned during such periods, but in no event shall the amount be less than the applicable state minimum wage for the full length of the time period in which any work was performed.

(c) Any employee aggrieved by violation of this section may do either of the following:

(1) Seek recovery of payments authorized by this section through a complaint filed pursuant to subdivision (a) of Section 98.

(2) Bring a civil action.

(d) The provisions of this section may be superseded by a collective bargaining agreement.

SEC. 5. Section 240 of the Labor Code is amended to read:

240. (a) If an employer has been convicted of a violation of any provision of this article, or if any judgment against an employer for nonpayment of wages remains unsatisfied for a period of 10 days after the time to appeal has expired, and no appeal is then pending, the Labor Commissioner may require the employer to deposit a bond in a sum that the Labor Commissioner may deem sufficient and adequate in the circumstances, to be approved by the Labor Commissioner. The bond shall be payable to the Labor Commissioner and shall be conditioned that the employer shall, for a definite future period, not exceeding six months, pay the employees in accordance with the provisions of this article, and shall be further conditioned upon the payment by the employer





of any judgment for wages, interest, penalties, or other demands within the jurisdiction of the Labor Commissioner that remain outstanding or may be recovered against the employer pursuant to the provisions of this article.

(b) If within 10 days after demand for the bond, which may be made by mail, the employer fails to deposit the bond, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against the employer in a court of competent jurisdiction to compel the employer to furnish the bond or to cease doing business until the employer has done so. The employer has the burden of proving either that the bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond, and that the bond is reasonably necessary or proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with the provisions of this article or any other labor law, the court may enjoin the employer, whether an individual, partnership, corporation, company, trust, or association, and any other person or persons that may have been or may be concerned with or in any way participating in the failure to pay the wages resulting in the conviction or in the judgment, from doing business until the requirement is met, and make other and further orders appropriate to compel compliance with the requirement.

SEC. 6. Section 245 is added to the Labor Code, to read:

245. Whenever the Labor Commissioner makes an award against an employer pursuant to this chapter, upon finding that the employer has engaged in a pattern and practice of violating wage and hour laws, the Labor Commissioner shall also make an order requiring the employer to post a notice at the place of employment where the affected employees are or were employed containing a description of the nature of the violation, a declaration by the employer stating that it will not engage in those unlawful acts in the future, and the address and telephone number of the Labor Commissioner. The



notice, on a form approved by the Labor Commissioner, shall be posted conspicuously for a period of not less than 60 days. The notice shall bear the seal of the State of California and of the Labor Commissioner and the signature of the employer or a representative or agent of the employer. The cost of producing and posting the notice shall be borne by the employer. The failure or refusal of an employer to post the notice in accordance with this subdivision shall subject the employer to a civil penalty, to be assessed and collected by the Labor Commissioner, in the amount of five hundred dollars (\$500) for each instance in which the employer fails or refused to post a notice as required by this subdivision and the employer shall be required to properly post the notice.

SEC. 7. Section 1174 of the Labor Code is amended to read:

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, the number of piece rate units earned and any applicable piece rate if paid on a piece rate basis by, and the wages paid to, employees employed at the respective plants or establishments, which shall be kept in



accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

SEC. 8. Section 1174.5 of the Labor Code is amended to read:

1174.5. (a) Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 or the wage orders of the Industrial Welfare Commission, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of fifty dollars (\$50) per employee per payroll for the initial pay period for which records are not maintained and one hundred dollars (\$100) per employee per payroll for each violation in the subsequent pay period, up to a period of three years.

Approved \_\_\_\_\_, 1999

\_\_\_\_\_  
*Governor*





VOLUME 2  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1999-2000 REGULAR SESSION

# ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS,  
CONCURRENT RESOLUTIONS,  
JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1998

Recessed December 8, 1998	Reconvened January 4, 1999
Recessed March 25, 1999	Reconvened April 5, 1999
Recessed July 15, 1999	Reconvened August 16, 1999
Recessed September 10, 1999	Reconvened January 3, 2000
Recessed April 13, 2000	Reconvened April 24, 2000
Recessed July 6, 2000	Reconvened August 7, 2000

Adjourned September 1, 2000  
Adjourned Sine Die November 30, 2000

Legislative Days .....	225
Calendar Days .....	725

HON. ROBERT M. HERTZBERG  
*Speaker*

HON. FRED KEELEY  
*Speaker pro Tempore*

HON. KEVIN SHELLEY  
*Majority Floor Leader*

HON. HELEN THOMSON  
*Assistant Speaker pro Tempore*

HON. SCOTT R. BAUGH  
*Minority Floor Leader*

*Compiled Under the Direction of*  
E. DOTSON WILSON  
*Chief Clerk*

AMY LEACH  
*History Clerk*

LIS - 2



## A.B. No. 1652—Steinberg.

An act to amend Sections 98.2, 203.2, 226, 240, 1174, and 1174.5 of, and to add Sections 226.7 and 245 to, the Labor Code, relating to employment.

## 1999

- Mar. 9—Read first time. To print.  
 Mar. 10—From printer. May be heard in committee April 9.  
 Mar. 24—Referred to Com. on L. & E.  
 April 19—From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.  
 April 21—Re-referred to Com. on L. & E.  
 April 22—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 8. Noes 1.) (April 21).  
 May 13—From committee: Do pass. (Ayes 16. Noes 5.) (May 12).  
 May 17—Read second time. To third reading.  
 May 24—Read third time, passed, and to Senate. (Ayes 68. Noes 9. Page 1826.)  
 May 25—In Senate. Read first time. To Com. on RLS. for assignment.  
 June 2—Referred to Com. on I.R.  
 June 24—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 4. Noes 2.)  
 July 12—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.  
 July 13—Read second time. To third reading.  
 Aug. 19—To inactive file on motion of Senator Solis.  
 Sept. 2—From inactive file. To second reading.  
 Sept. 3—Read second time. To third reading. Read third time, amended. To second reading.  
 Sept. 7—Read second time. To third reading.  
 Sept. 8—Read third time, amended. To second reading.  
 Sept. 9—Read second time. To third reading. Senate Rule 29.3 suspended. Read third time, passed, and to Assembly. (Ayes 23. Noes 12. Page 3164.)  
 Sept. 9—In Assembly. Concurrence in Senate amendments pending.  
 Sept. 10—Senate amendments concurred in. To enrollment. (Ayes 45. Noes 31. Page 4429.)  
 Sept. 24—Enrolled and to the Governor at 12:45 p.m.  
 Oct. 10—Vetoed by Governor.

## 2000

- Jan. 3—Consideration of Governor's veto pending. Consideration of Governor's veto stricken from file.

## A.B. No. 1653—Bock.

An act to add Chapter 2.2 (commencing with Section 6359) to Part 1 of Division 5 of the Labor Code, relating to occupational safety and health.

## 1999

- Mar. 9—Read first time. To print.  
 Mar. 10—From printer. May be heard in committee April 9.  
 Mar. 22—Referred to Com. on L. & E.  
 April 19—From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.  
 April 20—Re-referred to Com. on L. & E.  
 April 22—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 6. Noes 3.) (April 21).  
 May 12—In committee: Set, first hearing. Referred to APPR. suspense file.  
 May 26—In committee: Set, second hearing. Held under submission.

## 2000

- Jan. 31—From committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec. 10(c) of the Constitution.





**ASSEMBLY BILL**

**No. 2509**

**Introduced by Assembly Member Steinberg**

February 24, 2000

An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 of, and to add Sections 100.6, 100.7, 218.6, 226.7, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSELS DIGEST

AB 2509, as introduced, Steinberg. Employment: remedies for employment law violations.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for recovery of wages, penalties, and other demands for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law requires these awards for unpaid wages to accrue interest at



a specified adjusted annual rate determined under the tax laws.

This bill would instead require this rate to be the same as the legal rate of interest payable upon a contract obligation in default where the contract does not otherwise specify the rate of interest.

Existing law provides that any order, decision, or award made by the Labor Commissioner in these administrative proceedings may be appealed by filing an action in the municipal or superior court. If the appealing party is unsuccessful, existing law requires the court to award costs and attorney's fees to the other parties.

This bill would exempt those appeal proceedings from provisions respecting submission of certain matters in specified municipal and superior courts to mandatory arbitration. The bill would require employers filing such an appeal to post a prescribed undertaking and would provide for disposition thereof. The bill would require an award of costs and attorney's fees against an unsuccessful appellant regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Under existing law, any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious. Existing law requires that, if the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill would specify that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the United States Department of Labor. The bill would require the Labor Commissioner, within 15 days of receiving those findings, either to notify the parties of the reopening of the investigation or to issue a new determination of the complaint. The bill would also expressly provide that an employee may file a civil judicial action without exhausting any

administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

The bill would make defined substantial shareholders and parents subject to liability for wages unpaid and owed by a corporation, as specified. The bill would make successors to an employer liable for unpaid wages owed by the employer under specified circumstances.

Under existing law, an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill would make this penalty applicable to all employers and would make related conforming and technical, nonsubstantive changes.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would add an express exception for employee actions to recover underpayment of the minimum wage or overtime wages, in which a prevailing employee but not the employer is expressly authorized to recover attorney's fees. The bill would also require the court, in an action to recover unpaid wages, to award interest, as specified.

Under existing law, employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these requirements is a misdemeanor. Under existing law, an employee suffering injury as a result of the employer's knowing or intentional failure to comply with this



requirement is entitled to recover the greater of actual damages or \$100, plus costs and reasonable attorney's fees.

This bill would provide that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation. The bill would impose a state-mandated local program by requiring disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis and by requiring disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate. The bill would revise the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$100 for each pay period in which the violation occurs up to \$10,000, plus costs and reasonable attorney's fees. The bill would authorize an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

Existing law makes employers liable for prescribed civil penalties, based upon the number of employees and number of citations, for failure to provide employee wage deduction statements or keep certain employee pay records.

This bill would specify that if the employer fails to maintain records identifying the affected employees, these penalties are to be computed in accordance with a prescribed formula. The bill would make a technical, clarifying change in related provisions that specify employer record-keeping requirements.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil

action, the employee would be entitled to recover attorney's fees.

Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for 10 days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to 6 months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would also be conditioned on payment of such an unsatisfied judgment. The bill would make conforming related changes.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law prohibits employers from receiving or deducting gratuities intended for employees from wages otherwise payable. Violation is a misdemeanor. Under existing law, this prohibition is not applicable to an employee that has a guaranteed wage or salary that is at least the higher of the federal or state minimum wage.

This bill would delete the above exemption, thereby imposing a state-mandated local program. As so revised, the bill would make these provisions applicable to amounts paid by patrons directly to a dancer subject to specified orders of the commission. The bill would also impose a state-mandated



local program by requiring employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

Existing law requires employers to keep specified payroll records.

This bill would require these payroll records to identify the number of piece-rate units earned by employees and any applicable piece rate paid to employees.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 3 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.

Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.



This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 92 of the Labor Code is amended  
2 to read:

3 92. (a) The Labor Commissioner, and his or her  
4 deputies and agents, may issue subpoenas *subpoenas* to  
5 compel the attendance of witnesses and parties and the  
6 production of books, papers and records; administer  
7 oaths; examine witnesses under oath; take the  
8 verification, acknowledgment, or proof of written  
9 instruments; and take depositions and affidavits for the  
10 purpose of carrying out the provisions of this code and all  
11 laws which that the division is to enforce.

12 (b) *In any adjudicatory hearing before the Labor*  
13 *Commissioner, a notice in lieu of a subpoena may be used*  
14 *to compel the attendance of a party, a person for whose*  
15 *benefit the proceeding is prosecuted or defended, or any*  
16 *officer, director, or managing agent of a party or such a*  
17 *person. The service of a subpoena in these cases is not*  
18 *required if written notice requesting the witness to*  
19 *attend, with the time and place of the hearing, is served*  
20 *upon the party or person, or his or her attorney of record.*  
21 *The notice shall be served at least 10 days before the time*  
22 *requested for attendance unless the hearing officer*  
23 *prescribes a shorter time. The giving of the notice shall*  
24 *have the same effect as service of a subpoena on the*  
25 *witness. Section 1013 of the Code of Civil Procedure shall*  
26 *be applicable to service of these notices.*

(c) The notice specified in subdivision (b) may include a request that the party or person bring with him or her books, papers, records, documents, or other things. The notice shall state the exact materials or things to be produced and that the party or person has them in his or her possession or under his or her control.

(d) A party or person required to attend or produce records at a hearing pursuant to notice under subdivision (b) may object to the notice as provided in Section 11450.30 of the Government Code.

(e) Notice under subdivision (b) has the same force and effect as a subpoena issued by the Labor Commissioner pursuant to subdivision (a) and may be enforced, and willful disobedience punished, in accordance with Section 93.

SEC. 2. Section 98.1 of the Labor Code is amended to read:

98.1. (a) Within 15 days after the hearing is concluded, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. The order, decision, or award shall include a summary of the hearing and the reasons for the decision. Upon filing of the order, decision, or award, the Labor Commissioner shall serve a copy of the decision personally or by first-class mail on the parties. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the appropriate municipal or superior court, in accordance with the appropriate rules of jurisdiction.

(b) For the purpose of this section, an award shall include any sums found owing, damages proved, and any penalties awarded pursuant to this code.

(c) All awards granted pursuant to a hearing under this chapter shall accrue interest on all due and unpaid wages at the adjusted annual same rate—established pursuant to—as prescribed by subdivision (b) of Section 19269 3289 of the Revenue and Taxation Civil Code. The interest shall ~~run~~ accrue until the wages are paid from the

date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

SEC. 3. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the municipal or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable. The appeal proceedings in the municipal or superior court shall be exempt from Section 1141.11 of the Code of Civil Procedure.

(b) Whenever an employer files an appeal pursuant to this section, the employer shall post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking is equal to the amount owed, or the entire undertaking if

1 *the amount owed exceeds the undertaking shall be*  
2 *forfeited to the employee.*

3 (c) If the party seeking review by filing an appeal to  
4 the municipal or superior court is unsuccessful in the  
5 appeal, the court shall determine the costs and reasonable  
6 attorneys' attorney's fees incurred by the other parties to  
7 the appeal, regardless of whether the successful party is  
8 represented by his or her attorney or by the Labor  
9 Commissioner pursuant to Section 98.4, and shall assess  
10 that amount as a cost upon the party filing the appeal.

11 ~~(e)~~

12 (d) If no notice of appeal of the order, decision, or  
13 award is filed within the period set forth in subdivision  
14 (a), the order, decision, or award shall, in the absence of  
15 fraud, be deemed the final order.

16 ~~(e)~~

17 (e) The Labor Commissioner shall file, within 10 days  
18 of the order becoming final pursuant to subdivision (e)  
19 (d), a certified copy of the final order with the clerk of the  
20 municipal or superior court, in accordance with the  
21 appropriate rules of jurisdiction, of the appropriate  
22 county unless a settlement has been reached by the  
23 parties and approved by the Labor Commissioner.  
24 Judgment shall be entered immediately by the court  
25 clerk in conformity therewith. The judgment so entered  
26 shall have the same force and effect as, and shall be  
27 subject to all of the provisions of law relating to, a  
28 judgment in a civil action, and may be enforced in the  
29 same manner as any other judgment of the court in which  
30 it is entered. Enforcement of the judgment shall receive  
31 court priority.

32 ~~(e)~~

33 (f) In order to ensure that judgments are satisfied, the  
34 Labor Commissioner may serve upon the judgment  
35 debtor, personally or by first-class mail at the last known  
36 address of the judgment debtor listed with the division,  
37 a form similar to, and requiring the reporting of the same  
38 information as, the form approved or adopted by the  
39 Judicial Council for purposes of subdivision (b) (a) of  
40 Section 47:19-116.830 of the Code of Civil Procedure to

1 assist in identifying the nature and location of any assets  
2 of the judgment debtor.

3 The judgment debtor shall complete the form and  
4 cause it to be delivered to the division at the address listed  
5 on the form within 35 days after the form has been served  
6 on the judgment debtor, unless the judgment has been  
7 satisfied. In case of willful failure by the judgment debtor  
8 to comply with this subdivision, the division or the  
9 judgment creditor may request the court to apply the  
10 sanctions provided in Section 708.170 of the Code of Civil  
11 Procedure.

12 ~~(f)~~

13 (g) Notwithstanding subdivision (e) (e), the Labor  
14 Commissioner may stay execution of any judgment  
15 entered upon an order, decision, or award which that has  
16 become final upon good cause appearing therefore  
17 therefor and may impose the terms and conditions of the  
18 stay of execution. A certified copy of the stay of execution  
19 shall be filed with the clerk entering the judgment.

20 ~~(g)~~

21 (h) When a judgment is satisfied in fact, otherwise  
22 than by execution, the Labor Commissioner may, upon  
23 the motion of either party or on its own motion, order  
24 entry of satisfaction of judgment. The clerk of the court  
25 shall enter a satisfaction of judgment upon the filing of a  
26 certified copy of the order.

27 ~~(h)~~

28 (i) The Labor Commissioner shall make every  
29 reasonable effort to ensure that judgments are satisfied,  
30 including taking all appropriate legal action and  
31 requiring the employer to deposit a bond as provided in  
32 Section 240.

33 ~~(i)~~

34 (j) The judgment creditor, or the Labor  
35 Commissioner as assignee of the judgment creditor, shall  
36 be entitled to court costs and reasonable attorney fees for  
37 enforcing the judgment which that is rendered pursuant  
38 to this section.

39 SEC. 4. Section 98.7 of the Labor Code is amended to  
40 read:



1 98.7. (a) Any person who believes that he or she has  
 2 been discharged or otherwise discriminated against in  
 3 violation of any provision of this code under the  
 4 jurisdiction of the Labor Commissioner may file a  
 5 complaint with the division within six months after the  
 6 occurrence of the violation. The six-month period may be  
 7 extended for good cause. The complaint shall be  
 8 investigated by a discrimination complaint investigator in  
 9 accordance with this section. The Labor Commissioner  
 10 shall establish procedures for the investigation of  
 11 discrimination complaints. A summary of the procedures  
 12 shall be provided to each complainant and respondent at  
 13 the time of initial contact. The Labor Commissioner shall  
 14 inform complainants charging a violation of Section 6310  
 15 or 6311, at the time of initial contact, of his or her right to  
 16 file a separate, concurrent complaint with the United  
 17 States Department of Labor within 30 days after the  
 18 occurrence of the violation.

19 (b) Each complaint of unlawful discharge or  
 20 discrimination shall be assigned to a discrimination  
 21 complaint investigator, who shall prepare and submit a  
 22 report to the Labor Commissioner based on an  
 23 investigation of the complaint. The Labor Commissioner  
 24 may designate the chief deputy or assistant Labor  
 25 Commissioner or the chief counsel to receive and review  
 26 the reports. The investigation shall include, where  
 27 appropriate, interviews with the complainant,  
 28 respondent, and any witnesses who may have  
 29 information concerning the alleged violation, and a  
 30 review of any documents which that may be relevant to  
 31 the disposition of the complaint. The identity of witnesses  
 32 shall remain confidential unless the identification of the  
 33 a witness becomes necessary to proceed with the  
 34 investigation or to prosecute an action to enforce a  
 35 determination. The investigation report submitted to the  
 36 Labor Commissioner or designee shall include the  
 37 statements and documents obtained in the investigation;  
 38 and the findings of the investigator concerning whether  
 39 a violation occurred. The Labor Commissioner may hold  
 40 an investigative hearing whenever the Labor

1 Commissioner determines, after review of the  
 2 investigation report, that a hearing is necessary to fully  
 3 establish the facts. In the hearing the investigation report  
 4 shall be made a part of the record and the complainant  
 5 and respondent shall have the opportunity to present  
 6 further evidence. The Labor Commissioner shall issue,  
 7 serve, and enforce any necessary subpoenas.

8 (c) If the Labor Commissioner determines a violation  
 9 has occurred, he or she shall notify the complainant and  
 10 respondent and direct the respondent to cease and desist  
 11 from the violation and take such action as is deemed  
 12 necessary to remedy the violation, including, where  
 13 appropriate, rehiring or reinstatement, reimbursement  
 14 of lost wages and interest thereon, payment of reasonable  
 15 attorney's fees associated with any hearing held by the  
 16 Labor Commissioner in investigating the complaint, and  
 17 the posting of notices to employees. If the respondent  
 18 does not comply with the order within 10 working days  
 19 following notification of the Labor Commissioner's  
 20 determination, the Labor Commissioner shall bring an  
 21 action promptly in an appropriate court against the  
 22 respondent. If the Labor Commissioner fails to bring an  
 23 action in court promptly, the complainant may bring an  
 24 action against the Labor Commissioner in any  
 25 appropriate court for a writ of mandate to compel the  
 26 Labor Commissioner to bring an action in court against  
 27 the respondent. If the complainant prevails in his or her  
 28 action for a writ of mandate, the court shall award the  
 29 complainant court costs and reasonable attorney's fees,  
 30 notwithstanding any other provision of law. Regardless of  
 31 any delay in bringing an action in court, the Labor  
 32 Commissioner shall not be divested of jurisdiction. In any  
 33 such the action, the court may permit the claimant to  
 34 intervene as a party plaintiff to the action and shall have  
 35 jurisdiction, for cause shown, to restrain the violation and  
 36 to order all appropriate relief. Appropriate relief  
 37 includes, but is not limited to, rehiring or reinstatement  
 38 of the complainant, reimbursement of lost wages and  
 39 interest thereon, and any other compensation or  
 40 equitable relief as that is appropriate under the



1 circumstances of the case. The Labor Commissioner shall  
2 petition the court for appropriate temporary relief or a  
3 restraining order unless he or she determines good cause  
4 exists for not doing so.

5 (d) If the Labor Commissioner determines no  
6 violation has occurred, he or she shall notify the  
7 complainant and respondent and shall dismiss the  
8 complaint. The Labor Commissioner may direct the  
9 complainant to pay reasonable attorney's fees associated  
10 with any hearing held by the Labor Commissioner if the  
11 Labor Commissioner finds the complaint was frivolous,  
12 unreasonable, groundless, and was brought in bad faith.  
13 The complainant may, after notification of the Labor  
14 Commissioner's determination to dismiss a complaint,  
15 bring an action in an appropriate court, which shall have  
16 jurisdiction to determine whether a violation occurred,  
17 and if so, to restrain the violation and order all  
18 appropriate relief to remedy the violation. Appropriate  
19 relief includes, but is not limited to, rehiring or  
20 reinstatement of the complainant, reimbursement of lost  
21 wages and interest thereon, and such other compensation  
22 or equitable relief as that is appropriate under the  
23 circumstances of the case. When dismissing a complaint,  
24 the Labor Commissioner shall advise the complainant of  
25 his or her right to bring an action in an appropriate court  
26 if he or she disagrees with the determination of the Labor  
27 Commissioner, and in the case of an alleged violation of  
28 Section 6310 or 6311, to file a complaint against the state  
29 program with the United States Department of Labor.  
30 *The filing of a timely complaint against the state program*  
31 *with the United States Department of Labor shall vacate*  
32 *the Labor Commissioner's dismissal of the person's*  
33 *complaint against the respondent, pending the issuance*  
34 *of findings by the United States Department of Labor.*  
35 *Within 15 days of the receipt of those findings the Labor*  
36 *Commissioner shall notify the parties of the reopening of*  
37 *the investigation of the person's complaint against the*  
38 *respondent, or shall issue a new determination of the*  
39 *complaint pursuant to subdivision (c) or this subdivision.*

1 (e) The Labor Commissioner shall notify the  
2 complainant and respondent of his or her determination  
3 under subdivision (c) or (d) not later than 60 days after  
4 the filing of the complaint. Determinations by the Labor  
5 Commissioner under subdivision (c) or (d) may be  
6 appealed by the complainant or respondent to the  
7 Director of Industrial Relations within 10 days following  
8 notification of the determination. The appeal shall set  
9 forth specifically and in full detail the grounds upon  
10 which the appealing party considers the Labor  
11 Commissioner's determination to be unjust or unlawful,  
12 and every issue to be considered by the director. The  
13 director may consider any issue relating to the initial  
14 determination and may modify, affirm, or reverse the  
15 Labor Commissioner's determination. The director's  
16 determination shall be the determination of the Labor  
17 Commissioner. The director shall notify the complainant  
18 and respondent of his or her determination within 10 days  
19 of receipt of the appeal.

20 (f) The rights and remedies provided by this section  
21 do not preclude an employee from pursuing any other  
22 rights and remedies under any other ~~provisions~~ provision  
23 of law. *An employee may file a civil judicial action without*  
24 *exhausting his or her administrative remedies concerning*  
25 *the alleged violation of any of the discrimination*  
26 *provisions under the jurisdiction of the Labor*  
27 *Commissioner, and may seek whatever relief would be*  
28 *available from the Labor Commissioner under this*  
29 *section, in addition to any other relief that may be*  
30 *available under any other provision of law. The limitation*  
31 *period for filing a complaint with the Labor*  
32 *Commissioner under subdivision (a) shall not apply to*  
33 *any civil action filed by an employee under this*  
34 *subdivision.*

35 SEC. 5. Section 100.6 is added to the Labor Code, to  
36 read:

37 100.6. (a) As used in this section, "substantial  
38 shareholder" and "parent" have the same meanings as in  
39 Section 3717.





1 (b) In any proceeding under Section 98 in which  
 2 unpaid wages or penalties are claimed to be owed by a  
 3 corporation, the Labor Commissioner may cause  
 4 substantial shareholders and parents to be joined as  
 5 parties.

6 (c) In any action filed against a corporation for unpaid  
 7 wages or penalties pursuant to Section 98.3, 218.5, 1193.6,  
 8 or 1194, substantial shareholders and its parent may be  
 9 joined as defendants.

10 (d) In the event that the Labor Commissioner or the  
 11 court finds a corporation liable for unpaid wages or  
 12 penalties, the following persons shall be jointly and  
 13 severally liable with the corporation:

14 (1) The parent of the corporation.

15 (2) All substantial shareholders of the corporation or  
 16 its parent.

17 (e) The rights and remedies provided by this section  
 18 are not exclusive and do not preclude an employee or the  
 19 Labor Commissioner from pursuing any other rights and  
 20 remedies against any persons under any other provision  
 21 of law.

22 SEC. 6. Section 100.7 is added to the Labor Code, to  
 23 read:

24 100.7. A successor to any employer that owes wages to  
 25 former employees is liable for those wages if any of the  
 26 following are applicable:

27 (a) The successor uses substantially the same facilities  
 28 or workforce to produce substantially the same products  
 29 for substantially the same type of customers as the  
 30 predecessor employer.

31 (b) The successor shares the ownership, management,  
 32 control of labor relations, or interrelations of business  
 33 operations with the predecessor.

34 (c) The successor has in its employ in a managerial  
 35 capacity any person who directly or indirectly controlled  
 36 the wages, hours, or working conditions of the affected  
 37 employees of the predecessor employer.

38 (d) The successor is an individual who is an immediate  
 39 family member of any owner, partner, officer, or director

1 of the predecessor employer or of any person who had a  
 2 financial interest in the predecessor employer.

3 SEC. 7. Section 203.1 of the Labor Code is amended  
 4 to read:

5 203.1. If an employer in the building and construction  
 6 industry pays an employee in the regular course of  
 7 employment or in accordance with Sections Section 201  
 8 and, 201.5, 201.7, or 202 any wages or fringe benefits, or  
 9 both, by check, draft or voucher, which check, draft or  
 10 voucher is subsequently refused payment because the  
 11 employer or maker has no account with the bank,  
 12 institution, or person on which the instrument is drawn,  
 13 or has insufficient funds to ~~his~~ in the account upon which  
 14 the instrument is drawn at the time of its presentation, so  
 15 long as the same is presented within 30 days of receipt by  
 16 the employee of the check, draft or voucher, ~~such~~ those  
 17 wages or fringe benefits, or both, shall continue as a  
 18 penalty from the due date thereof at the same rate until  
 19 paid or until an action therefor is commenced, ~~but such.~~  
 20 However, those wages and fringe benefits shall not  
 21 continue for more than 30 days, ~~provided, however, that~~  
 22 the ~~said~~ and this penalty shall not apply if the employer  
 23 can establish to the satisfaction of the Labor  
 24 Commissioner or an appropriate court of law that the ~~said~~  
 25 violation of this section was unintentional. This penalty is  
 26 in addition to, and independent and apart from, any other  
 27 penalty in this article.

28 SEC. 8. Section 218.5 of the Labor Code is amended  
 29 to read:

30 218.5. In any action brought for the nonpayment of  
 31 wages, fringe benefits, or health and welfare or pension  
 32 fund contributions, the court shall award reasonable  
 33 attorney's fees and costs to the prevailing party if any  
 34 party to the action requests attorney's fees and costs upon  
 35 the initiation of the action. This section shall not apply to  
 36 an action brought by the Labor Commissioner. This  
 37 section shall not apply to a surety issuing a bond pursuant  
 38 to Chapter 9 (commencing with Section 7000) of Division  
 39 3 of the Business and Professions Code or to an action to  
 40 enforce a mechanics lien brought under Chapter 2



1 (commencing with Section 3109) of Title 15 of Part 4 of  
2 Division 3 of the Civil Code.

3 *This section does not apply to any action for which*  
4 *attorney's fees are recoverable under Section 1194.*

5 SEC. 9. Section 218.6 is added to the Labor Code, to  
6 read:

7 218.6. In any action brought for the nonpayment of  
8 wages, the court shall award interest on all due and  
9 unpaid wages at the rate of interest specified in  
10 subdivision (b) of Section 3289 of the Civil Code, which  
11 shall accrue from the date that the wages were due and  
12 payable as provided in Part 1 (commencing with Section  
13 200) of Division 2.

14 SEC. 10. Section 226 of the Labor Code is amended to  
15 read:

16 226. (a) Every employer shall, semimonthly, or at  
17 the time of each payment of wages, furnish each of his or  
18 her employees, either as a detachable part of the check,  
19 draft, or voucher paying the employee's wages, or  
20 separately when wages are paid by personal check or  
21 cash, an itemized statement in writing showing: (1) gross  
22 wages earned; (2) total hours worked by each the  
23 employee ~~whose compensation is based on an hourly~~  
24 ~~wage; (3), except for any employee whose compensation~~  
25 ~~is solely based on a salary and who is exempt from~~  
26 ~~payment of overtime under Section 515 or any applicable~~  
27 ~~order of the Industrial Welfare Commission, (3) the~~  
28 ~~number of piece rate units earned and any applicable~~  
29 ~~piece rate if the employee is paid on a piece-rate basis, (4)~~  
30 ~~all deductions, provided, that all deductions made on~~  
31 ~~written orders of the employee may be aggregated and~~  
32 ~~shown as one item; (4), (5) net wages earned; (5), (6) the~~  
33 ~~inclusive dates of the period for which the employee is~~  
34 ~~paid; (6), (7) the name of the employee and his or her~~  
35 ~~social security number; and (7), (8) the name and~~  
36 ~~address of the legal entity which that is the employer, and~~  
37 ~~(9) all applicable hourly rates in effect during the pay~~  
38 ~~period and the corresponding number of hours worked at~~  
39 ~~each hourly rate by the employee.~~

1 The deductions made from each payments of wages  
2 shall be recorded in ink or other indelible form, properly  
3 dated, showing the month, day, and year, and a copy of  
4 the statement; or a record of the deductions; shall be kept  
5 on file by the employer for at least three years at the place  
6 of employment or at a central location within the State of  
7 California.

8 An employer who that is required by this code or any  
9 regulation adopted pursuant to this code to keep the  
10 information required by this section shall afford current  
11 and former employees the right to inspect or copy the  
12 records pertaining to that current or former employee,  
13 upon reasonable request to the employer. The employer  
14 may take reasonable steps to assure the identity of a  
15 current or former employee. If the employer provides  
16 copies of the records, the actual cost of reproduction may  
17 be charged to the current or former employee.

18 This section shall does not apply to any employer of any  
19 person employed by the owner or occupant of a  
20 residential dwelling whose duties are incidental to the  
21 ownership, maintenance, or use of the dwelling,  
22 including the care and supervision of children, or whose  
23 duties are personal and not in the course of the trade,  
24 business, profession, or occupation of the owner or  
25 occupant.

26 (b) Any employee suffering injury as a result of a  
27 knowing and intentional failure by an employer to  
28 comply with subdivision (a) shall be entitled to recover  
29 the greater of all actual damages or one hundred dollars  
30 (\$100) for each pay period in which a violation occurs,  
31 not exceeding an aggregate penalty of ten thousand  
32 dollars (\$10,000), whichever is greater, plus and shall be  
33 entitled to an award of costs and reasonable attorney  
34 attorney's fees. Any aggrieved employee may seek  
35 recovery of the damages or penalty provided for in this  
36 section by filing a complaint pursuant to subdivision (a)  
37 of Section 98 or bringing a civil action.

38 (c) This section shall does not apply to the state, or any  
39 city, county, city and county, district, or any other  
40 governmental entity.



1 SEC. 11. Section 226.3 of the Labor Code is amended  
2 to read:

3 226.3. Any employer ~~who~~ that violates subdivision (a)  
4 of Section 226 shall be subject to a civil penalty in the  
5 amount of two hundred fifty dollars (\$250) per employee  
6 per violation in an initial citation and one thousand dollars  
7 (\$1,000) per employee for each violation in a subsequent  
8 citation, for which the employer fails to provide the  
9 employee a wage deduction statement or fails to keep the  
10 records required in subdivision (a) of Section 226. *In the*  
11 *event that an employer fails to maintain records that*  
12 *identify each employee to whom wages are paid, the*  
13 *penalties under this section shall be computed by*  
14 *multiplying the number of employees employed on the*  
15 *date the penalty is assessed by the 24 semimonthly pay*  
16 *periods of the immediately preceding 12 months, but the*  
17 *employer may affirmatively establish that the evidence*  
18 *supports a lesser penalty based upon proof of a lesser*  
19 *number of affected employees. The civil penalties*  
20 *provided for in this section are in addition to any other*  
21 *penalty provided by law. In enforcing this section, the*  
22 *Labor Commissioner shall take into consideration*  
23 *whether the violation was inadvertent; and, in his or her*  
24 *discretion, may decide not to penalize an employer for a*  
25 *first violation when that violation was due to a clerical*  
26 *error or inadvertent mistake.*

27 SEC. 12. Section 226.7 is added to the Labor Code, to  
28 read:

29 226.7. (a) No employer shall require any employee to  
30 work during any meal or rest period mandated by an  
31 applicable order of the Industrial Welfare Commission.

32 (b) An employer that violates this section shall be  
33 subject to both of the following:

34 (1) A civil penalty of fifty dollars (\$50) per employee  
35 per violation.

36 (2) Payment to the aggrieved employee of an amount  
37 equal to twice his or her average hourly rate of  
38 compensation for the full length of the meal or rest  
39 periods during which the employee was required to  
40 perform any work. An employee paid on a piecework

1 basis shall be entitled to an amount equal to twice the  
2 amount of piecework units earned during those periods,  
3 but in no event shall the amount be less than the  
4 applicable state minimum wage for the full length of  
5 those time periods during which any work was  
6 performed.

7 (c) Any employee aggrieved by a violation of this  
8 section may do either of the following:

9 (1) Seek recovery of payments under paragraph (2) of  
10 subdivision (b) through a complaint filed pursuant to  
11 subdivision (a) of Section 98.

12 (2) Seek recovery of payments under paragraph (2) of  
13 subdivision (b) in a civil action. The court shall award a  
14 prevailing plaintiff in such an action reasonable  
15 attorney's fees.

16 SEC. 13. Section 240 of the Labor Code is amended to  
17 read:

18 240. (a) If any employer has been convicted of a  
19 violation of any provision of this article, or if any  
20 judgment against an employer for ~~nonpayment of unpaid~~  
21 ~~wages, interest, penalties, or other demands for~~  
22 ~~compensation within the jurisdiction of the Labor~~  
23 ~~Commissioner remains unsatisfied for a period of 10 days~~  
24 ~~after the time to appeal therefrom has expired, and no~~  
25 ~~appeal therefrom is then pending, the Labor~~  
26 ~~Commissioner may require the employer to deposit a~~  
27 ~~bond in such a sum as that the Labor Commissioner may~~  
28 ~~deem deems sufficient and adequate in the~~  
29 ~~circumstances, to be approved by the Labor~~  
30 ~~Commissioner. The bond shall be payable to the Labor~~  
31 ~~Commissioner and shall be conditioned that the~~  
32 ~~employer shall, for a definite future period, not exceeding~~  
33 ~~six months, pay the employees in accordance with the~~  
34 ~~provisions of this article, and shall be further conditioned~~  
35 ~~upon the payment by the employer of any unsatisfied~~  
36 ~~judgment which may be recovered against the employer~~  
37 ~~pursuant to the provisions of this article for unpaid wages,~~  
38 ~~interest, penalties, or other demands within the~~  
39 ~~jurisdiction of the Labor Commissioner.~~



1 (b) If within 10 days after demand for the bond, which  
 2 demand may be made by mail, the employer fails to  
 3 deposit the bond, the Labor Commissioner may bring an  
 4 action in the name and on behalf of the people of the State  
 5 of California against the employer in a court of competent  
 6 jurisdiction to compel the employer to furnish the bond  
 7 or to cease doing business until the employer has done so.  
 8 The employer has the burden of proving either that the  
 9 bond is unnecessary or that the amount demanded is  
 10 excessive. If the court finds that there is just cause for  
 11 requiring the bond, and that the bond is reasonably  
 12 necessary or proper to secure prompt payment of the  
 13 wages of the employees of the employer and any  
 14 unsatisfied judgment against the employer for unpaid  
 15 wages, interest, penalties, or other demands within the  
 16 jurisdiction of the Labor Commissioner or for the  
 17 employer's compliance with the provisions of this article,  
 18 the court may enjoin the employer, whether an  
 19 individual, partnership, corporation, company, trust, or  
 20 association, and such any other person or persons as that  
 21 may have been or may be concerned with, or in any way  
 22 participating participated in, the failure to pay the wages  
 23 resulting in the conviction or in the judgment, from doing  
 24 business until the requirement is met, and make other  
 25 and further orders appropriate to compel compliance  
 26 with the requirement.

27 SEC. 14. Section 245 is added to the Labor Code, to  
 28 read:

29 245. Whenever the Labor Commissioner makes an  
 30 award against an employer pursuant to this chapter, upon  
 31 finding that the employer has engaged in a pattern and  
 32 practice of violating wage and hours laws, the Labor  
 33 Commissioner shall also make an order requiring the  
 34 employer to post a notice at the place of employment  
 35 where the affected employees are or were employed  
 36 containing a description of the nature of the violation, a  
 37 declaration by the employer stating that it will not engage  
 38 in those unlawful acts in the future, and the address and  
 39 telephone number of the Labor Commissioner. The  
 40 notice, on a form approved by the Labor Commissioner,

1 shall be posted conspicuously by the employer for a  
 2 period of not less than 60 days. The notice shall bear the  
 3 seal of the State of California and of the Labor  
 4 Commissioner and the signature of the employer or a  
 5 representative or agent of the employer. The cost of  
 6 producing and posting the notice shall be paid by the  
 7 employer. The failure or refusal of an employer to post  
 8 the notice in accordance with this section shall subject the  
 9 employer to a civil penalty, to be assessed and collected  
 10 by the Labor Commissioner, in the amount of five  
 11 hundred dollars (\$500) for each instance in which the  
 12 employer fails or refuses to post a notice as required by  
 13 this section, and the employer shall be required to  
 14 properly post the notice.

15 SEC. 15. Section 350 of the Labor Code is amended to  
 16 read:

17 350. As used in this article, unless the context indicates  
 18 otherwise:

19 (a) "Employer" means every person engaged in any  
 20 business or enterprise in this State, which state that has  
 21 one or more persons in service under any appointment,  
 22 contract of hire, or apprenticeship, express or implied,  
 23 oral or written, irrespective of whether such the person  
 24 is the owner of the business or is operating on a  
 25 concessionaire or other basis.

26 (b) "Employee" means every person, including aliens  
 27 and minors, rendering actual service in any business for  
 28 and an employer, whether gratuitously or for wages or pay  
 29 and, whether such the wages or pay are measured by the  
 30 standard of time, piece, task, commission, or other  
 31 method of calculation, and whether such the service is  
 32 rendered on a commission, concessionaire, or other basis.

33 (c) "Employing" includes hiring, or in any way  
 34 contracting for, the services of an employee.

35 (d) "Agent" means every person other than the  
 36 employer having the authority to hire or discharge any  
 37 employee or supervise, direct, or control the acts of  
 38 employees.

39 (e) "Gratuity" includes any tip, gratuity, money, or  
 40 part thereof, which that has been paid or given to or left



1 for an employee by a patron of a business over and above  
 2 the actual amount due such the business for services  
 3 rendered or for goods, food, drink, or articles sold or  
 4 served to such the patron. *Any amounts paid directly by*  
 5 *a patron to a dancer employed by an employer subject to*  
 6 *Industrial Welfare Commission Order No. 5 or 10 shall be*  
 7 *deemed a gratuity.*

8 (f) "Business" means any business establishment; or  
 9 enterprise, regardless of where conducted.

10 SEC. 16. Section 351 of the Labor Code is amended to  
 11 read:

12 351. No employer or agent shall collect, take, or  
 13 receive any gratuity or a part thereof; that is paid, given  
 14 to, or left for an employee by a patron, or deduct any  
 15 amount from wages due an employee on account of such  
 16 a gratuity, or require an employee to credit the amount,  
 17 or any part thereof, of such a gratuity against and as a part  
 18 of the wages due the employee from the employer. Every  
 19 such gratuity is hereby declared to be the sole property  
 20 of the employee or employees to whom it was paid, given,  
 21 or left for. ~~This section shall not apply to any employment~~  
 22 ~~in which no charge is made to a patron for services~~  
 23 ~~rendered to the patron by an employee on behalf of his~~  
 24 ~~employer if both of the following conditions are met: (a)~~  
 25 ~~the employee is receiving a wage or salary not less than~~  
 26 ~~the higher of the state or federal minimum wage;~~  
 27 ~~regardless of whether such employee is subject to either~~  
 28 ~~such minimum wage law; and (b) the employee's wage~~  
 29 ~~or salary is guaranteed and paid in full irrespective of the~~  
 30 ~~amount of tips received by the employee. An employer~~  
 31 ~~that permits patrons to pay gratuities by credit card shall~~  
 32 ~~pay the employees the full amount of the gratuity that the~~  
 33 ~~patron indicated on the credit card slip, without any~~  
 34 ~~deductions for any credit card payment processing fees~~  
 35 ~~or costs that may be charged to the employer by the~~  
 36 ~~credit card company. Payment of gratuities made by~~  
 37 ~~patrons using credit cards shall be made to the employees~~  
 38 ~~not later than the next regular payday following the date~~  
 39 ~~the patron authorized the credit card payment.~~

1 SEC. 17. Section 1174 of the Labor Code is amended  
 2 to read:

3 1174. Every person employing labor in this state shall:

4 (a) Furnish to the commission, at its request, reports  
 5 or information ~~which that~~ the commission requires to  
 6 carry out this chapter. The reports and information shall  
 7 be verified if required by the commission or any member  
 8 thereof.

9 (b) Allow any member of the commission or the  
 10 employees of the Division of Labor Standards  
 11 Enforcement free access to the place of business or  
 12 employment of the person to secure any information or  
 13 make any investigation ~~which that~~ they are authorized by  
 14 this chapter to ascertain or make. The commission may  
 15 inspect or make excerpts, relating to the employment of  
 16 employees, from the books, reports, contracts, payrolls,  
 17 documents, or papers of the person.

18 (c) Keep a record showing the names and addresses of  
 19 all employees employed and the ages of all minors.

20 (d) Keep, at a central location in the state or at the  
 21 plants or establishments at which employees are  
 22 employed, payroll records showing the hours worked  
 23 daily by; and the wages paid to, *and the number of*  
 24 *piece-rate units earned by and any applicable piece rate*  
 25 *paid to, employees employed at the respective plants or*  
 26 *establishments, and which. These records shall be kept in*  
 27 *accordance with rules established for this purpose by the*  
 28 *commission, but in any case shall be kept on file for not*  
 29 *less than two years.*

30 SEC. 18. Section 1174.5 of the Labor Code is amended  
 31 to read:

32 1174.5. (a) Any person employing labor who willfully  
 33 fails to maintain the records required by subdivision (c)  
 34 of Section 1174 or accurate and complete records  
 35 required by subdivision (d) of Section 1174 *or by the*  
 36 *applicable wage orders of the Industrial Welfare*  
 37 *Commission, or to allow any member of the commission*  
 38 *or employees of the division to inspect records pursuant*  
 39 *to subdivision (b) of Section 1174, shall be subject to a civil*  
 40 *penalty of five one hundred dollars (\$500) (\$100) per*



1 *employee for each payroll period during which the*  
 2 *violation occurs, up to a maximum period of three years.*

3 SEC. 19. Section 1194.2 of the Labor Code is amended  
 4 to read:

5 1194.2. (a) In any proceeding before the Labor  
 6 Commissioner, or any action under Section 1193.6 or  
 7 Section 1194, to recover wages because of the payment of  
 8 a wage less than the minimum wage fixed by an order of  
 9 the commission, an employee shall be entitled  
 10 additionally to recover liquidated damages in an amount  
 11 equal to the wages unlawfully unpaid and interest  
 12 thereon. Nothing in this subdivision shall be construed to  
 13 authorize the recovery of liquidated damages for failure  
 14 to pay overtime compensation.

15 (b) Notwithstanding subdivision (a), if the employer  
 16 demonstrates to the satisfaction of the Labor  
 17 Commissioner or the court that the act or omission giving  
 18 rise to the action was in good faith and that the employer  
 19 had reasonable grounds for believing that the act or  
 20 omission was not a violation of any provision of the Labor  
 21 Code relating to minimum wage, or an order of the  
 22 commission, the Labor Commissioner or the court may,  
 23 in its discretion of the Labor Commissioner or the  
 24 court as the case may be, refuse to award liquidated  
 25 damages or award any amount of liquidated damages not  
 26 exceeding the amount specified in subdivision (a).

27 (c) This section only ~~shall apply~~ applies to civil actions  
 28 commenced on or after January 1, 1992.

29 SEC. 20. Section 1197.1 of the Labor Code is amended  
 30 to read:

31 1197.1. (a) Any employer or other person, acting  
 32 either individually or as an officer, agent, or employee of  
 33 another person, who pays or causes to be paid to any  
 34 employee a wage less than the minimum fixed by an  
 35 order of the commission shall be subject to a civil penalty  
 36 and restitution as follows:

37 (1) For any initial violation that is intentionally  
 38 committed, fifty dollars (\$50) for each underpaid  
 39 employee for each pay period for which the employee is  
 40 underpaid, in addition to an amount sufficient to recover,

1 on behalf of the affected employees, all underpaid wages,  
 2 any owed interest thereon, and statutory liquidated  
 3 damages.

4 (2) For each subsequent violation for the same specific  
 5 offense, two hundred fifty dollars (\$250) for each  
 6 underpaid employee for each pay period for which the  
 7 employee is underpaid, regardless of whether the initial  
 8 violation is intentionally committed, in addition to an  
 9 amount sufficient to recover, on behalf of the affected  
 10 employees, all underpaid wages, any interest owed  
 11 thereon, and statutory liquidated damages.

12 (b) If, upon inspection or investigation, the Labor  
 13 Commissioner determines that a person has paid or  
 14 caused to be paid a wage less than the minimum, the  
 15 Labor Commissioner may issue a citation to the person in  
 16 violation. The citation may be served personally or by  
 17 registered mail in accordance with subdivision (c) of  
 18 Section 11505 of the Government Code. Each citation  
 19 shall be in writing and shall describe the nature of the  
 20 violation, including reference to the statutory provision  
 21 alleged to have been violated. The Labor Commissioner  
 22 promptly shall take all appropriate action, in accordance  
 23 with this section, to enforce the citation and to recover  
 24 the civil penalty and restitution assessed in connection  
 25 with the citation.

26 (c) If a person desires to contest a citation or the  
 27 proposed assessment of a civil penalty or restitution  
 28 therefor, the person shall, within 15 business days after  
 29 service of the citation, notify the office of the Labor  
 30 Commissioner that appears on the citation of his or her  
 31 request for an informal hearing. The Labor  
 32 Commissioner or his or her deputy or agent shall, within  
 33 30 days, hold a hearing at the conclusion of which the  
 34 citation or proposed assessment of a civil penalty and  
 35 restitution shall be affirmed, modified, or dismissed.

36 The decision of the Labor Commissioner shall consist of  
 37 a notice of findings, findings, and an order, all of which  
 38 shall be served on all parties to the hearing within 15 days  
 39 after the hearing by regular first-class mail at the last  
 40 known address of the party on file with the Labor



1 Commissioner. Service shall be completed pursuant to  
 2 Section 1013 of the Code of Civil Procedure. Any amount  
 3 found due by the Labor Commissioner as a result of a  
 4 hearing shall become due and payable 45 days after notice  
 5 of the findings and written findings and order have been  
 6 mailed to the party assessed. A writ of mandate may be  
 7 taken from this finding to the appropriate superior court.  
 8 The party shall pay any judgment and costs ultimately  
 9 rendered by the court against the party for the  
 10 assessment. The writ shall be taken within 45 days of  
 11 service of the notice of findings, findings, and order  
 12 thereon.

13 (d) A person to whom a citation has been issued shall  
 14 may, in lieu of contesting a citation pursuant to this  
 15 section, transmit to the office of the Labor Commissioner  
 16 designated on the citation the amount of the *civil penalty*  
 17 and *restitution* specified for the violation within 15  
 18 business days after issuance of the citation.

19 (e) When no petition objecting to a citation or the  
 20 proposed assessment of a civil penalty and *restitution* is  
 21 filed, a certified copy of the citation or proposed civil  
 22 penalty and *restitution* may be filed by the Labor  
 23 Commissioner in the office of the clerk of the superior  
 24 court in any county in which the person assessed has or  
 25 had a place of business. The clerk, immediately upon the  
 26 filing, shall enter judgment for the state against the  
 27 person assessed in the amount shown on the citation or  
 28 proposed assessment of a civil penalty and *restitution*.

29 (f) When findings and the order thereon are made  
 30 affirming or modifying a citation or proposed assessment  
 31 of a civil penalty and *restitution* after hearing, a certified  
 32 copy of these findings and the order entered thereon may  
 33 be entered by the Labor Commissioner in the office of the  
 34 clerk of the superior court in any county in which the  
 35 person assessed has property or in which the person  
 36 assessed has or had a place of business. The clerk,  
 37 immediately upon the filing, shall enter judgment for the  
 38 state against the person assessed in the amount shown on  
 39 the certified order.

1 (g) A judgment entered pursuant to this section shall  
 2 bear the same rate of interest and shall have the same  
 3 effect as other judgments and be given the same  
 4 preference allowed by the law on other judgments  
 5 rendered for claims for taxes. The clerk shall make no  
 6 charge for the service provided by this section to be  
 7 performed by him or her.

8 (h) The civil penalties and *restitution* provided for in  
 9 this section are in addition to any other penalty or *remedy*  
 10 provided by law.

11 (i) This section shall not apply to any order of the  
 12 commission relating to household occupations.

13 SEC. 21. No reimbursement is required by this act  
 14 pursuant to Section 6 of Article XIII B of the California  
 15 Constitution because the only costs that may be incurred  
 16 by a local agency or school district will be incurred  
 17 because this act creates a new crime or infraction,  
 18 eliminates a crime or infraction, or changes the penalty  
 19 for a crime or infraction, within the meaning of Section  
 20 17556 of the Government Code, or changes the definition  
 21 of a crime within the meaning of Section 6 of Article  
 22 XIII B of the California Constitution.







Date of Hearing: April 12, 2000

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Darrell Steinberg, Chair

AB 2509 (Steinberg) – As Introduced: February 24, 2000

**SUMMARY:** Revises statutes relating to the administrative and civil enforcement of wage and hour laws including wage collection and enforcement procedures before the Labor Commissioner (Commissioner). Specifically, this bill:

- 1) Provides that in an administrative wage claim proceeding (Berman hearing) before the Commissioner, a notice for production of documents, which is served by mail, may be used in lieu of subpoena, which requires personal service.
- 2) Provides that the legal rate of interest on due and unpaid wages at a Berman hearing shall be at the rate established by Civil Code Section 3289(b), which is 10%.
- 3) Provides that following a Berman hearing, an employer filing an appeal shall post an undertaking in the amount of the Commissioner's final order, decision or award. Provides further that the requirement of judicial arbitration does not apply in such proceedings. Provides that in cases where the Commissioner represents the wage claimant in such proceedings, the Commissioner may be awarded attorneys fees in the same manner as private counsel representing a wage claimant.
- 4) Provides if the United States Department of Labor (Labor Department) determines that the Commissioner has erred in dismissing the complaint of an employee of unlawful retaliation, as specified, the Commissioner shall, within 15 days after receipt of the Labor Department's determination, either notify the parties of the ongoing of the investigation of the employees complaint, or shall issue a new determination in the matter.

Provides that an employee may file a civil action for unlawful retaliation, as specified, without first filing a discrimination claim before the Commissioner, and that the limitation periods for such administrative remedies do not apply in such a civil action.

- 5) Provides that the parent of and substantial shareholders in a corporation are jointly and severally liable with the corporation for unpaid wages and penalties. Defines "substantial shareholder" as provided in Labor Code section 3717, as a shareholder who owns at least 15 percent of the total value of all classes of stock, or fifteen percent of the beneficial interests in the corporation.
- 6) Provides that a successor, as defined, to an employer who owes wages to his or her former employees is liable for those wages.
- 7) Provides that in cases where wages are paid with a check for which payment is refused due to insufficient funds, the imposition of up to 30 days' waiting time penalties applies to all employers, rather than employers only in the building and construction industry.



- 8) Clarifies that Labor Code Section 1194, which provides for an award of attorneys fees for an employee in cases involving failure to pay minimum wage and overtime wages, is separate from, and not controlled by Labor Code Section 218.5, which provides for prevailing party attorneys fees in other wage cases.
- 9) Provides that the legal rate of interest on due and unpaid wages in a civil action for unpaid wages shall be established by Civil Code Section 3289(b), which is 10%.
- 10) Provides that an employer's itemized wage statement shall include, among other information, the number of piecework units earned and any applicable piece rate if paid on a piecework basis, and for non-exempt employees, the applicable hourly rates in effect during the pay period and the hourly rate of pay and hours worked, where applicable.

Clarifies that the employer shall keep specified payroll records for employees paid in cash and by check.

Provides, in the case of a knowing and intentional failure by an employer to comply with the itemized wage statement requirements, for an employee to recover a penalty of up to \$100 per payroll period up to a maximum of \$10,000. Provides that an employee may bring a complaint before the Commissioner or file a civil action for damages or penalties, and attorney's fees.

- 11) Provides that in a case where an employer fails to maintain records that identify each employee to whom wages are paid, penalties shall be computed by multiplying the number of employees employed on the date the penalty for the preceding year, unless the employer affirmatively establishes evidence that supports a lesser penalty based upon proof of a lesser number of affected employees.
- 12) Provides for penalties for an employer who violates the requirement that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC). Provides for penalties of \$50 per employee per pay period and payment of an amount equal to twice the average hourly rate of compensation for the employee for the full length of the meal or rest period. Provides that an employee may bring a complaint before the Commissioner or file a civil action or for damages or penalties, and attorney's fees.
- 13) Provides that the Commissioner may order an employer to post a bond if the employer fails to satisfy a final judgment for interest, penalties and other demands for compensation within the jurisdiction of the Commissioner, as well as unpaid wages. Provides that the bond shall cover such interest, penalties, or other demands, as well as unpaid wages.
- 14) Provides that the Commissioner shall, under specified circumstances, order the employer to post a workplace notice describing the nature of a violation and related information.
- 15) Provides that any amounts paid directly by a patron to a dancer employed by an employer subject to IWC Order No. 5 or 10 shall be deemed a gratuity.



- 16) Prohibits an employer from deducting from a gratuity indicated by a patron on a credit card slip any credit card payment processing fee or cost. Requires payment of gratuities made by credit card to be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.
- 17) Provides that an employer shall maintain payroll records showing the number of piece-rate units earned by and any applicable piece rate paid to employees.
- 18) Provides that the civil penalty for an employer who willfully fails to maintain specified payroll records includes, in addition to records required by statute, records required by any applicable wage orders of the IWC. Revises the penalty for a violation of this section from \$500 to \$100 per employee for each payroll period up to a maximum period of three years.
- 19) Provides that the liquidated damages for a violation of minimum wage laws may be awarded in a hearing before the Commissioner in the same manner as a civil action under current law.
- 20) Provides that with respect to a claim for a failure to pay minimum wages, the Commissioner may, in the same proceeding, order both payment of wages owed, interest thereon, statutory liquidated damages and civil penalties.

EXISTING LAW:

- 1) Provides in a Berman hearing for documents to be obtained by subpoena served by personal service, but not a notice delivered by mail.
- 2) Establishes the rate of interest on unpaid wages a Berman hearing based on a statute which has been repealed.
- 3) Provides for the appeal to and a de novo review in court of the Commissioner's order, decision, or award following a Berman hearing.
- 4) Provides for an appeal to the Labor Department of a dismissal of an employee's complaint of unlawful discrimination.
- 5) Provides under Labor Code section 2717 for a civil action to hold substantial shareholders of a corporation without workers' compensation insurance liable for reimbursement of the Uninsured Employers Fund.
- 6) Provides under Labor Code section 2684 that in garment manufacturing, a business which is a successor to an employer who owes wages to the former employees is liable for those wages if the successor meets specified criteria.
- 7) Provides a penalty of up to 30 days' wages for an employer in the building and construction trades who intentionally pays wages with a check for which payment is refused due to insufficient funds.



- 8) Provides for an employee to recover in a civil action for a failure to pay minimum wage or overtime compensation reasonable attorney's fees, and costs of suit.
- 9) Provides under Civil Code Section 3289(b) for recovery of interest at a rate of 10% in a civil action for a breach of contract, as specified.
- 10) Provides that when wages are paid, an employer shall issue an itemized wage statement including specified information including net and gross wages earned; total hours worked; the dates of the period covered; and all deductions.

Provides, in the case of a knowing and intentional failure by an employer to comply with the itemized wage statement requirements, an employee may recover a penalty of actual damages or \$100, whichever is greater, plus costs and reasonable attorneys fees.

- 11) Provides that an employer who violates the itemized wage statement requirements is subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation. Provides that the Commissioner shall take into consideration whether the violation was inadvertent, and may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.
- 12) Provides, under Wages Orders of the IWC for meal periods and rest periods. Provide under the Wage Orders for an "on duty" meal period when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.
- 13) Provides that the Commissioner may order an employer to post a bond to ensure future payment of wages in cases where the employer has failed to satisfy a final judgment for nonpayment of wages.
- 14) Provides for employers to post specified information including applicable wage orders of the IWC, information on safety and health, harassment and discrimination in employment, and rights under the Family and Medical Leave Act.
- 15) Defines "gratuity" to mean any tip, gratuity, money or part thereof, which has been paid or given to or left for an employee by a patron of a business over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the patron.
- 16) Provides that no employer shall collect, take or receive any gratuity or part thereof paid, given or left for an employee by a patron, or deduct any amount from wages due an employee on account of such gratuity. Provides that this prohibition does not apply under specified circumstances.
- 17) Requires an employer to keep payroll records containing specified information including the names, addresses and hours worked daily by employees.
- 18) Provides a civil penalty of \$500 for an employer who fails to keep specified payroll records.



- 19) Provides that the liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for a violation of minimum wage laws may be awarded in a civil action.
- 20) Provides for the Commissioner to issue a civil penalty citation of \$50 for an initial violation of minimum wages and \$250 for subsequent violations, and establishes a proceeding to contest such a penalty citation.

Provides for the Commissioner to order payment of minimum wages owed to an employee in a separate proceeding before the Commissioner under Labor Code section 98.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Current statutes, regulations, and wage orders of the IWC establish requirements for the payment of wages including minimum wages and overtime, hours of work, and a framework of administrative and civil remedies for violations of wage and hour laws. This bill revises the administrative and civil procedures, remedies and record keeping requirements for the stated purpose of strengthening enforcement of existing wage and hour standards. It does not increase minimum wages or revise overtime requirements.
- 2) Revisions in the administrative procedures for wage claims before the Commissioner and appeals of the Commissioner's decision include:
  - a) Allowing records to be obtained through a notice, rather than a subpoena. A subpoena, which is allowed under current law requires personal service. A notice may be mailed.
  - b) Allowing the commissioner to combine two separate proceedings established under current law, one for payment of minimum wages owed, and another for civil penalties for failure to pay minimum wage, into a single proceeding.
  - c) Providing that the Commissioner may award liquidated damages for a minimum wage violation instead of requiring the Commissioner or employee to file a civil suit to recover such damages. Under current law such damages may be recovered in a civil action by the Commissioner or the wage claimant, but not in an administrative hearing before the Commissioner.
  - d) Establishing the rate of interest on unpaid wages at 10% in both administrative and civil court cases. Current law cites a repealed section and is confusing.
  - e) Requiring an employer appealing a Commissioner's order following a hearing to post an undertaking and waiving the requirement for judicial arbitration in such cases. The judicial arbitration hearing may be viewed as redundant to the Berman hearing in these cases.
- 3) Revisions related to wage and payroll records include:



- a) Providing that itemized wage statements and central payroll records include piece rate and hourly pay rate information for piece rate and hourly workers.
  - b) Increasing the penalties for violation of itemized wage statement and central payroll records requirements.
  - c) Shifting the burden of proof concerning the number of workers at an establishment where payroll records are missing.
- 4) Revisions related to penalties for violations of other wage and hour standards include:
- a) Applying penalties for intentional issuance of a bad (insufficient funds) payroll check applies to all employers rather than construction employers only. Under current law, the penalty is limited to construction employers.
  - b) Requiring an employer determined by the Commissioner to have engaged in a pattern and practice of wage law violations to post a workplace notice of findings and the Commissioner's telephone number to report further violations.
- 5) Revisions for the purpose of clarifying existing law include:
- a) Clarifying that an employee may bring a civil action for unlawful retaliation without exhausting administrative remedies, as specified, with the Commissioner.
  - b) Clarifying that Labor Code Section 1194, which provides for an award of attorneys fees for an employee in cases involving failure to pay minimum wage and overtime wages, is separate from, and not controlled by Labor Code Section 218.5, which provides for prevailing party attorneys fees in other wage cases.
- 6) This bill also provides for unpaid wages to be collected from substantial shareholders and successor entities under specified circumstances. The substantial shareholders provision is based on substantial shareholder liability for corporations which lack workers' compensation insurance. The successor entity provision is based on the existing provision related to successor liability for unpaid wages in the garment manufacturing industry.
- 7) Last year the supporters sponsored similar legislation in AB 633 and AB 1652, which passed and were vetoed. This bill does not contain a number of controversial provisions proposed in last year's legislation. For example, it does not establish a private right of action to recover and share in a portion of the state's civil penalties for wage violations, and for minimum wage and overtime violations. It does not carry forward a proposal to establish liquidated damages for overtime violations. It does not prescribe the Commissioner's required efforts to collect wage judgements.
- 8) Supporters state that California has a large and growing "underground economy" of employers who are chronic violators of wage and hour, safety, and tax laws. Such employers pay cash under the table or with checks that bounce, fail to report and pay employment taxes,



work their employees long hours without rest breaks, and avoid paying wage judgments issued against them. They cheat workers out of billions of dollars in wages owed to them under minimum wage and overtime laws. California's underground economy supplants an estimated \$60 billion in legal business transactions. According to executive orders concerning the expanding underground economy issued by Governor's Deukmejian and Wilson, the state's loss of income taxes alone increased from \$2 billion in 1986 to \$3 billion in 1993.

They state that this bill streamlines the Commissioner process by allowing document requests by mail; by allowing the commissioner to re-open a discrimination case on remand from the Department of Labor; and providing for a "one-stop" civil penalty system where both wages and penalties can be recovered at one time; ensures that workers are provided adequate record keeping information, ensures that employers cannot easily escape wage liability, and that this bill clarifies areas of the law.

- 9) Opponents state that they have serious concerns regarding nearly all of the twenty-nine changes proposed by this bill and their impact on California's employers who even inadvertently violate a wage and hour law. These include: authorizing the Commissioner to create new, different rules of evidence and subpoenas process for wage and hour claims; eliminating judicial discretion to require non-binding arbitration on appeals; reopening of previously dismissed claims when letters criticizing a state program are filed with the U.S. Department of Labor; establishment of joint, and several liabilities for substantial shareholders, parent corporations and successors for unpaid wages and penalties; mandated private taxpayer payment of civil servant attorneys; wage and hour claims permitted in civil court prior to exhaustion of administrative remedies; new commissioner authority to assess civil damages, including liquidated damages; and new mandated payment of restitution plus civil penalties for failure to pay minimum wage consisting of all underpaid wages, any interest owed and statutory liquidated damages.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

American Federation of State, County and Municipal Employees  
 California Conference Board of the Amalgamated Transit Union  
 California Conference of Machinists  
 California Labor Federation, AFL-CIO  
 Employment Law Center, Legal Aid Society of San Francisco  
 Engineers and Scientists of California  
 Exotic Dancers Alliance  
 Hotel Employees, Restaurant Employees International Union  
 Mexican American Legal Defense and Educational Fund  
 Region 8 States Council of the United Food & Commercial Workers  
 Service Employees International Union  
 Transport Workers Union of America



Opposition

Associated General Contractors  
California Chamber of Commerce  
California Manufacturers and Technology Association  
California Retailers Association  
Civil Justice Association of California  
Western Growers Association

Analysis Prepared by: Ralph Lightstone / L. & E. / (916)319-2091







AMENDED IN SENATE JUNE 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2509**

LIS - 1b

Introduced by Assembly Member Steinberg

February 24, 2000

An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 of, and to add Sections 100.6, 100.7, 218.6, 226.7, 226.8, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSELS DIGEST

AB 2509, as amended, Steinberg. Employment: remedies for employment law violations.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for recovery of wages, penalties, and other demands for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law



requires these awards for unpaid wages to accrue interest at a specified adjusted annual rate determined under the tax laws.

This bill would instead require this rate to be the same as the legal rate of interest payable upon a contract obligation in default where the contract does not otherwise specify the rate of interest.

Existing law provides that any order, decision, or award made by the Labor Commissioner in these administrative proceedings may be appealed by filing an action in the municipal or superior court. If the appealing party is unsuccessful, existing law requires the court to award costs and attorney's fees to the other parties.

This bill would exempt those appeal proceedings from provisions respecting submission of certain matters in specified municipal and superior courts to mandatory arbitration. The bill would require employers filing such an appeal to post a prescribed undertaking and would provide for disposition thereof. The bill would require an award of costs and attorney's fees against an unsuccessful appellant regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Under existing law, any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious. Existing law requires that, if the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill would specify that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the United States Department of Labor. The bill would require the Labor Commissioner, within 15 days of receiving those findings, either to notify the parties of the reopening of the investigation or to issue a new determination of the complaint. The bill would also expressly provide that an employee may

file a civil judicial action without exhausting any administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

The bill would make defined substantial shareholders and parents subject to liability for wages unpaid and owed by a corporation, as specified. The bill would make successors to an employer liable for unpaid wages owed by the employer under specified circumstances.

Under existing law, an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill would make this penalty applicable to all employers and would make related conforming and technical, nonsubstantive changes.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would add an express exception for employee actions to recover underpayment of the minimum wage or overtime wages, in which a prevailing employee but not the employer is expressly authorized to recover attorney's fees. The bill would also require the court, in an action to recover unpaid wages, to award interest, as specified.

Under existing law, employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these requirements is a misdemeanor. Under existing law, an employee suffering injury as a result of the employer's



knowing or intentional failure to comply with this requirement is entitled to recover the greater of actual damages or \$100, plus costs and reasonable attorney's fees.

This bill would provide that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation. The bill would impose a state-mandated local program by requiring disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis and by requiring disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate. The bill would revise the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$100 for each pay period in which the violation occurs up to \$10,000, plus costs and reasonable attorney's fees. The bill would authorize an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

Existing law makes employers liable for prescribed civil penalties, based upon the number of employees and number of citations, for failure to provide employee wage deduction statements or keep certain employee pay records.

This bill would specify that if the employer fails to maintain records identifying the affected employees, these penalties are to be computed in accordance with a prescribed formula. The bill would make a technical, clarifying change in related provisions that specify employer record-keeping requirements.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil

action, the employee would be entitled to recover attorney's fees.

*This bill would provide that if an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall either purchase the tools or equipment from the employee in an amount equal to the price paid by the employee or pay sufficient wages to the employee to qualify for an exemption to the wage order, as provided.*

Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for 10 days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to 6 months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would also be conditioned on payment of such an unsatisfied judgment. The bill would make conforming related changes.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law prohibits employers from receiving or deducting gratuities intended for employees from wages



otherwise payable. Violation is a misdemeanor. Under existing law, this prohibition is not applicable to an employee that has a guaranteed wage or salary that is at least the higher of the federal or state minimum wage.

This bill would delete the above exemption, thereby imposing a state-mandated local program. As so revised, the bill would make these provisions applicable to amounts paid by patrons directly to a dancer subject to specified orders of the commission. The bill would also impose a state-mandated local program by requiring employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

Existing law requires employers to keep specified payroll records.

This bill would require these payroll records to identify the number of piece-rate units earned by employees and any applicable piece rate paid to employees.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 3 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.

Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that

the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.

This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 92 of the Labor Code is amended  
2 to read:

3 92. (a) The Labor Commissioner and his or her  
4 deputies and agents may issue subpoenas to compel the  
5 attendance of witnesses and parties and the production of  
6 books, papers and records; administer oaths; examine  
7 witnesses under oath; take the verification,  
8 acknowledgment, or proof of written instruments; and  
9 take depositions and affidavits for the purpose of carrying  
10 out the provisions of this code and all laws that the  
11 division is to enforce.

12 (b) In any adjudicatory hearing before the Labor  
13 Commissioner, a notice in lieu of a subpoena may be used  
14 to compel the attendance of a party, a person for whose  
15 benefit the proceeding is prosecuted or defended, or any  
16 officer, director, or managing agent of a party or such a

1 shall serve a copy of the decision personally or by  
 2 first-class mail on the parties. The notice shall also advise  
 3 the parties of their right to appeal the decision or award  
 4 and further advise the parties that failure to do so within  
 5 the period prescribed by this chapter shall result in the  
 6 decision or award becoming final and enforceable as a  
 7 judgment by the appropriate municipal or superior court,  
 8 in accordance with the appropriate rules of jurisdiction.

9 (b) For the purpose of this section, an award shall  
 10 include any sums found owing, damages proved, and any  
 11 penalties awarded pursuant to this code.

12 (c) All awards granted pursuant to a hearing under  
 13 this chapter shall accrue interest on all due and unpaid  
 14 wages at the same rates prescribed by subdivision (b) of  
 15 Section 3289 of the Civil Code. The interest shall accrue  
 16 until the wages are paid from the date that the wages  
 17 were due and payable as provided in Part 1 (commencing  
 18 with Section 200) of Division 2.

19 SEC. 3. Section 98.2 of the Labor Code is amended to  
 20 read:

21 98.2. (a) Within 10 days after service of notice of an  
 22 order, decision, or award the parties may seek review by  
 23 filing an appeal to the municipal or superior court, in  
 24 accordance with the appropriate rules of jurisdiction,  
 25 where the appeal shall be heard de novo. A copy of the  
 26 appeal request shall be served upon the Labor  
 27 Commissioner by the appellant. For purposes of  
 28 computing the 10-day period after service, Section 1013  
 29 of the Code of Civil Procedure shall be applicable. The  
 30 appeal proceedings in the municipal or superior court  
 31 shall be exempt from Section 1141.11 of the Code of Civil  
 32 Procedure.

33 (b) Whenever an employer files an appeal pursuant to  
 34 this section, the employer shall post an undertaking with  
 35 the reviewing court in the amount of the order, decision,  
 36 or award. The undertaking shall consist of an appeal bond  
 37 issued by a licensed surety or a cash deposit with the court  
 38 in the amount of the order, decision, or award. The  
 39 employer shall provide written notification to the other  
 40 parties and the Labor Commissioner of the posting of the



1 person. The service of a subpoena in these cases is not  
 2 required if written notice requesting the witness to  
 3 attend, with the time and place of the hearing, is served  
 4 upon the party or person, or his or her attorney of record.  
 5 The notice shall be served at least 10 days before the time  
 6 requested for attendance unless the hearing officer  
 7 prescribes a shorter time. The giving of the notice shall  
 8 have the same effect as service of a subpoena on the  
 9 witness. Section 1013 of the Code of Civil Procedure shall  
 10 be applicable to service of these notices.

11 (c) The notice specified in subdivision (b) may  
 12 include a request that the party or person bring with him  
 13 or her books, papers, records, documents, or other things.  
 14 The notice shall state the exact materials or things to be  
 15 produced and that the party or person has them in his or  
 16 her possession or under his or her control.

17 (d) A party or person required to attend or produce  
 18 records at a hearing pursuant to notice under subdivision  
 19 (b) may object to the notice as provided in Section  
 20 11450.30 of the Government Code.

21 (e) Notice under subdivision (b) has the same force  
 22 and effect as a subpoena issued by the Labor  
 23 Commissioner pursuant to subdivision (a) and may be  
 24 enforced, and willful disobedience punished, in  
 25 accordance with Section 93.

26 (f) Any subpoena specified in subdivision (a) or any  
 27 notice specified in subdivision (b) may include a request  
 28 that the party or person deliver to the Labor  
 29 Commissioner and to the requesting party a copy of the  
 30 books, papers, records, documents, or other things  
 31 subject to the subpoena or notice not less than five days  
 32 prior to the hearing.

33 SEC. 2. Section 98.1 of the Labor Code is amended to  
 34 read:

35 98.1. (a) Within 15 days after the hearing is  
 36 concluded, the Labor Commissioner shall file in the office  
 37 of the division a copy of the order, decision, or award. The  
 38 order, decision, or award shall include a summary of the  
 39 hearing and the reasons for the decision. Upon filing of  
 40 the order, decision, or award, the Labor Commissioner

1 undertaking. The undertaking shall be on the condition  
 2 that, if any judgment is entered in favor of the employee,  
 3 the employer shall pay the amount owed pursuant to the  
 4 judgment, and if the appeal is withdrawn or dismissed  
 5 without entry of judgment, the employer shall pay the  
 6 amount owed pursuant to the order, decision, or award of  
 7 the Labor Commissioner unless the parties have executed  
 8 a settlement agreement for payment of some other  
 9 amount, in which case the employer shall pay the amount  
 10 that the employer is obligated to pay under the terms of  
 11 the settlement agreement. If the employer fails to pay the  
 12 amount owed within 10 days of entry of the judgment,  
 13 dismissal, or withdrawal of the appeal, or the execution of  
 14 a settlement agreement, a portion of the undertaking if  
 15 equal to the amount owed, or the entire undertaking if  
 16 the amount owed exceeds the undertaking, shall be  
 17 forfeited to the employee.

18 (c) If the party seeking review by filing an appeal to  
 19 the municipal or superior court is unsuccessful in the  
 20 appeal, the court shall determine the costs and reasonable  
 21 attorney's fees incurred by the other parties to the appeal,  
 22 regardless of whether the successful party is represented  
 23 by his or her attorney or by the Labor Commissioner  
 24 pursuant to Section 98.4, and shall assess that amount as  
 25 a cost upon the party filing the appeal.

26 (d) If no notice of appeal of the order, decision, or  
 27 award is filed within the period set forth in subdivision  
 28 (a), the order, decision, or award shall, in the absence of  
 29 fraud, be deemed the final order.

30 (e) The Labor Commissioner shall file, within 10 days  
 31 of the order becoming final pursuant to subdivision (d),  
 32 a certified copy of the final order with the clerk of the  
 33 municipal or superior court, in accordance with the  
 34 appropriate rules of jurisdiction, of the appropriate  
 35 county unless a settlement has been reached by the  
 36 parties and approved by the Labor Commissioner.  
 37 Judgment shall be entered immediately by the court  
 38 clerk in conformity therewith. The judgment so entered  
 39 shall have the same force and effect as, and shall be  
 40 subject to all of the provisions of law relating to, a

1 judgment in a civil action, and may be enforced in the  
 2 same manner as any other judgment of the court in which  
 3 it is entered. Enforcement of the judgment shall receive  
 4 court priority.

5 (f) In order to ensure that judgments are satisfied, the  
 6 Labor Commissioner may serve upon the judgment  
 7 debtor, personally or by first-class mail at the last known  
 8 address of the judgment debtor listed with the division,  
 9 a form similar to, and requiring the reporting of the same  
 10 information as, the form approved or adopted by the  
 11 Judicial Council for purposes of subdivision (a) of Section  
 12 116.830 of the Code of Civil Procedure to assist in  
 13 identifying the nature and location of any assets of the  
 14 judgment debtor.

15 The judgment debtor shall complete the form and  
 16 cause it to be delivered to the division at the address listed  
 17 on the form within 35 days after the form has been served  
 18 on the judgment debtor, unless the judgment has been  
 19 satisfied. In case of willful failure by the division or the  
 20 debtor to comply with this subdivision, the division or the  
 21 judgment creditor may request the court to apply the  
 22 sanctions provided in Section 708.170 of the Code of Civil  
 23 Procedure.

24 (g) Notwithstanding subdivision (e), the Labor  
 25 Commissioner may stay execution of any judgment  
 26 entered upon an order, decision, or award that has  
 27 become final upon good cause appearing therefor and  
 28 may impose the terms and conditions of the stay of  
 29 execution. A certified copy of the stay of execution shall  
 30 be filed with the clerk entering the judgment.

31 (h) When a judgment is satisfied in fact, otherwise  
 32 than by execution, the Labor Commissioner may, upon  
 33 the motion of either party or on its own motion, order  
 34 entry of satisfaction of judgment. The clerk of the court  
 35 shall enter a satisfaction of judgment upon the filing of a  
 36 certified copy of the order.

37 (i) The Labor Commissioner shall make every  
 38 reasonable effort to ensure that judgments are satisfied,  
 39 including taking all appropriate legal action and



1 requiring the employer to deposit a bond as provided in  
2 Section 240.

3 (j) The judgment creditor, or the Labor  
4 Commissioner as assignee of the judgment creditor, shall  
5 be entitled to court costs and reasonable attorney fees for  
6 enforcing the judgment that is rendered pursuant to this  
7 section.

8 SEC. 4. Section 98.7 of the Labor Code is amended to  
9 read:

10 98.7. (a) Any person who believes that he or she has  
11 been discharged or otherwise discriminated against in  
12 violation of any provision of this code under the  
13 jurisdiction of the Labor Commissioner may file a  
14 complaint with the division within six months after the  
15 occurrence of the violation. The six-month period may be  
16 extended for good cause. The complaint shall be  
17 investigated by a discrimination complaint investigator in  
18 accordance with this section. The Labor Commissioner  
19 shall establish procedures for the investigation of  
20 discrimination complaints. A summary of the procedures  
21 shall be provided to each complainant and respondent at  
22 the time of initial contact. The Labor Commissioner shall  
23 inform complainants charging a violation of Section 6310  
24 or 6311, at the time of initial contact, of his or her right to  
25 file a separate, concurrent complaint with the United  
26 States Department of Labor within 30 days after the  
27 occurrence of the violation.

28 (b) Each complaint of unlawful discharge or  
29 discrimination shall be assigned to a discrimination  
30 complaint investigator, who shall prepare and submit a  
31 report to the Labor Commissioner based on an  
32 investigation of the complaint. The Labor Commissioner  
33 may designate the chief deputy or assistant Labor  
34 Commissioner or the chief counsel to receive and review  
35 the reports. The investigation shall include, where  
36 appropriate, interviews with the complainant,  
37 respondent, and any witnesses who may have  
38 information concerning the alleged violation, and a  
39 review of any documents that may be relevant to the  
40 disposition of the complaint. The identity of witnesses

1 shall remain confidential unless the identification of a  
2 witness becomes necessary to proceed with the  
3 investigation or to prosecute an action to enforce a  
4 determination. The investigation report submitted to the  
5 Labor Commissioner or designee shall include the  
6 statements and documents obtained in the investigation  
7 and the findings of the investigator concerning whether  
8 a violation occurred. The Labor Commissioner may hold  
9 an investigative hearing whenever the Labor  
10 Commissioner determines, after review of the  
11 investigation report, that a hearing is necessary to fully  
12 establish the facts. In the hearing the investigation report  
13 shall be made a part of the record and the complainant  
14 and respondent shall have the opportunity to present  
15 further evidence. The Labor Commissioner shall issue,  
16 serve, and enforce any necessary subpoenas.

17 (c) If the Labor Commissioner determines a violation  
18 has occurred, he or she shall notify the complainant and  
19 respondent and direct the respondent to cease and desist  
20 from the violation and take action as deemed necessary  
21 to remedy the violation, including, where appropriate,  
22 rehiring or reinstatement, reimbursement of lost wages  
23 and interest thereon, payment of reasonable attorney's  
24 fees associated with any hearing held by the Labor  
25 Commissioner in investigating the complaint, and the  
26 posting of notices to employees. If the respondent does  
27 not comply with the order within 10 working days  
28 following notification of the Labor Commissioner's  
29 determination, the Labor Commissioner shall bring an  
30 action promptly in an appropriate court against the  
31 respondent. If the Labor Commissioner fails to bring an  
32 action in court promptly, the complainant may bring an  
33 action against the Labor Commissioner in any  
34 appropriate court for a writ of mandate to compel the  
35 Labor Commissioner to bring an action in court against  
36 the respondent. If the complainant prevails in his or her  
37 action for a writ of mandate, the court shall award the  
38 complainant court costs and reasonable attorney's fees,  
39 notwithstanding any other provision of law. Regardless of  
40 any delay in bringing an action in court, the Labor





1 Commissioner shall not be divested of jurisdiction. In the  
 2 action, the court may permit the claimant to intervene as  
 3 a party plaintiff to the action and shall have jurisdiction,  
 4 for cause shown, to restrain the violation and to order all  
 5 appropriate relief. Appropriate relief includes, but is not  
 6 limited to, rehiring or reinstatement of the complainant,  
 7 reimbursement of lost wages and interest thereon, and  
 8 any other compensation or equitable relief that is  
 9 appropriate under the circumstances of the case. The  
 10 Labor Commissioner shall petition the court for  
 11 appropriate temporary relief or a restraining order unless  
 12 he or she determines good cause exists for not doing so.

13 (d) If the Labor Commissioner determines no  
 14 violation has occurred, he or she shall notify the  
 15 complainant and respondent and shall dismiss the  
 16 complaint. The Labor Commissioner may direct the  
 17 complainant to pay reasonable attorney's fees associated  
 18 with any hearing held by the Labor Commissioner if the  
 19 Labor Commissioner finds the complaint was frivolous,  
 20 unreasonable, groundless, and was brought in bad faith.  
 21 The complainant may, after notification of the Labor  
 22 Commissioner's determination to dismiss a complaint,  
 23 bring an action in an appropriate court, which shall have  
 24 jurisdiction to determine whether a violation occurred,  
 25 and if so, to restrain the violation and order all  
 26 appropriate relief to remedy the violation. Appropriate  
 27 relief includes, but is not limited to, rehiring or  
 28 reinstatement of the complainant, reimbursement of lost  
 29 wages and interest thereon, and other compensation or  
 30 equitable relief that is appropriate under the  
 31 circumstances of the case. When dismissing a complaint,  
 32 the Labor Commissioner shall advise the complainant of  
 33 his or her right to bring an action in an appropriate court  
 34 if he or she disagrees with the determination of the Labor  
 35 Commissioner, and in the case of an alleged violation of  
 36 Section 6310 or 6311, to file a complaint against the state  
 37 program with the United States Department of Labor.  
 38 The filing of a timely complaint against the state program  
 39 with the United States Department of Labor shall vacate  
 40 the Labor Commissioner's dismissal of the person's

1 complaint against the respondent, pending the issuance  
 2 of findings by the United States Department of Labor.  
 3 Within 15 days of the receipt of those findings the Labor  
 4 Commissioner shall notify the parties of the reopening of  
 5 the investigation of the person's complaint against the  
 6 respondent, or shall issue a new determination of the  
 7 complaint pursuant to subdivision (c) or this subdivision.

8 (e) The Labor Commissioner shall notify the  
 9 complainant and respondent of his or her determination  
 10 under subdivision (c) or (d) not later than 60 days after  
 11 the filing of the complaint. Determinations by the Labor  
 12 Commissioner under subdivision (c) or (d) may be  
 13 appealed by the complainant or respondent to the  
 14 Director of Industrial Relations within 10 days following  
 15 notification of the determination. The appeal shall set  
 16 forth specifically and in full detail the grounds upon  
 17 which the appealing party considers the Labor  
 18 Commissioner's determination to be unjust or unlawful,  
 19 and every issue to be considered by the director. The  
 20 director may consider any issue relating to the initial  
 21 determination and may modify, affirm, or reverse the  
 22 Labor Commissioner's determination. The director's  
 23 determination shall be the determination of the Labor  
 24 Commissioner. The director shall notify the complainant  
 25 and respondent of his or her determination within 10 days  
 26 of receipt of the appeal.

27 (f) The rights and remedies provided by this section  
 28 do not preclude an employee from pursuing any other  
 29 rights and remedies under any other provision of law. An  
 30 employee may file a civil judicial action without  
 31 exhausting his or her administrative remedies concerning  
 32 the alleged violation of any of the discrimination  
 33 provisions under the jurisdiction of the Labor  
 34 Commissioner, and may seek whatever relief would be  
 35 available from the Labor Commissioner under this  
 36 section, in addition to any other relief that may be  
 37 available under any other provision of law. The limitation  
 38 period for filing a complaint with the Labor  
 39 Commissioner under subdivision (a) shall not apply to



(c) The successor has in its employ in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) The successor is an individual who is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer.

SEC. 7. Section 203.1 of the Labor Code is amended to read:

203.1. If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days and this penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the violation of this section was unintentional. This penalty is in addition to, and independent and apart from, any other penalty in this article.

SEC. 8. Section 218.5 of the Labor Code is amended to read:

218.5. In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner. This

any civil action filed by an employee under this subdivision.

SEC. 5. Section 100.6 is added to the Labor Code, to read:

100.6. (a) As used in this section, "substantial shareholder" and "parent" have the same meanings as in Section 3717.

(b) In any proceeding under Section 98 in which unpaid wages or penalties are claimed to be owed by a corporation, the Labor Commissioner may cause substantial shareholders and parents to be joined as parties.

(c) In any action filed against a corporation for unpaid wages or penalties pursuant to Section 98.3, 218.5, 1193.6, or 1194, substantial shareholders and its parent may be joined as defendants.

(d) In the event that the Labor Commissioner or the court finds a corporation liable for unpaid wages or penalties, the following persons shall be jointly and severally liable with the corporation:

(1) The parent of the corporation.

(2) All substantial shareholders of the corporation or its parent.

(e) The rights and remedies provided by this section are not exclusive and do not preclude an employee or the Labor Commissioner from pursuing any other rights and remedies against any persons under any other provision of law.

SEC. 6. Section 100.7 is added to the Labor Code, to read:

100.7. A successor to any employer that owes wages to former employees is liable for those wages if any of the following are applicable:

(a) The successor uses substantially the same facilities or workforce to produce substantially the same products for substantially the same type of customers as the predecessor employer.

(b) The successor shares the ownership, management, control of labor relations, or interrelations of business operations with the predecessor.



1 section shall not apply to a surety issuing a bond pursuant  
 2 to Chapter 9 (commencing with Section 7000) of Division  
 3 of the Business and Professions Code or to an action to  
 4 enforce a mechanics lien brought under Chapter 2  
 5 (commencing with Section 3109) of Title 15 of Part 4 of  
 6 Division 3 of the Civil Code.

7 This section does not apply to any action for which  
 8 attorney's fees are recoverable under Section 1194.

9 SEC. 9. Section 218.6 is added to the Labor Code, to  
 10 read:

11 218.6. In any action brought for the nonpayment of  
 12 wages, the court shall award interest on all due and  
 13 unpaid wages at the rate of interest specified in  
 14 subdivision (b) of Section 3289 of the Civil Code, which  
 15 shall accrue from the date that the wages were due and  
 16 payable as provided in Part 1 (commencing with Section  
 17 200) of Division 2.

18 SEC. 10. Section 226 of the Labor Code is amended to  
 19 read:

20 226. (a) Every employer shall, semimonthly or at the  
 21 time of each payment of wages, furnish each of his or her  
 22 employees, either as a detachable part of the check, draft,  
 23 or voucher paying the employee's wages, or separately  
 24 when wages are paid by personal check or cash, an  
 25 itemized statement in writing showing (1) gross wages  
 26 earned, (2) total hours worked by the employee, except  
 27 for any employee whose compensation is solely based on  
 28 a salary and who is exempt from payment of overtime  
 29 under Section 515 or any applicable order of the  
 30 Industrial Welfare Commission, (3) the number of piece  
 31 rate units earned and any applicable piece rate if the  
 32 employee is paid on a piece-rate basis, (4) all deductions,  
 33 provided, that all deductions made on written orders of  
 34 the employee may be aggregated and shown as one item,  
 35 (5) net wages earned, (6) the inclusive dates of the period  
 36 for which the employee is paid, (7) the name of the  
 37 employee and his or her social security number, (8) the  
 38 name and address of the legal entity that is the employer,  
 39 and (9) all applicable hourly rates in effect during the pay

1 period and the corresponding number of hours worked at  
 2 each hourly rate by the employee.

3 The deductions made from payments of wages shall be  
 4 recorded in ink or other indelible form, properly dated,  
 5 showing the month, day, and year, and a copy of the  
 6 statement or a record of the deductions shall be kept on  
 7 file by the employer for at least three years at the place  
 8 of employment or at a central location within the State of  
 9 California.

10 An employer that is required by this code or any  
 11 regulation adopted pursuant to this code to keep the  
 12 information required by this section shall afford current  
 13 and former employees the right to inspect or copy the  
 14 records pertaining to that current or former employee,  
 15 upon reasonable request to the employer. The employer  
 16 may take reasonable steps to assure the identity of a  
 17 current or former employee. If the employer provides  
 18 copies of the records, the actual cost of reproduction may  
 19 be charged to the current or former employee.

20 This section does not apply to any employer of any  
 21 person employed by the owner or occupant of a  
 22 residential dwelling whose duties are incidental to the  
 23 ownership, maintenance, or use of the dwelling,  
 24 including the care and supervision of children, or whose  
 25 duties are personal and not in the course of the trade,  
 26 business, profession, or occupation of the owner or  
 27 occupant.

28 (b) Any employee suffering injury as a result of a  
 29 knowing and intentional failure by an employer to  
 30 comply with subdivision (a) shall be entitled to recover  
 31 the greater of all actual damages or one hundred dollars  
 32 (\$100) for each pay period in which a violation occurs, not  
 33 exceeding an aggregate penalty of ten thousand dollars  
 34 (\$10,000), and shall be entitled to an award of costs and  
 35 reasonable attorney's fees. Any aggrieved employee may  
 36 seek recovery of the damages or penalty provided for in  
 37 this section by filing a complaint pursuant to subdivision  
 38 (a) of Section 98 or bringing a civil action.



1 compensation for the full length of the meal or rest  
 2 periods during which the employee was required to  
 3 perform any work. An employee paid on a piecework  
 4 basis shall be entitled to an amount equal to twice the  
 5 amount of piecework units earned during those periods,  
 6 but in no event shall the amount be less than the  
 7 applicable state minimum wage for the full length of  
 8 those time periods during which any work was  
 9 performed.

10 (c) Any employee aggrieved by a violation of this  
 11 section may do either of the following:

12 (1) Seek recovery of payments under paragraph (2) of  
 13 subdivision (b) through a complaint filed pursuant to  
 14 subdivision (a) of Section 98.

15 (2) Seek recovery of payments under paragraph (2) of  
 16 subdivision (b) in a civil action. The court shall award a  
 17 prevailing plaintiff in such an action reasonable  
 18 attorney's fees.

19 SEC. 13. Section 226.8 is added to the Labor Code, to  
 20 read:

21 226.8. If an employer fails to provide and maintain  
 22 necessary tools or equipment in violation of an applicable  
 23 wage order of the Industrial Welfare Commission and an  
 24 employee purchases the tools or equipment in order to  
 25 perform his or her work, the employer shall do one of the  
 26 following, whichever results in a greater sum being paid  
 27 to the employee:

28 (a) Purchase the tools or equipment from the  
 29 employee in an amount equal to the price paid by the  
 30 employee for the tools or equipment.

31 (b) Pay sufficient wages to the employee, as stated in  
 32 the applicable wage order, to qualify for an exemption to  
 33 the wage order.

34 SEC. 14. Section 240 of the Labor Code is amended to  
 35 read:

36 240. (a) If any employer has been convicted of a  
 37 violation of any provision of this article, or if any  
 38 judgment against an employer for unpaid wages, interest,  
 39 penalties, or other demands for compensation within the  
 40 jurisdiction of the Labor Commissioner remains

1 (c) This section does not apply to the state, or any city,  
 2 county, city and county, district, or any other  
 3 governmental entity.

4 SEC. 11. Section 226.3 of the Labor Code is amended  
 5 to read:

6 226.3. Any employer that violates subdivision (a) of  
 7 Section 226 shall be subject to a civil penalty in the  
 8 amount of two hundred fifty dollars (\$250) per employee  
 9 per violation in an initial citation and one thousand dollars  
 10 (\$1,000) per employee for each violation in a subsequent  
 11 citation, for which the employer fails to provide the  
 12 employee a wage deduction statement or fails to keep the  
 13 records required in subdivision (a) of Section 226. In the  
 14 event that an employer fails to maintain records that  
 15 identify each employee to whom wages are paid, the  
 16 penalties under this section shall be computed by  
 17 multiplying the number of employees employed on the  
 18 date the penalty is assessed by the 24 semimonthly pay  
 19 periods of the immediately preceding 12 months, but the  
 20 employer may affirmatively establish that the evidence  
 21 supports a lesser penalty based upon proof of a lesser  
 22 number of affected employees. The civil penalties  
 23 provided for in this section are in addition to any other  
 24 penalty provided by law. In enforcing this section, the  
 25 Labor Commissioner shall take into consideration  
 26 whether the violation was inadvertent and, in his or her  
 27 discretion, may decide not to penalize an employer for a  
 28 first violation when that violation was due to a clerical  
 29 error or inadvertent mistake.

30 SEC. 12. Section 226.7 is added to the Labor Code, to  
 31 read:

32 226.7. (a) No employer shall require any employee to  
 33 work during any meal or rest period mandated by an  
 34 applicable order of the Industrial Welfare Commission.

35 (b) An employer that violates this section shall be  
 36 subject to both of the following:

37 (1) A civil penalty of fifty dollars (\$50) per employee  
 38 per violation.

39 (2) Payment to the aggrieved employee of an amount  
 40 equal to twice his or her average hourly rate of



1 unsatisfied for a period of 10 days after the time to appeal  
 2 therefrom has expired, and no appeal therefrom is then  
 3 pending, the Labor Commissioner may require the  
 4 employer to deposit a bond in a sum that the Labor  
 5 Commissioner deems sufficient and adequate in the  
 6 circumstances. The bond shall be payable to the Labor  
 7 Commissioner and shall be conditioned that the  
 8 employer shall, for a definite future period, not exceeding  
 9 six months, pay the employees in accordance with the  
 10 provisions of this article, and shall be further conditioned  
 11 upon the payment by the employer of any unsatisfied  
 12 judgment against the employer for unpaid wages,  
 13 interest, penalties, or other demands within the  
 14 jurisdiction of the Labor Commissioner.

15 (b) If within 10 days after demand for the bond, which  
 16 demand may be made by mail, the employer fails to  
 17 deposit the bond, the Labor Commissioner may bring an  
 18 action in the name and on behalf of the people of the State  
 19 of California against the employer in a court of competent  
 20 jurisdiction to compel the employer to furnish the bond  
 21 or to cease doing business until the employer has done so.  
 22 The employer has the burden of proving either that the  
 23 bond is unnecessary or that the amount demanded is  
 24 excessive. If the court finds that there is just cause for  
 25 requiring the bond, and that the bond is reasonably  
 26 necessary or proper to secure prompt payment of any  
 27 unsatisfied judgment against the employer for unpaid  
 28 wages, interest, penalties, or other demands within the  
 29 jurisdiction of the Labor Commissioner or for the  
 30 employer's compliance with the provisions of this article,  
 31 the court may enjoin the employer, whether an  
 32 individual, partnership, corporation, company, trust, or  
 33 association, and any other person or persons that may  
 34 have been or may be concerned with, or in any way  
 35 participated in, the failure to pay the wages resulting in  
 36 the judgment, from doing business until the requirement  
 37 is met, and make other and further orders appropriate to  
 38 compel compliance with the requirement.  
 39 **SEC-14.**

1 **SEC. 15.** Section 245 is added to the Labor Code, to  
 2 read:

3 245. Whenever the Labor Commissioner makes an  
 4 award against an employer pursuant to this chapter, upon  
 5 finding that the employer has engaged in a pattern and  
 6 practice of violating wage and hours laws, the Labor  
 7 Commissioner shall also make an order requiring the  
 8 employer to post a notice at the place of employment  
 9 where the affected employees are or were employed  
 10 containing a description of the nature of the violation, a  
 11 declaration by the employer stating that it will not engage  
 12 in those unlawful acts in the future, and the address and  
 13 telephone number of the Labor Commissioner. The  
 14 notice, on a form approved by the Labor Commissioner,  
 15 shall be posted conspicuously by the employer for a  
 16 period of not less than 60 days. The notice shall bear the  
 17 seal of the State of California and of the Labor  
 18 Commissioner and the signature of the employer or a  
 19 representative or agent of the employer. The cost of  
 20 producing and posting the notice shall be paid by the  
 21 employer. The failure or refusal of an employer to post  
 22 the notice in accordance with this section shall subject the  
 23 employer to a civil penalty, to be assessed and collected  
 24 by the Labor Commissioner, in the amount of five  
 25 hundred dollars (\$500) for each instance in which the  
 26 employer fails or refuses to post a notice as required by  
 27 this section, and the employer shall be required to  
 28 properly post the notice.

29 **SEC-15.**

30 **SEC. 16.** Section 350 of the Labor Code is amended to  
 31 read:

32 350. As used in this article, unless the context indicates  
 33 otherwise:

34 (a) "Employer" means every person engaged in any  
 35 business or enterprise in this state that has one or more  
 36 persons in service under any appointment, contract of  
 37 hire, or apprenticeship, express or implied, oral or  
 38 written, irrespective of whether the person is the owner  
 39 of the business or is operating on a concessionaire or other  
 40 basis.



1 (b) "Employee" means every person, including aliens  
 2 and minors, rendering actual service in any business for  
 3 an employer, whether gratuitously or for wages or pay,  
 4 whether the wages or pay are measured by the standard  
 5 of time, piece, task, commission, or other method of  
 6 calculation, and whether the service is rendered on a  
 7 commission, concessionaire, or other basis.

8 (c) "Employing" includes hiring, or in any way  
 9 contracting for, the services of an employee.

10 (d) "Agent" means every person other than the  
 11 employer having the authority to hire or discharge any  
 12 employee or supervise, direct, or control the acts of  
 13 employees.

14 (e) "Gratuity" includes any tip, gratuity, money, or  
 15 part thereof that has been paid or given to or left for an  
 16 employee by a patron of a business over and above the  
 17 actual amount due the business for services rendered or  
 18 for goods, food, drink, or articles sold or served to the  
 19 patron. Any amounts paid directly by a patron to a dancer  
 20 employed by an employer subject to Industrial Welfare  
 21 Commission Order No. 5 or 10 shall be deemed a gratuity.

22 (f) "Business" means any business establishment or  
 23 enterprise, regardless of where conducted.

24 ~~SEC-16.~~

25 ~~SEC. 17.~~ Section 351 of the Labor Code is amended to  
 26 read:

27 351. No employer or agent shall collect, take, or  
 28 receive any gratuity or a part thereof that is paid, given  
 29 to, or left for an employee by a patron, or deduct any  
 30 amount from wages due an employee on account of a  
 31 gratuity, or require an employee to credit the amount, or  
 32 any part thereof, of a gratuity against and as a part of the  
 33 wages due the employee from the employer. Every  
 34 gratuity is hereby declared to be the sole property of the  
 35 employee or employees to whom it was paid, given, or left  
 36 for. An employer that permits patrons to pay gratuities by  
 37 credit card shall pay the employees the full amount of the  
 38 gratuity that the patron indicated on the credit card slip,  
 39 without any deductions for any credit card payment  
 40 processing fees or costs that may be charged to the

1 employer by the credit card company. Payment of  
 2 gratuities made by patrons using credit cards shall be  
 3 made to the employees not later than the next regular  
 4 payday following the date the patron authorized the  
 5 credit card payment.

6 ~~SEC-17.~~

7 ~~SEC. 18.~~ Section 1174 of the Labor Code is amended  
 8 to read:

9 1174. Every person employing labor in this state shall:

10 (a) Furnish to the commission, at its request, reports  
 11 or information that the commission requires to carry out  
 12 this chapter. The reports and information shall be verified  
 13 if required by the commission or any member thereof.

14 (b) Allow any member of the commission or the  
 15 employees of the Division of Labor Standards  
 16 Enforcement free access to the place of business or  
 17 employment of the person to secure any information or  
 18 make any investigation that they are authorized by this  
 19 chapter to ascertain or make. The commission may  
 20 inspect or make excerpts, relating to the employment of  
 21 employees, from the books, reports, contracts, payrolls,  
 22 documents, or papers of the person.

23 (c) Keep a record showing the names and addresses of  
 24 all employees employed and the ages of all minors.

25 (d) Keep, at a central location in the state or at the  
 26 plants or establishments at which employees are  
 27 employed, payroll records showing the hours worked  
 28 daily by and the wages paid to, and the number of  
 29 piece-rate units earned by and any applicable piece rate  
 30 paid to, employees employed at the respective plants or  
 31 establishments. These records shall be kept in accordance  
 32 with rules established for this purpose by the commission,  
 33 but in any case shall be kept on file for not less than two  
 34 years.

35 ~~SEC-18.~~

36 ~~SEC. 19.~~ Section 1174.5 of the Labor Code is amended  
 37 to read:

38 1174.5. (a) Any person employing labor who willfully  
 39 fails to maintain the records required by subdivision (c)  
 40 of Section 1174 or accurate and complete records

1 required by subdivision (d) of Section 1174 or by the  
 2 applicable wage orders of the Industrial Welfare  
 3 Commission, or to allow any member of the commission  
 4 or employees of the division to inspect records pursuant  
 5 to subdivision (b) of Section 1174, shall be subject to a civil  
 6 penalty of one hundred dollars (\$100) per employee for  
 7 each payroll period during which the violation occurs, up  
 8 to a maximum period of three years.

9 ~~SEC. 19.~~

10 SEC. 20. Section 1194.2 of the Labor Code is amended  
 11 to read:

12 1194.2. (a) In any proceeding before the Labor  
 13 Commissioner, or any action under Section 1193.6 or 1194,  
 14 to recover wages because of the payment of a wage less  
 15 than the minimum wage fixed by an order of the  
 16 commission, an employee shall be entitled additionally to  
 17 recover liquidated damages in an amount equal to the  
 18 wages unlawfully unpaid and interest thereon. Nothing in  
 19 this subdivision shall be construed to authorize the  
 20 recovery of liquidated damages for failure to pay  
 21 overtime compensation.

22 (b) Notwithstanding subdivision (a), if the employer  
 23 demonstrates to the satisfaction of the Labor  
 24 Commissioner or the court that the act or omission giving  
 25 rise to the action was in good faith and that the employer  
 26 had reasonable grounds for believing that the act or  
 27 omission was not a violation of any provision of the Labor  
 28 Code relating to minimum wage, or an order of the  
 29 commission, the Labor Commissioner or the court may,  
 30 in the discretion of the Labor Commissioner or the court  
 31 as the case may be, refuse to award liquidated damages  
 32 or award any amount of liquidated damages not  
 33 exceeding the amount specified in subdivision (a).

34 (c) This section only applies to civil actions  
 35 commenced on or after January 1, 1992.

36 ~~SEC. 20.~~

37 SEC. 21. Section 1197.1 of the Labor Code is amended  
 38 to read:

39 1197.1. (a) Any employer or other person, acting  
 40 either individually or as an officer, agent, or employee of

1 another person, who pays or causes to be paid to any  
 2 employee a wage less than the minimum fixed by an  
 3 order of the commission shall be subject to a civil penalty  
 4 and restitution as follows:

5 (1) For any initial violation that is intentionally  
 6 committed, fifty dollars (\$50) for each underpaid  
 7 employee for each pay period for which the employee is  
 8 underpaid, in addition to an amount sufficient to recover,  
 9 on behalf of the affected employees, all underpaid wages,  
 10 any owed interest thereon, and statutory liquidated  
 11 damages.

12 (2) For each subsequent violation for the same specific  
 13 offense, two hundred fifty dollars (\$250) for each  
 14 underpaid employee for each pay period for which the  
 15 employee is underpaid, regardless of whether the initial  
 16 violation is intentionally committed, in addition to an  
 17 amount sufficient to recover, on behalf of the affected  
 18 employees, all underpaid wages, any interest owed  
 19 thereon, and statutory liquidated damages.

20 (b) If, upon inspection or investigation, the Labor  
 21 Commissioner determines that a person has paid or  
 22 caused to be paid a wage less than the minimum, the  
 23 Labor Commissioner may issue a citation to the person in  
 24 violation. The citation may be served personally or by  
 25 registered mail in accordance with subdivision (c) of  
 26 Section 11505 of the Government Code. Each citation  
 27 shall be in writing and shall describe the nature of the  
 28 violation, including reference to the statutory provision  
 29 alleged to have been violated. The Labor Commissioner  
 30 promptly shall take all appropriate action, in accordance  
 31 with this section, to enforce the citation and to recover  
 32 the civil penalty and restitution assessed in connection  
 33 with the citation.

34 (c) If a person desires to contest a citation or the  
 35 proposed assessment of a civil penalty or restitution  
 36 therefor, the person shall, within 15 business days after  
 37 service of the citation, notify the office of the Labor  
 38 Commissioner that appears on the citation of his or her  
 39 request for an informal hearing. The Labor  
 40 Commissioner or his or her deputy or agent shall, within



1 30 days, hold a hearing at the conclusion of which the  
2 citation or proposed assessment of a civil penalty and  
3 restitution shall be affirmed, modified, or dismissed.

4 The decision of the Labor Commissioner shall consist of  
5 a notice of findings, findings, and an order, all of which  
6 shall be served on all parties to the hearing within 15 days  
7 after the hearing by regular first-class mail at the last  
8 known address of the party on file with the Labor  
9 Commissioner. Service shall be completed pursuant to  
10 Section 1013 of the Code of Civil Procedure. Any amount  
11 found due by the Labor Commissioner as a result of a  
12 hearing shall become due and payable 45 days after notice  
13 of the findings and written findings and order have been  
14 mailed to the party assessed. A writ of mandate may be  
15 taken from this finding to the appropriate superior court.  
16 The party shall pay any judgment and costs ultimately  
17 rendered by the court against the party for the  
18 assessment. The writ shall be taken within 45 days of  
19 service of the notice of findings, findings, and order  
20 thereon.

21 (d) A person to whom a citation has been issued may,  
22 in lieu of contesting a citation pursuant to this section,  
23 transmit to the office of the Labor Commissioner  
24 designated on the citation the amount of the civil penalty  
25 and restitution specified for the violation within 15  
26 business days after issuance of the citation.

27 (e) When no petition objecting to a citation or the  
28 proposed assessment of a civil penalty and restitution is  
29 filed, a certified copy of the citation or proposed civil  
30 penalty and restitution may be filed by the Labor  
31 Commissioner in the office of the clerk of the superior  
32 court in any county in which the person assessed has or  
33 had a place of business. The clerk, immediately upon the  
34 filing, shall enter judgment for the state against the  
35 person assessed in the amount shown on the citation or  
36 proposed assessment of a civil penalty and restitution.

37 (f) When findings and the order thereon are made  
38 affirming or modifying a citation or proposed assessment  
39 of a civil penalty and restitution after hearing, a certified  
40 copy of these findings and the order entered thereon may

1 be entered by the Labor Commissioner in the office of the  
2 clerk of the superior court in any county in which the  
3 person assessed has property or in which the person  
4 assessed has or had a place of business. The clerk,  
5 immediately upon the filing, shall enter judgment for the  
6 state against the person assessed in the amount shown on  
7 the certified order.

8 (g) A judgment entered pursuant to this section shall  
9 bear the same rate of interest and shall have the same  
10 effect as other judgments and be given the same  
11 preference allowed by the law on other judgments  
12 rendered for claims for taxes. The clerk shall make no  
13 charge for the service provided by this section to be  
14 performed by him or her.

15 (h) The civil penalties and restitution provided for in  
16 this section are in addition to any other penalty or remedy  
17 provided by law.

18 (i) This section shall not apply to any order of the  
19 commission relating to household occupations.  
20 ~~SEC. 21.~~

21 SEC. 22. No reimbursement is required by this act  
22 pursuant to Section 6 of Article XIII B of the California  
23 Constitution because the only costs that may be incurred  
24 by a local agency or school district will be incurred  
25 because this act creates a new crime or infraction,  
26 eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section  
28 17556 of the Government Code, or changes the definition  
29 of a crime within the meaning of Section 6 of Article  
30 XIII B of the California Constitution.







AMENDED IN SENATE JULY 6, 2000  
AMENDED IN SENATE JUNE 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL** **No. 2509**

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Introduced by Assembly Member Steinberg

February 24, 2000

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An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 of, and to add Sections 100.6, 100.7, 218.6, 226.7, 226.8, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSELS DIGEST

AB 2509, as amended, Steinberg. Employment: remedies for employment law violations.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for recovery of wages, penalties, and other demands



for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law requires these awards for unpaid wages to accrue interest at a specified adjusted annual rate determined under the tax laws.

This bill would instead require this rate to be the same as the legal rate of interest payable upon a contract obligation in default where the contract does not otherwise specify the rate of interest.

Existing law provides that any order, decision, or award made by the Labor Commissioner in these administrative proceedings may be appealed by filing an action in the municipal or superior court. If the appealing party is unsuccessful, existing law requires the court to award costs and attorney's fees to the other parties.

This bill would exempt those appeal proceedings from provisions respecting submission of certain matters in specified municipal and superior courts to mandatory arbitration. The bill would require employers filing such an appeal to post a prescribed undertaking and would provide for disposition thereof. The bill would require an award of costs and attorney's fees against an unsuccessful appellant regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Under existing law, any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious. Existing law requires that, if the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill would specify that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the United States Department of Labor. The bill would require the Labor Commissioner, within 15 days of receiving those findings, either to notify the parties of the reopening of the

investigation or to issue a new determination of the complaint. The bill would also expressly provide that an employee may file a civil judicial action without exhausting any administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

The bill would make defined substantial shareholders and parents subject to liability for wages unpaid and owed by a corporation, as specified. The bill would make successors to an employer liable for unpaid wages owed by the employer under specified circumstances.

Under existing law, an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill would make this penalty applicable to all employers and would make related conforming and technical, nonsubstantive changes.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would add an express exception for employee actions to recover underpayment of the minimum wage or overtime wages, in which a prevailing employee but not the employer is expressly authorized to recover attorney's fees. The bill would also require the court, in an action to recover unpaid wages, to award interest, as specified.

Under existing law, employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these



requirements is a misdemeanor. Under existing law, an employee suffering injury as a result of the employer's knowing or intentional failure to comply with this requirement is entitled to recover the greater of actual damages or \$100, plus costs and reasonable attorney's fees.

This bill would provide that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation. The bill would impose a state-mandated local program by requiring disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis and by requiring disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate. The bill would revise the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$100 for each pay period in which the violation occurs up to \$10,000, plus costs and reasonable attorney's fees. The bill would authorize an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

Existing law makes employers liable for prescribed civil penalties, based upon the number of employees and number of citations, for failure to provide employee wage deduction statements or keep certain employee pay records.

This bill would specify that if the employer fails to maintain records identifying the affected employees, these penalties are to be computed in accordance with a prescribed formula. The bill would make a technical, clarifying change in related provisions that specify employer record-keeping requirements.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor

Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.

This bill would provide that if an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall either purchase the tools or equipment from the employee in an amount equal to the price paid by the employee or pay sufficient wages to the employee to qualify for an exemption to the wage order, as provided.

Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for 10 days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to 6 months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would also be conditioned on payment of such an unsatisfied judgment. The bill would make conforming related changes.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.



Existing law prohibits employers from receiving or deducting gratuities intended for employees from wages otherwise payable. Violation is a misdemeanor. Under existing law, this prohibition is not applicable to an employee that has a guaranteed wage or salary that is at least the higher of the federal or state minimum wage.

This bill would delete the above exemption, thereby imposing a state-mandated local program. As so revised, the bill would make these provisions applicable to amounts paid by patrons directly to a dancer subject to specified orders of the commission. The bill would also impose a state-mandated local program by requiring employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

Existing law requires employers to keep specified payroll records.

This bill would require these payroll records to identify the number of piece-rate units earned by employees and any applicable piece rate paid to employees.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 3 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.

Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or

omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.

This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 92 of the Labor Code is amended  
2 to read:  
3 92. (a) The Labor Commissioner and his or her  
4 deputies and agents may issue subpoenas to compel the  
5 attendance of witnesses and parties and the production of  
6 books, papers and records; administer oaths; examine  
7 witnesses under oath; take the verification,  
8 acknowledgment, or proof of written instruments; and  
9 take depositions and affidavits for the purpose of carrying  
10 out the provisions of this code and all laws that the  
11 division is to enforce.

12 (b) In any adjudicatory hearing before the Labor  
13 Commissioner, a notice in lieu of a subpoena may be used  
14 to compel the attendance of a party, a person for whose  
15 benefit the proceeding is prosecuted or defended, or any

1 the order, decision, or award, the Labor Commissioner  
 2 shall serve a copy of the decision personally or by  
 3 first-class mail on the parties. The notice shall also advise  
 4 the parties of their right to appeal the decision or award  
 5 and further advise the parties that failure to do so within  
 6 the period prescribed by this chapter shall result in the  
 7 decision or award becoming final and enforceable as a  
 8 judgment by the appropriate municipal or superior court,  
 9 in accordance with the appropriate rules of jurisdiction.

10 (b) For the purpose of this section, an award shall  
 11 include any sums found owing, damages proved, and any  
 12 penalties awarded pursuant to this code.

13 (c) All awards granted pursuant to a hearing under  
 14 this chapter shall accrue interest on all due and unpaid  
 15 wages at the same rate as prescribed by subdivision (b) of  
 16 Section 3289 of the Civil Code. The interest shall accrue  
 17 until the wages are paid from the date that the wages  
 18 were due and payable as provided in Part 1 (commencing  
 19 with Section 200) of Division 2.

20 SEC. 3. Section 98.2 of the Labor Code is amended to  
 21 read:

22 98.2. (a) Within 10 days after service of notice of an  
 23 order, decision, or award the parties may seek review by  
 24 filing an appeal to the municipal or superior court, in  
 25 accordance with the appropriate rules of jurisdiction,  
 26 where the appeal shall be heard de novo. A copy of the  
 27 appeal request shall be served upon the Labor  
 28 Commissioner by the appellant. For purposes of  
 29 computing the 10-day period after service, Section 1013  
 30 of the Code of Civil Procedure shall be applicable. The  
 31 appeal proceedings in the municipal or superior court  
 32 shall be exempt from Section 1141.11 of the Code of Civil  
 33 Procedure.

34 (b) Whenever an employer files an appeal pursuant to  
 35 this section, the employer shall post an undertaking with  
 36 the reviewing court in the amount of the order, decision,  
 37 or award. The undertaking shall consist of an appeal bond  
 38 issued by a licensed surety or a cash deposit with the court  
 39 in the amount of the order, decision, or award. The  
 40 employer shall provide written notification to the other

1 officer, director, or managing agent of a party or such a  
 2 person. The service of a subpoena in these cases is not  
 3 required if written notice requesting the witness to  
 4 attend, with the time and place of the hearing, is served  
 5 upon the party or person, or his or her attorney of record.  
 6 The notice shall be served at least 10 days before the time  
 7 requested for attendance unless the hearing officer  
 8 prescribes a shorter time. The giving of the notice shall  
 9 have the same effect as service of a subpoena on the  
 10 witness. Section 1013 of the Code of Civil Procedure shall  
 11 be applicable to service of these notices.

12 (c) The notice specified in subdivision (b) may  
 13 include a request that the party or person bring with him  
 14 or her books, papers, records, documents, or other things.  
 15 The notice shall state the exact materials or things to be  
 16 produced and that the party or person has them in his or  
 17 her possession or under his or her control.

18 (d) A party or person required to attend or produce  
 19 records at a hearing pursuant to notice under subdivision  
 20 (b) may object to the notice as provided in Section  
 21 11450.30 of the Government Code.

22 (e) Notice under subdivision (b) has the same force  
 23 and effect as a subpoena issued by the Labor  
 24 Commissioner pursuant to subdivision (a) and may be  
 25 enforced, and willful disobedience punished, in  
 26 accordance with Section 93.

27 (f) Any subpoena specified in subdivision (a) or any  
 28 notice specified in subdivision (b) may include a request  
 29 that the party or person deliver to the Labor  
 30 Commissioner and to the requesting party a copy of the  
 31 books, papers, records, documents, or other things  
 32 subject to the subpoena or notice not less than five days  
 33 prior to the hearing.

34 SEC. 2. Section 98.1 of the Labor Code is amended to  
 35 read:

36 98.1. (a) Within 15 days after the hearing is  
 37 concluded, the Labor Commissioner shall file in the office  
 38 of the division a copy of the order, decision, or award. The  
 39 order, decision, or award shall include a summary of the  
 40 hearing and the reasons for the decision. Upon filing of



1 parties and the Labor Commissioner of the posting of the  
 2 undertaking. The undertaking shall be on the condition  
 3 that, if any judgment is entered in favor of the employee,  
 4 the employer shall pay the amount owed pursuant to the  
 5 judgment, and if the appeal is withdrawn or dismissed  
 6 without entry of judgment, the employer shall pay the  
 7 amount owed pursuant to the order, decision, or award of  
 8 the Labor Commissioner unless the parties have executed  
 9 a settlement agreement for payment of some other  
 10 amount, in which case the employer shall pay the amount  
 11 that the employer is obligated to pay under the terms of  
 12 the settlement agreement. If the employer fails to pay the  
 13 amount owed within 10 days of entry of the judgment,  
 14 dismissal, or withdrawal of the appeal, or the execution of  
 15 a settlement agreement, a portion of the undertaking if  
 16 equal to the amount owed, or the entire undertaking if  
 17 the amount owed exceeds the undertaking, shall be  
 18 forfeited to the employee.

19 (c) If the party seeking review by filing an appeal to  
 20 the municipal or superior court is unsuccessful in the  
 21 appeal, the court shall determine the costs and reasonable  
 22 attorney's fees incurred by the other parties to the appeal,  
 23 regardless of whether the successful party is represented  
 24 by his or her attorney or by the Labor Commissioner  
 25 pursuant to Section 98.4, and shall assess that amount as  
 26 a cost upon the party filing the appeal.

27 (d) If no notice of appeal of the order, decision, or  
 28 award is filed within the period set forth in subdivision  
 29 (a), the order, decision, or award shall, in the absence of  
 30 fraud, be deemed the final order.

31 (e) The Labor Commissioner shall file, within 10 days  
 32 of the order becoming final pursuant to subdivision (d),  
 33 a certified copy of the final order with the clerk of the  
 34 municipal or superior court, in accordance with the  
 35 appropriate rules of jurisdiction, of the appropriate  
 36 county unless a settlement has been reached by the  
 37 parties and approved by the Labor Commissioner.  
 38 Judgment shall be entered immediately by the court  
 39 clerk in conformity therewith. The judgment so entered  
 40 shall have the same force and effect as, and shall be

1 subject to all of the provisions of law relating to, a  
 2 judgment in a civil action, and may be enforced in the  
 3 same manner as any other judgment of the court in which  
 4 it is entered. Enforcement of the judgment shall receive  
 5 court priority.

6 (f) In order to ensure that judgments are satisfied, the  
 7 Labor Commissioner may serve upon the judgment  
 8 debtor, personally or by first-class mail at the last known  
 9 address of the judgment debtor listed with the division,  
 10 a form similar to, and requiring the reporting of the same  
 11 information as, the form approved or adopted by the  
 12 Judicial Council for purposes of subdivision (a) of Section  
 13 116.830 of the Code of Civil Procedure to assist in  
 14 identifying the nature and location of any assets of the  
 15 judgment debtor.

16 The judgment debtor shall complete the form and  
 17 cause it to be delivered to the division at the address listed  
 18 on the form within 35 days after the form has been served  
 19 on the judgment debtor, unless the judgment has been  
 20 satisfied. In case of willful failure by the judgment debtor  
 21 to comply with this subdivision, the division or the  
 22 judgment creditor may request the court to apply the  
 23 sanctions provided in Section 708.170 of the Code of Civil  
 24 Procedure.

25 (g) Notwithstanding subdivision (e), the Labor  
 26 Commissioner may stay execution of any judgment  
 27 entered upon an order, decision, or award that has  
 28 become final upon good cause appearing therefor and  
 29 may impose the terms and conditions of the stay of  
 30 execution. A certified copy of the stay of execution shall  
 31 be filed with the clerk entering the judgment.

32 (h) When a judgment is satisfied in fact, otherwise  
 33 than by execution, the Labor Commissioner may, upon  
 34 the motion of either party or on its own motion, order  
 35 entry of satisfaction of judgment. The clerk of the court  
 36 shall enter a satisfaction of judgment upon the filing of a  
 37 certified copy of the order.

38 (i) The Labor Commissioner shall make every  
 39 reasonable effort to ensure that judgments are satisfied,  
 40 including taking all appropriate legal action and



1 requiring the employer to deposit a bond as provided in  
2 Section 240.

3 (j) The judgment creditor, or the Labor  
4 Commissioner as assignee of the judgment creditor, shall  
5 be entitled to court costs and reasonable attorney fees for  
6 enforcing the judgment that is rendered pursuant to this  
7 section.

8 SEC. 4. Section 98.7 of the Labor Code is amended to  
9 read:

10 98.7. (a) Any person who believes that he or she has  
11 been discharged or otherwise discriminated against in  
12 violation of any provision of this code under the  
13 jurisdiction of the Labor Commissioner may file a  
14 complaint with the division within six months after the  
15 occurrence of the violation. The six-month period may be  
16 extended for good cause. The complaint shall be  
17 investigated by a discrimination complaint investigator in  
18 accordance with this section. The Labor Commissioner  
19 shall establish procedures for the investigation of  
20 discrimination complaints. A summary of the procedures  
21 shall be provided to each complainant and respondent at  
22 the time of initial contact. The Labor Commissioner shall  
23 inform complainants charging a violation of Section 6310  
24 or 6311, at the time of initial contact, of his or her right to  
25 file a separate, concurrent complaint with the United  
26 States Department of Labor within 30 days after the  
27 occurrence of the violation.

28 (b) Each complaint of unlawful discharge or  
29 discrimination shall be assigned to a discrimination  
30 complaint investigator, who shall prepare and submit a  
31 report to the Labor Commissioner based on an  
32 investigation of the complaint. The Labor Commissioner  
33 may designate the chief deputy or assistant Labor  
34 Commissioner or the chief counsel to receive and review  
35 the reports. The investigation shall include, where  
36 appropriate, interviews with the complainant,  
37 respondent, and any witnesses who may have  
38 information concerning the alleged violation, and a  
39 review of any documents that may be relevant to the  
40 disposition of the complaint. The identity of witnesses

1 shall remain confidential unless the identification of a  
2 witness becomes necessary to proceed with the  
3 investigation or to prosecute an action to enforce a  
4 determination. The investigation report submitted to the  
5 Labor Commissioner or designee shall include the  
6 statements and documents obtained in the investigation  
7 and the findings of the investigator concerning whether  
8 a violation occurred. The Labor Commissioner may hold  
9 an investigative hearing whenever the Labor  
10 Commissioner determines, after review of the  
11 investigation report, that a hearing is necessary to fully  
12 establish the facts. In the hearing the investigation report  
13 shall be made a part of the record and the complainant  
14 and respondent shall have the opportunity to present  
15 further evidence. The Labor Commissioner shall issue,  
16 serve, and enforce any necessary subpoenas.

17 (c) If the Labor Commissioner determines a violation  
18 has occurred, he or she shall notify the complainant and  
19 respondent and direct the respondent to cease and desist  
20 from the violation and take action as deemed necessary  
21 to remedy the violation, including, where appropriate,  
22 rehiring or reinstatement, reimbursement of lost wages  
23 and interest thereon, payment of reasonable attorney's  
24 fees associated with any hearing held by the Labor  
25 Commissioner in investigating the complaint, and the  
26 posting of notices to employees. If the respondent does  
27 not comply with the order within 10 working days  
28 following notification of the Labor Commissioner's  
29 determination, the Labor Commissioner shall bring an  
30 action promptly in an appropriate court against the  
31 respondent. If the Labor Commissioner fails to bring an  
32 action in court promptly, the complainant may bring an  
33 action against the Labor Commissioner in any  
34 appropriate court for a writ of mandate to compel the  
35 Labor Commissioner to bring an action in court against  
36 the respondent. If the complainant prevails in his or her  
37 action for a writ of mandate, the court shall award the  
38 complainant court costs and reasonable attorney's fees,  
39 notwithstanding any other provision of law. Regardless of  
40 any delay in bringing an action in court, the Labor



complaint against the respondent, pending the issuance of findings by the United States Department of Labor. Within 15 days of the receipt of those findings the Labor Commissioner shall notify the parties of the reopening of the investigation of the person's complaint against the respondent, or shall issue a new determination of the complaint pursuant to subdivision (c) or this subdivision.

(e) The Labor Commissioner shall notify the complainant and respondent of his or her determination under subdivision (c) or (d) not later than 60 days after the filing of the complaint. Determinations by the Labor Commissioner under subdivision (c) or (d) may be appealed by the complainant or respondent to the Director of Industrial Relations within 10 days following notification of the determination. The appeal shall set forth specifically and in full detail the grounds upon which the appealing party considers the Labor Commissioner's determination to be unjust or unlawful, and every issue to be considered by the director. The director may consider any issue relating to the initial determination and may modify, affirm, or reverse the Labor Commissioner's determination. The director's determination shall be the determination of the Labor Commissioner. The director shall notify the complainant and respondent of his or her determination within 10 days of receipt of the appeal.

(f) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provision of law. An employee may file a civil judicial action without exhausting his or her administrative remedies concerning the alleged violation of any of the discrimination provisions under the jurisdiction of the Labor Commissioner, and may seek whatever relief would be available from the Labor Commissioner under this section, in addition to any other relief that may be available under any other provision of law. The limitation period for filing a complaint with the Labor Commissioner under subdivision (a) shall not apply to

Commissioner shall not be divested of jurisdiction. In the action, the court may permit the claimant to intervene as a party plaintiff to the action and shall have jurisdiction, for cause shown, to restrain the violation and to order all appropriate relief. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and any other compensation or equitable relief that is appropriate under the circumstances of the case. The Labor Commissioner shall petition the court for appropriate temporary relief or a restraining order unless he or she determines good cause exists for not doing so.

(d) If the Labor Commissioner determines no violation has occurred, he or she shall notify the complainant and respondent and shall dismiss the complaint. The Labor Commissioner may direct the complainant to pay reasonable attorney's fees associated with any hearing held by the Labor Commissioner if the Labor Commissioner finds the complaint was frivolous, unreasonable, groundless, and was brought in bad faith. The complainant may, after notification of the Labor Commissioner's determination to dismiss a complaint, bring an action in an appropriate court, which shall have jurisdiction to determine whether a violation occurred, and if so, to restrain the violation and order all appropriate relief to remedy the violation. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and other compensation or equitable relief that is appropriate under the circumstances of the case. When dismissing a complaint, the Labor Commissioner shall advise the complainant of his or her right to bring an action in an appropriate court if he or she disagrees with the determination of the Labor Commissioner, and in the case of an alleged violation of Section 6310 or 6311, to file a complaint against the state program with the United States Department of Labor. The filing of a timely complaint against the state program with the United States Department of Labor shall vacate the Labor Commissioner's dismissal of the person's



1 any civil action filed by an employee under this  
2 subdivision.

3 SEC. 5. Section 100.6 is added to the Labor Code, to  
4 read:

5 100.6. (a) As used in this section, "substantial  
6 shareholder" and "parent" have the same meanings as in  
7 Section 3717.

8 (b) In any proceeding under Section 98 in which  
9 unpaid wages or penalties are claimed to be owed by a  
10 corporation, the Labor Commissioner may cause  
11 substantial shareholders and parents to be joined as  
12 parties.

13 (c) In any action filed against a corporation for unpaid  
14 wages or penalties pursuant to Section 98.3, 218.5, 1193.6,  
15 or 1194, substantial shareholders and its parent may be  
16 joined as defendants.

17 (d) In the event that the Labor Commissioner or the  
18 court finds a corporation liable for unpaid wages or  
19 penalties, the following persons shall be jointly and  
20 severally liable with the corporation:

21 (1) The parent of the corporation.  
22 (2) All substantial shareholders of the corporation or  
23 its parent.

24 (e) The rights and remedies provided by this section  
25 are not exclusive and do not preclude an employee or the  
26 Labor Commissioner from pursuing any other rights and  
27 remedies against any persons under any other provision  
28 of law.

29 SEC. 6. Section 100.7 is added to the Labor Code, to  
30 read:

31 100.7. A successor to any employer that owes wages to  
32 former employees is liable for those wages if any of the  
33 following are applicable:

34 (a) The successor uses substantially the same facilities  
35 or workforce to produce substantially the same products  
36 for substantially the same type of customers as the  
37 predecessor employer.

38 (b) The successor shares the ownership, management,  
39 control of labor relations, or interrelations of business  
40 operations with the predecessor.

1 (c) The successor has in its employ in a managerial  
2 capacity any person who directly or indirectly controlled  
3 the wages, hours, or working conditions of the affected  
4 employees of the predecessor employer.

5 (d) The successor is an individual who is an immediate  
6 family member of any owner, partner, officer, or director  
7 of the predecessor employer or of any person who had a  
8 financial interest in the predecessor employer.

9 SEC. 7. Section 203.1 of the Labor Code is amended  
10 to read:

11 203.1. If an employer pays an employee in the regular  
12 course of employment or in accordance with Section 201,  
13 201.5, 201.7, or 202 any wages or fringe benefits, or both,  
14 by check, draft or voucher, which check, draft or voucher  
15 is subsequently refused payment because the employer  
16 or maker has no account with the bank, institution, or  
17 person on which the instrument is drawn, or has  
18 insufficient funds in the account upon which the  
19 instrument is drawn at the time of its presentation, so long  
20 as the same is presented within 30 days of receipt by the  
21 employee of the check, draft or voucher, those wages or  
22 fringe benefits, or both, shall continue as a penalty from  
23 the due date thereof at the same rate until paid or until  
24 an action therefor is commenced. However, those wages  
25 and fringe benefits shall not continue for more than 30  
26 days and this penalty shall not apply if the employer can  
27 establish to the satisfaction of the Labor Commissioner or  
28 an appropriate court of law that the violation of this  
29 section was unintentional. This penalty is in addition to,  
30 and independent and apart from, any other penalty in  
31 this article.

32 SEC. 8. Section 218.5 of the Labor Code is amended  
33 to read:

34 218.5. In any action brought for the nonpayment of  
35 wages, fringe benefits, or health and welfare or pension  
36 fund contributions, the court shall award reasonable  
37 attorney's fees and costs to the prevailing party if any  
38 party to the action requests attorney's fees and costs upon  
39 the initiation of the action. This section shall not apply to  
40 an action brought by the Labor Commissioner. This



1 section shall not apply to a surety issuing a bond pursuant  
 2 to Chapter 9 (commencing with Section 7000) of Division  
 3 3 of the Business and Professions Code or to an action to  
 4 enforce a mechanics lien brought under Chapter 2  
 5 (commencing with Section 3109) of Title 15 of Part 4 of  
 6 Division 3 of the Civil Code.

7 This section does not apply to any action for which  
 8 attorney's fees are recoverable under Section 1194.

9 SEC. 9. Section 218.6 is added to the Labor Code, to  
 10 read:

11 218.6. In any action brought for the nonpayment of  
 12 wages, the court shall award interest on all due and  
 13 unpaid wages at the rate of interest specified in  
 14 subdivision (b) of Section 3289 of the Civil Code, which  
 15 shall accrue from the date that the wages were due and  
 16 payable as provided in Part 1 (commencing with Section  
 17 200) of Division 2.

18 SEC. 10. Section 226 of the Labor Code is amended to  
 19 read:

20 226. (a) Every employer shall, semimonthly or at the  
 21 time of each payment of wages, furnish each of his or her  
 22 employees, either as a detachable part of the check, draft,  
 23 or voucher paying the employee's wages, or separately  
 24 when wages are paid by personal check or cash, an  
 25 itemized statement in writing showing (1) gross wages  
 26 earned, (2) total hours worked by the employee, except  
 27 for any employee whose compensation is solely based on  
 28 a salary and who is exempt from payment of overtime  
 29 under Section 515 or any applicable order of the  
 30 Industrial Welfare Commission, (3) the number of piece  
 31 rate units earned and any applicable piece rate if the  
 32 employee is paid on a piece-rate basis, (4) all deductions,  
 33 provided, that all deductions made on written orders of  
 34 the employee may be aggregated and shown as one item,  
 35 (5) net wages earned, (6) the inclusive dates of the period  
 36 for which the employee is paid, (7) the name of the  
 37 employee and his or her social security number, (8) the  
 38 name and address of the legal entity that is the employer,  
 39 and (9) all applicable hourly rates in effect during the pay

1 period and the corresponding number of hours worked at  
 2 each hourly rate by the employee.

3 The deductions made from payments of wages shall be  
 4 recorded in ink or other indelible form, properly dated,  
 5 showing the month, day, and year, and a copy of the  
 6 statement or a record of the deductions shall be kept on  
 7 file by the employer for at least three years at the place  
 8 of employment or at a central location within the State of  
 9 California.

10 An employer that is required by this code or any  
 11 regulation adopted pursuant to this code to keep the  
 12 information required by this section shall afford current  
 13 and former employees the right to inspect or copy the  
 14 records pertaining to that current or former employee,  
 15 upon reasonable request to the employer. The employer  
 16 may take reasonable steps to assure the identity of a  
 17 current or former employee. If the employer provides  
 18 copies of the records, the actual cost of reproduction may  
 19 be charged to the current or former employee.

20 This section does not apply to any employer of any  
 21 person employed by the owner or occupant of a  
 22 residential dwelling whose duties are incidental to the  
 23 ownership, maintenance, or use of the dwelling,  
 24 including the care and supervision of children, or whose  
 25 duties are personal and not in the course of the trade,  
 26 business, profession, or occupation of the owner or  
 27 occupant.

28 (b) Any employee suffering injury as a result of a  
 29 knowing and intentional failure by an employer to  
 30 comply with subdivision (a) shall be entitled to recover  
 31 the greater of all actual damages or one hundred dollars  
 32 (\$100) for each pay period in which a violation occurs, not  
 33 exceeding an aggregate penalty of ten thousand dollars  
 34 (\$10,000), and shall be entitled to an award of costs and  
 35 reasonable attorney's fees. Any aggrieved employee may  
 36 seek recovery of the damages or penalty provided for in  
 37 this section by filing a complaint pursuant to subdivision  
 38 (a) of Section 98 or bringing a civil action.

1 (c) This section does not apply to the state, or any city,  
2 county, city and county, district, or any other  
3 governmental entity.

4 SEC. 11. Section 226.3 of the Labor Code is amended  
5 to read:

6 226.3. Any employer that violates subdivision (a) of  
7 Section 226 shall be subject to a civil penalty in the  
8 amount of two hundred fifty dollars (\$250) per employee  
9 per violation in an initial citation and one thousand dollars  
10 (\$1,000) per employee for each violation in a subsequent  
11 citation, for which the employer fails to provide the  
12 employee a wage deduction statement or fails to keep the  
13 records required in subdivision (a) of Section 226. In the  
14 event that an employer fails to maintain records that  
15 identify each employee to whom wages are paid, the  
16 penalties under this section shall be computed by  
17 multiplying the number of employees employed on the  
18 date the penalty is assessed by the 24 semimonthly pay  
19 periods of the immediately preceding 12 months, but the  
20 employer may affirmatively establish that the evidence  
21 supports a lesser penalty based upon proof of a lesser  
22 number of affected employees. The civil penalties  
23 provided for in this section are in addition to any other  
24 penalty provided by law. In enforcing this section, the  
25 Labor Commissioner shall take into consideration  
26 whether the violation was inadvertent and, in his or her  
27 discretion, may decide not to penalize an employer for a  
28 first violation when that violation was due to a clerical  
29 error or inadvertent mistake.

30 SEC. 12. Section 226.7 is added to the Labor Code, to  
31 read:

32 226.7. (a) No employer shall require any employee to  
33 work during any meal or rest period mandated by an  
34 applicable order of the Industrial Welfare Commission.

35 (b) An employer that violates this section shall be  
36 subject to both of the following:

37 (1) A civil penalty of fifty dollars (\$50) per employee  
38 per violation.

39 (2) Payment to the aggrieved employee of an amount  
40 equal to twice his or her average hourly rate of

1 compensation for the full length of the meal or rest  
2 periods during which the employee was required to  
3 perform any work. An employee paid on a piecework  
4 basis shall be entitled to an amount equal to twice the  
5 amount of piecework units earned during those periods,  
6 but in no event shall the amount be less than the  
7 applicable state minimum wage for the full length of  
8 those time periods during which any work was  
9 performed.

10 (c) Any employee aggrieved by a violation of this  
11 section may do either of the following:

12 (1) Seek recovery of payments under paragraph (2) of  
13 subdivision (b) through a complaint filed pursuant to  
14 subdivision (a) of Section 98.

15 (2) Seek recovery of payments under paragraph (2) of  
16 subdivision (b) in a civil action. The court shall award a  
17 prevailing plaintiff in such an action reasonable  
18 attorney's fees.

19 SEC. 13. Section 226.8 is added to the Labor Code, to  
20 read:

21 226.8. If an employer fails to provide and maintain  
22 necessary tools or equipment in violation of an applicable  
23 wage order of the Industrial Welfare Commission and an  
24 employee purchases the tools or equipment in order to  
25 perform his or her work, the employer shall do one of the  
26 following, whichever results in a greater sum being paid  
27 to the employee:

28 (a) Purchase the tools or equipment from the  
29 employee in an amount equal to the price paid by the  
30 employee for the tools or equipment.

31 (b) Pay sufficient wages to the employee for a period  
32 of six months, as stated in the applicable wage order, to  
33 qualify for an exemption to the wage order.

34 SEC. 14. Section 240 of the Labor Code is amended to  
35 read:

36 240. (a) If any employer has been convicted of a  
37 violation of any provision of this article, or if any  
38 judgment against an employer for unpaid wages, interest,  
39 penalties, or other demands for compensation within the  
40 jurisdiction of the Labor Commissioner remains



1 unsatisfied for a period of 10 days after the time to appeal  
 2 therefrom has expired, and no appeal therefrom is then  
 3 pending, the Labor Commissioner may require the  
 4 employer to deposit a bond in a sum that the Labor  
 5 Commissioner deems sufficient and adequate in the  
 6 circumstances. The bond shall be payable to the Labor  
 7 Commissioner and shall be conditioned that the  
 8 employer shall, for a definite future period, not exceeding  
 9 six months, pay the employees in accordance with the  
 10 provisions of this article, and shall be further conditioned  
 11 upon the payment by the employer of any unsatisfied  
 12 judgment against the employer for unpaid wages,  
 13 interest, penalties, or other demands within the  
 14 jurisdiction of the Labor Commissioner.

15 (b) If within 10 days after demand for the bond, which  
 16 demand may be made by mail, the employer fails to  
 17 deposit the bond, the Labor Commissioner may bring an  
 18 action in the name and on behalf of the people of the State  
 19 of California against the employer in a court of competent  
 20 jurisdiction to compel the employer to furnish the bond  
 21 or to cease doing business until the employer has done so.  
 22 The employer has the burden of proving either that the  
 23 bond is unnecessary or that the amount demanded is  
 24 excessive. If the court finds that there is just cause for  
 25 requiring the bond, and that the bond is reasonably  
 26 necessary or proper to secure prompt payment of any  
 27 unsatisfied judgment against the employer for unpaid  
 28 wages, interest, penalties, or other demands within the  
 29 jurisdiction of the Labor Commissioner or for the  
 30 employer's compliance with the provisions of this article,  
 31 the court may enjoin the employer, whether an  
 32 individual, partnership, corporation, company, trust, or  
 33 association, and any other person or persons that may  
 34 have been or may be concerned with, or in any way  
 35 participated in, the failure to pay the wages resulting in  
 36 the judgment, from doing business until the requirement  
 37 is met, and make other and further orders appropriate to  
 38 compel compliance with the requirement.

39 SEC. 15. Section 245 is added to the Labor Code. to  
 40 read:

1 245. Whenever the Labor Commissioner makes an  
 2 award against an employer pursuant to this chapter, upon  
 3 finding that the employer has engaged in a pattern and  
 4 practice of violating wage and hours laws, the Labor  
 5 Commissioner shall also make an order requiring the  
 6 employer to post a notice at the place of employment  
 7 where the affected employees are or were employed  
 8 containing a description of the nature of the violation, a  
 9 declaration by the employer stating that it will not engage  
 10 in those unlawful acts in the future, and the address and  
 11 telephone number of the Labor Commissioner. The  
 12 notice, on a form approved by the Labor Commissioner,  
 13 shall be posted conspicuously by the employer for a  
 14 period of not less than 60 days. The notice shall bear the  
 15 seal of the State of California and of the Labor  
 16 Commissioner and the signature of the employer or a  
 17 representative or agent of the employer. The cost of  
 18 producing and posting the notice shall be paid by the  
 19 employer. The failure or refusal of an employer to post  
 20 the notice in accordance with this section shall subject the  
 21 employer to a civil penalty, to be assessed and collected  
 22 by the Labor Commissioner, in the amount of five  
 23 hundred dollars (\$500) for each instance in which the  
 24 employer fails or refuses to post a notice as required by  
 25 this section, and the employer shall be required to  
 26 properly post the notice.

27 SEC. 16. Section 350 of the Labor Code is amended to  
 28 read:

29 350. As used in this article, unless the context indicates  
 30 otherwise:

31 (a) "Employer" means every person engaged in any  
 32 business or enterprise in this state that has one or more  
 33 persons in service under any appointment, contract of  
 34 hire, or apprenticeship, express or implied, oral or  
 35 written, irrespective of whether the person is the owner  
 36 of the business or is operating on a concessionaire or other  
 37 basis.

38 (b) "Employee" means every person, including aliens  
 39 and minors, rendering actual service in any business for  
 40 an employer, whether gratuitously or for wages or pay,

1 whether the wages or pay are measured by the standard  
 2 of time, piece, task, commission, or other method of  
 3 calculation, and whether the service is rendered on a  
 4 commission, concessionaire, or other basis.  
 5 (c) "Employing" includes hiring, or in any way  
 6 contracting for, the services of an employee.  
 7 (d) "Agent" means every person other than the  
 8 employer having the authority to hire or discharge any  
 9 employee or supervise, direct, or control the acts of  
 10 employees.

11 (e) "Gratuity" includes any tip, gratuity, money, or  
 12 part thereof that has been paid or given to or left for an  
 13 employee by a patron of a business over and above the  
 14 actual amount due the business for services rendered or  
 15 for goods, food, drink, or articles sold or served to the  
 16 patron. Any amounts paid directly by a patron to a dancer  
 17 employed by an employer subject to Industrial Welfare  
 18 Commission Order No. 5 or 10 shall be deemed a gratuity.

19 (f) "Business" means any business establishment or  
 20 enterprise, regardless of where conducted.  
 21 SEC. 17. Section 351 of the Labor Code is amended to  
 22 read:

23 351. No employer or agent shall collect, take, or  
 24 receive any gratuity or a part thereof that is paid, given  
 25 to, or left for an employee by a patron, or deduct any  
 26 amount from wages due an employee on account of a  
 27 gratuity, or require an employee to credit the amount, or  
 28 any part thereof, of a gratuity against and as a part of the  
 29 wages due the employee from the employer. Every  
 30 gratuity is hereby declared to be the sole property of the  
 31 employee or employees to whom it was paid, given, or left  
 32 for. An employer that permits patrons to pay gratuities by  
 33 credit card shall pay the employees the full amount of the  
 34 gratuity that the patron indicated on the credit card slip,  
 35 without any deductions for any credit card payment  
 36 processing fees or costs that may be charged to the  
 37 employer by the credit card company. Payment of  
 38 gratuities made by patrons using credit cards shall be  
 39 made to the employees not later than the next regular

1 payday following the date the patron authorized the  
 2 credit card payment.

3 SEC. 18. Section 1174 of the Labor Code is amended  
 4 to read:

5 1174. Every person employing labor in this state shall:

6 (a) Furnish to the commission, at its request, reports  
 7 or information that the commission requires to carry out  
 8 this chapter. The reports and information shall be verified  
 9 if required by the commission or any member thereof.

10 (b) Allow any member of the commission or the  
 11 employees of the Division of Labor Standards  
 12 Enforcement free access to the place of business or  
 13 employment of the person to secure any information or  
 14 make any investigation that they are authorized by this  
 15 chapter to ascertain or make. The commission may  
 16 inspect or make excerpts, relating to the employment of  
 17 employees, from the books, reports, contracts, payrolls,  
 18 documents, or papers of the person.

19 (c) Keep a record showing the names and addresses of  
 20 all employees employed and the ages of all minors.

21 (d) Keep, at a central location in the state or at the  
 22 plants or establishments at which employees are  
 23 employed, payroll records showing the hours worked  
 24 daily by and the wages paid to, and the number of  
 25 piece-rate units earned by and any applicable piece rate  
 26 paid to, employees employed at the respective plants or  
 27 establishments. These records shall be kept in accordance  
 28 with rules established for this purpose by the commission,  
 29 but in any case shall be kept on file for not less than two  
 30 years.

31 SEC. 19. Section 1174.5 of the Labor Code is amended  
 32 to read:

33 1174.5. Any person employing labor who willfully fails  
 34 to maintain the records required by subdivision (c) of  
 35 Section 1174 or accurate and complete records required  
 36 by subdivision (d) of Section 1174 or by the applicable  
 37 wage orders of the Industrial Welfare Commission, or to  
 38 allow any member of the commission or employees of the  
 39 division to inspect records pursuant to subdivision (b) of  
 40 Section 1174, shall be subject to a civil penalty of one



1 hundred dollars (\$100) per employee for each payroll  
2 period during which the violation occurs, up to a  
3 maximum period of three years.

4 SEC. 20. Section 1194.2 of the Labor Code is amended  
5 to read:

6 1194.2. (a) In any proceeding before the Labor  
7 Commissioner, or any action under Section 1193.6 or 1194,  
8 to recover wages because of the payment of a wage less  
9 than the minimum wage fixed by an order of the  
10 commission, an employee shall be entitled additionally to  
11 recover liquidated damages in an amount equal to the  
12 wages unlawfully unpaid and interest thereon. Nothing in  
13 this subdivision shall be construed to authorize the  
14 recovery of liquidated damages for failure to pay  
15 overtime compensation.

16 (b) Notwithstanding subdivision (a), if the employer  
17 demonstrates to the satisfaction of the Labor  
18 Commissioner or the court that the act or omission giving  
19 rise to the action was in good faith and that the employer  
20 had reasonable grounds for believing that the act or  
21 omission was not a violation of any provision of the Labor  
22 Code relating to minimum wage, or an order of the  
23 commission, the Labor Commissioner or the court may,  
24 in the discretion of the Labor Commissioner or the court  
25 as the case may be, refuse to award liquidated damages  
26 or award any amount of liquidated damages not  
27 exceeding the amount specified in subdivision (a).

28 (c) This section only applies to civil actions  
29 commenced on or after January 1, 1992.

30 SEC. 21. Section 1197.1 of the Labor Code is amended  
31 to read:

32 1197.1. (a) Any employer or other person, acting  
33 either individually or as an officer, agent, or employee of  
34 another person, who pays or causes to be paid to any  
35 employee a wage less than the minimum fixed by an  
36 order of the commission shall be subject to a civil penalty  
37 and restitution as follows:

38 (1) For any initial violation that is intentionally  
39 committed, fifty dollars (\$50) for each underpaid  
40 employee for each pay period for which the employee is

1 underpaid, in addition to an amount sufficient to recover,  
2 on behalf of the affected employees, all underpaid wages,  
3 any owed interest thereon, and statutory liquidated  
4 damages.

5 (2) For each subsequent violation for the same specific  
6 offense, two hundred fifty dollars (\$250) for each  
7 underpaid employee for each pay period for which the  
8 employee is underpaid, regardless of whether the initial  
9 violation is intentionally committed, in addition to an  
10 amount sufficient to recover, on behalf of the affected  
11 employees, all underpaid wages, any interest owed  
12 thereon, and statutory liquidated damages.

13 (b) If, upon inspection or investigation, the Labor  
14 Commissioner determines that a person has paid or  
15 caused to be paid a wage less than the minimum, the  
16 Labor Commissioner may issue a citation to the person in  
17 violation. The citation may be served personally or by  
18 registered mail in accordance with subdivision (c) of  
19 Section 11505 of the Government Code. Each citation  
20 shall be in writing and shall describe the nature of the  
21 violation, including reference to the statutory provision  
22 alleged to have been violated. The Labor Commissioner  
23 promptly shall take all appropriate action, in accordance  
24 with this section, to enforce the citation and to recover  
25 the civil penalty and restitution assessed in connection  
26 with the citation.

27 (c) If a person desires to contest a citation or the  
28 proposed assessment of a civil penalty or restitution  
29 therefor, the person shall, within 15 business days after  
30 service of the citation, notify the office of the Labor  
31 Commissioner that appears on the citation of his or her  
32 request for an informal hearing. The Labor  
33 Commissioner or his or her deputy or agent shall, within  
34 30 days, hold a hearing at the conclusion of which the  
35 citation or proposed assessment of a civil penalty and  
36 restitution shall be affirmed, modified, or dismissed.

37 The decision of the Labor Commissioner shall consist of  
38 a notice of findings, findings, and an order, all of which  
39 shall be served on all parties to the hearing within 15 days  
40 after the hearing by regular first-class mail at the last



1 known address of the party on file with the Labor  
 2 Commissioner. Service shall be completed pursuant to  
 3 Section 1013 of the Code of Civil Procedure. Any amount  
 4 found due by the Labor Commissioner as a result of a  
 5 hearing shall become due and payable 45 days after notice  
 6 of the findings and written findings and order have been  
 7 mailed to the party assessed. A writ of mandate may be  
 8 taken from this finding to the appropriate superior court.  
 9 The party shall pay any judgment and costs ultimately  
 10 rendered by the court against the party for the  
 11 assessment. The writ shall be taken within 45 days of  
 12 service of the notice of findings, findings, and order  
 13 thereon.

14 (d) A person to whom a citation has been issued may,  
 15 in lieu of contesting a citation pursuant to this section,  
 16 transmit to the office of the Labor Commissioner  
 17 designated on the citation the amount of the civil penalty  
 18 and restitution specified for the violation within 15  
 19 business days after issuance of the citation.

20 (e) When no petition objecting to a citation or the  
 21 proposed assessment of a civil penalty and restitution is  
 22 filed, a certified copy of the citation or proposed civil  
 23 penalty and restitution may be filed by the Labor  
 24 Commissioner in the office of the clerk of the superior  
 25 court in any county in which the person assessed has or  
 26 had a place of business. The clerk, immediately upon the  
 27 filing, shall enter judgment for the state against the  
 28 person assessed in the amount shown on the citation or  
 29 proposed assessment of a civil penalty and restitution.

30 (f) When findings and the order thereon are made  
 31 affirming or modifying a citation or proposed assessment  
 32 of a civil penalty and restitution after hearing, a certified  
 33 copy of these findings and the order entered thereon may  
 34 be entered by the Labor Commissioner in the office of the  
 35 clerk of the superior court in any county in which the  
 36 person assessed has property or in which the person  
 37 assessed has or had a place of business. The clerk,  
 38 immediately upon the filing, shall enter judgment for the  
 39 state against the person assessed in the amount shown on  
 40 the certified order.

1 (g) A judgment entered pursuant to this section shall  
 2 bear the same rate of interest and shall have the same  
 3 effect as other judgments and be given the same  
 4 preference allowed by the law on other judgments  
 5 rendered for claims for taxes. The clerk shall make no  
 6 charge for the service provided by this section to be  
 7 performed by him or her.

8 (h) The civil penalties and restitution provided for in  
 9 this section are in addition to any other penalty or remedy  
 10 provided by law.

11 (i) This section shall not apply to any order of the  
 12 commission relating to household occupations.  
 13 SEC. 22. No reimbursement is required by this act  
 14 pursuant to Section 6 of Article XIII B of the California  
 15 Constitution because the only costs that may be incurred  
 16 by a local agency or school district will be incurred  
 17 because this act creates a new crime or infraction,  
 18 eliminates a crime or infraction, or changes the penalty  
 19 for a crime or infraction, within the meaning of Section  
 20 17556 of the Government Code, or changes the definition  
 21 of a crime within the meaning of Section 6 of Article  
 22 XIII B of the California Constitution.







AMENDED IN SENATE AUGUST 7, 2000

AMENDED IN SENATE JULY 6, 2000

AMENDED IN SENATE JUNE 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2509**

LSIS - 1d

Introduced by Assembly Member Steinberg

February 24, 2000

An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 of, and to add Sections ~~100.6, 100.7,~~ 218.6, 226.7, 226.8, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSELS DIGEST

AB 2509, as amended, Steinberg. Employment: remedies for employment law violations.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and



findings, either to notify the parties of the reopening of the investigation or to issue a new determination of the complaint. The bill would also expressly provide that an employee may file a civil judicial action without exhausting any administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

~~The bill would make defined substantial shareholders and parents subject to liability for wages unpaid and owed by a corporation, as specified. The bill would make successors to an employer liable for unpaid wages owed by the employer under specified circumstances.~~

Under existing law, an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill would make this penalty applicable to all employers and would make related conforming and technical, nonsubstantive changes.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would add an express exception for employee actions to recover underpayment of the minimum wage or overtime wages, in which a prevailing employee but not the employer is expressly authorized to recover attorney's fees. The bill would also require the court, in an action to recover unpaid wages, to award interest, as specified.

Under existing law, employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages,

awards for recovery of wages, penalties, and other demands for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law requires these awards for unpaid wages to accrue interest at a specified adjusted annual rate determined under the tax laws.

This bill would instead require this rate to be the same as the legal rate of interest payable upon a contract obligation in default where the contract does not otherwise specify the rate of interest.

Existing law provides that any order, decision, or award made by the Labor Commissioner in these administrative proceedings may be appealed by filing an action in the municipal or superior court. If the appealing party is unsuccessful, existing law requires the court to award costs and attorney's fees to the other parties.

This bill would exempt those appeal proceedings from provisions respecting submission of certain matters in specified municipal and superior courts to mandatory arbitration. The bill would require employers filing such an appeal to post a prescribed undertaking and would provide for disposition thereof. The bill would require an award of costs and attorney's fees against an unsuccessful appellant regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Under existing law, any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious. Existing law requires that, if the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill would specify that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the United States Department of Labor. The bill would require the Labor Commissioner, within 15 days of receiving those



and certain other information. Violation of these requirements is a misdemeanor. Under existing law, an employee suffering injury as a result of the employer's knowing or intentional failure to comply with this requirement is entitled to recover the greater of actual damages or \$100, plus costs and reasonable attorney's fees.

This bill would provide that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation. The bill would impose a state-mandated local program by requiring disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis and by requiring disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate. The bill would revise the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$100 for each pay period in which the violation occurs up to \$10,000, plus costs and reasonable attorney's fees. The bill would authorize an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

Existing law makes employers liable for prescribed civil penalties, based upon the number of employees and number of citations, for failure to provide employee wage deduction statements or keep certain employee pay records.

This bill would specify that if the employer fails to maintain records identifying the affected employees, these penalties are to be computed in accordance with a prescribed formula. The bill would make a technical, clarifying change in related provisions that specify employer record-keeping requirements.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make any employer that requires any employee, to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee

could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.

This bill would provide that if an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall either purchase the tools or equipment from the employee in an amount equal to the price paid by the employee or pay sufficient wages to the employee to qualify for an exemption to the wage order, as provided.

Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for 10 days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to 6 months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would also be conditioned on payment of such an unsatisfied judgment. The bill would make conforming related changes.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with

specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law prohibits employers from receiving or deducting gratuities intended for employees from wages otherwise payable. Violation is a misdemeanor. Under existing law, this prohibition is not applicable to an employee that has a guaranteed wage or salary that is at least the higher of the federal or state minimum wage.

This bill would delete the above exemption, thereby imposing a state-mandated local program. As so revised, the bill would make these provisions applicable to amounts paid by patrons directly to a dancer subject to specified orders of the commission. The bill would also impose a state-mandated local program by requiring employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

Existing law requires employers to keep specified payroll records.

This bill would require these payroll records to identify the number of piece-rate units earned by employees and any applicable piece rate paid to employees.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 3 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.

Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to

additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.

This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 92 of the Labor Code is amended  
2 to read:

3 92. (a) The Labor Commissioner and his or her  
4 deputies and agents may issue subpoenas to compel the  
5 attendance of witnesses and parties and the production of  
6 books, papers and records; administer oaths; examine  
7 witnesses under oath; take the verification,  
8 acknowledgment, or proof of written instruments; and  
9 take depositions and affidavits for the purpose of carrying  
10 out the provisions of this code and all laws that the  
11 division is to enforce.

12 (b) In any adjudicatory hearing before the Labor  
13 Commissioner, a notice in lieu of a subpoena may be used





STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
INDUSTRIAL WELFARE COMMISSION

Public Meeting

May 5, 2000

Van Nuys State Office Building  
6150 Van Nuys Boulevard - Auditorium  
Van Nuys, California

**GOLDEN STATE REPORTING**  
P.O. BOX 5848  
Monterey, CA 93944-0848  
(831) 663-8851

P A R T I C I P A N T S

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Industrial Welfare Commission

BILL DOMBROWSKI, Chair

BARRY BROAD

LESLEE COLEMAN

Staff

ANDREW R. BARON, Executive Officer

MARGUERITE C. STRICKLIN, Legal Counsel

MICHAEL MORENO, Principal Analyst



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1 meeting's going at that time.

2           The first item on the agenda is the ski  
3 industry. And we don't really have that many speakers.

4           I guess we'll bring up two panels: first, Bob  
5 Roberts, Glenn Kreis, Kevin Johnston, Brian Cochran, Don  
6 Wolcott, and Tim Badheim (sic).

7           Just grab the seats.

8           For the court recorder's -- to facilitate him,  
9 could you please identify yourself first, just to make  
10 sure we get it on the record for the transcripts?

11           Mr. Roberts, do you want to start it?

12           MR. ROBERTS: Yes. Good morning, chairman,  
13 commissioners, the staff. I am Bob Roberts, the  
14 executive director of the California Ski Industry  
15 Association. And with me today I have a number of  
16 gentlemen from our industry. And I'll let them introduce  
17 themselves as we do it. I just want to make a couple of  
18 brief overview remarks.

19           I did include in my letter to you the fact that  
20 we are a very small and unique industry. We operate  
21 principally in rural areas and exclusively above 6,000  
22 feet, so that we do operate in a very different  
23 environment.

24           Our weather conditions are our lives, and we are

1 very, very dependent upon snow, windows of too much snow,  
2 too little snow. We also have conditions -- a lot of our  
3 resorts have snow-making, but those are even, as you will  
4 hear, conditioned upon weather and temperature.

5           One of our real concerns is that we are an  
6 industry that, frankly, is very small and is very  
7 economically difficult to comprehend. We have -- year in  
8 and year out, we do, in California, somewhere between 5.7  
9 and 7.4 million skier visits, depending upon how many --  
10 how the snow flies, quite honestly.

11           And this year is a very good example. Last year  
12 was a record year. We did 7.4 million visitors. 80  
13 percent of our visitors come from California. They come,  
14 they drive. If they see the weather -- if they know the  
15 weather's going to be favorable, they come up. If the  
16 weather's not good, they don't come up. And this year  
17 was absolutely the reverse. We had a very, very poor  
18 start. We lost Christmas, for all practical purposes,  
19 and we lost the first part of January, as you'll hear.  
20 And that had a tremendous impact because we can't, in any  
21 large way, count on a destination business the way that  
22 Colorado does. We're trying to build it, but our market  
23 is Californians. And if Californians have other things  
24 to do or the weather isn't right, they don't come. So we

1 have a -- we are conditioned by weather very  
2 dramatically.

3           The economics are fairly simple. We average  
4 about \$300 million a year in sales. That's the average,  
5 year in and year out, good years and bad. Our labor  
6 portion of that is roughly a third, or a million (sic)  
7 dollars is our annual payroll.

8           The statistics that the National Ski Areas  
9 Association and a number of research associations have  
10 put out indicate that our profitability here in  
11 California averages between 3 and 5 percent of sales,  
12 depending upon the winter. Some winters it's worse, some  
13 winters it's a little better. But 3 to 5 percent is our  
14 norm. So, it's a very low-margin business. You have to  
15 love it to be in it.

16           If we were to have to conform to all of the  
17 conditions in AB 60, we estimate that we'd have at least  
18 about a 15 percent increase. Well, if we've got \$300  
19 million in sales and we've got 5 percent, which is about  
20 \$15 million, as an industry-wide profitability, a 15  
21 percent increase of \$100 million of payroll basically  
22 takes out the profitability for the industry.

23           And we have operated, since we -- as an  
24 industry, since the beginning, under first the federal

1 Fair Labor Standards Act, and then legislation that was  
2 passed during the Brown administration which exempted us  
3 from the daily overtime requirements and allowed us to  
4 continue with the 56-hour week. And this has been, not  
5 only for our industry, but our industry nationally.  
6 Colorado did put in a minimum wage and they put hours  
7 within their minimum wage laws -- and they are our most  
8 direct competitors -- but they too, their legislature,  
9 suspended them from the overtime requirements, because we  
10 really have to make snow while the snow flies, or move it  
11 or manage it. And we are very tied to these weather  
12 patterns.

13           What we had asked for and proposed in our  
14 discussions was to move from a 56-hour week to a 48-hour  
15 week. We feel that that's fair. And certainly, in  
16 today's labor climate, that's a reality. We are in a --  
17 we have a very hot, as we all know, economy in the state,  
18 and it's very competitive. So, we are prepared to move  
19 back.

20           In further discussions, however, with both staff  
21 and counsel, it appears that what we would like to do, as  
22 I proposed in the letter, to have a 48-hour year-round,  
23 simply doesn't work because of the nuances and the legal  
24 nuances that were pointed out to us of the federal Fair

1 Labor Standards. There's a difference between resorts  
2 that are on federal land and that are on private land,  
3 and different standards apply. And so, we are -- we are  
4 asking, and we are going to give you a follow-up letter,  
5 asking you to take those legal considerations into  
6 account, and we would like to see a 48-hour week in the  
7 winter and a 40-hour week in the summer.

8           The summer -- it's important, however, to note  
9 that the summer for us has traditionally been four 10's.  
10 It's a lifestyle issue. People want to go camping,  
11 fishing, get into the back country. So, we would like to  
12 have four 10's.

13           The law provides that you can do all of these  
14 things if you have a vote. And therein lies, really, one  
15 of the hardest parts we have. We have 16,000 employees  
16 in our industry. 14,500 of them are seasonal. And of  
17 those, about half are gone. They come within a period of  
18 time, and some don't even last a season in some resorts.  
19 So, we end up with a tremendously seasonal, volatile  
20 turnover at our seasonal level. And for our core year-  
21 round people, they would be somewhat at the mercy -- and  
22 then there's the question of when do you have the vote.  
23 A year like this, when many of the resorts didn't get  
24 started until even into January, it becomes a very



1 difficult thing for us to comprehend. And in many ways,  
2 we feel it's unfair to the year-round employees, the  
3 hourly year-round employees, as well.

4           So, with me today, I have, as I say, a number of  
5 individuals from the resorts in different walks, and I  
6 think I'd just like to let -- let's start with Kevin  
7 here, because -- from Dodge Ridge -- because they are, I  
8 think, emblematic of the kind of year we've had.

9           MR. JOHNSTON: I'm Kevin. I'm the lift  
10 maintenance manager for Dodge Ridge, in charge of the --  
11 keeping the lifts -- getting the lifts fired up in the  
12 mornings and making sure that they're safe and staying  
13 all day. And it's part of my job. It's about a 10-hour  
14 day during the winter months. We probably work six,  
15 seven days a week. You know, it's our busy season. And  
16 I know a lot of us kind of count on that extra money.  
17 That's kind of like -- that's our little window to make --  
18 - make the extra cash to get through the summer and stuff  
19 like that, so we do put a lot of hours in.

20           This year my ski area had a bad year. We opened  
21 the 27th. We don't have snow-making. We opened the 27th  
22 of January and closed April 9th. So, we're -- you know,  
23 this year, we're -- we're down about half from what our  
24 annual profit is, this year.

1           So, just speaking with Bob, I mean, that 56-hour  
2 deal and all that overtime does make a big dent in the  
3 profits, especially for a small area like ours.

4           MR. ROBERTS: Okay. Glenn, do you want to --

5           MR. KREIS: Yeah. My name is Glenn Kreis, with  
6 Mammoth Mountain. I'm staff supervisor on cats group.  
7 I've worked for Mammoth Mountain for 28 years -- 28  
8 seasons, not all year round.

9           And I went through this before the 56-hour law  
10 and when we had no overtime at all. I mean, you could  
11 work all the hours you wanted, when I was at the low end,  
12 beginning. I started out as a lift operator, worked on  
13 ski patrol, I was a fry cook, and I've been 18 years  
14 working snow cats.

15           And in my experience, the low-end employee got  
16 hurt at 40 hours, especially the people that were in  
17 services like cafeteria, ticket sales, hotel  
18 reservations. They did not get 40 hours. You went home.  
19 You got maybe 38 hours a week. And it really hurt, when  
20 you're at the bottom end of the pay scale. They want  
21 those extra hours, and it really, really tore them up.

22           My job, it doesn't really affect. I'm at the  
23 top end of my pay scale. It doesn't bother me at all,  
24 where I'm at. And in my department, we will get the

1 overtime because of the snow factor. I mean, we have a  
2 mountain open, and we have to groom it all.

3           But in my experience, that's what happened. We  
4 -- it just -- I was a bottom-end kid working in the ski  
5 industry, and we wanted -- I went there working 100 hours  
6 every two weeks. All of a sudden, I'm working 78. And  
7 rents were \$250 a month for a two-bedroom place, and the  
8 salary was \$3.00 an hour, and it just killed you. Now  
9 the salary's at \$8.00 an hour, and a one-bedroom  
10 apartment like I live in is \$550 a month. These kids get  
11 buried. They just get nailed. And they stack them six,  
12 seven, eight in apartments now, even with what they're  
13 making. And they need those hours.

14           And granted, a lot of them don't want it. They  
15 want to go snowboarding and skiing.

16           But that's just a fact of what happened, you  
17 know. It went to 40 hours, they cut our hours. Then it  
18 went to the 56 law, and we got that extra 10 hours we  
19 could work. And that's what's happened in our industry  
20 back in the '70's. And I remember it well.

21           So, I -- that's just my opinion of it. I like  
22 time and a half over 40, but I know what happens on the  
23 bottom end with those kids. So, that's all I have to  
24 say.

1                   MR. COCHRANE: My name's Brian Cochrane. I'm  
2 assistant snow-making supervisor at Snow Summit.

3                   Just to reiterate what Mr. Roberts said, we're  
4 kind of at the mercy of the weather. It isn't -- you  
5 know, it's up and down each season, fluctuates.

6                   Like Glenn, myself, I've been in the business  
7 for quite a few years. And as assistant supervisor, I'm  
8 going to get the hours anyway. A typical snow-making  
9 shift usually lasts minimum of 10 hours, if not more.  
10 And when the weather's cold, we're racking up the hours.  
11 And when it's not, they usually find something else for  
12 us to do, parking lots. Myself, I go to lift maintenance  
13 or the cat crew, grooming. But if, you know, this deal  
14 where, if they're going to cut back our hours because of  
15 the overtime, then they're probably not going to find  
16 work for us in the -- in other departments because, you  
17 know, they have only so much that they can spend.

18                   It's -- most California ski businesses aren't  
19 usually owned by a big corporation or something, you  
20 know, like -- like Vail or US Ski, US. It's mostly the  
21 area you work at, like Snow Summit is just Snow Summit.  
22 You don't have a corporation that we can dig into for  
23 extra funds or something.

24                   But if -- if they have to go back home, say,

1 after 8 hours and they want to cut back on the overtime -  
2 - typically, we have two shift changes if we're making  
3 snow around the clock, usually five at night till five in  
4 the morning or vice versa -- if it has to go to like  
5 three or four shift changes, it would be, personnel-wise,  
6 a logistical nightmare, because the guy's 8 hours are up,  
7 "Okay, you have to go home," and his replacement's not  
8 there. It's just, you know, too bad. Then your -- the  
9 size of your crew is going to fluctuate, and you'd kind  
10 of like to keep it even so we can stay on top of things.

11 Snow-making, especially in a year like this  
12 year, we're very dependent on it, geographically  
13 speaking. And the estimated cost is like \$2,000 to  
14 \$3,000 an hour to make snow. That's equipment rentals,  
15 diesel fuel, and salaries and so forth.

16 So, the business we're in, we're kind of like  
17 farmers and such now, agriculture. We're at the mercy of  
18 the weather. Some years are better than others.

19 MR. ROBERTS: Don, do you want to --

20 COMMISSIONER BROAD: Can I ask you a couple  
21 questions?

22 MR. COCHRANE: Yeah, sure.

23 COMMISSIONER BROAD: And I'm going to have some  
24 more questions specifically for you, sir.

1           Tell me about the wage rates where you work for  
2 the various occupations.

3           MR. COCHRANE: I would -- say like what would be  
4 the entry wage for a brand-new snow-maker?

5           COMMISSIONER BROAD: Yeah.

6           MR. COCHRANE: \$7.50 to \$8.00 an hour is usually  
7 what we start them off at.

8           COMMISSIONER BROAD: And to what?

9           MR. COCHRANE: Myself, right now, I'm up to  
10 \$12.25. The ceiling in my position is \$14.00 an hour.

11          COMMISSIONER BROAD: Do you get any benefits?

12          MR. COCHRANE: As far as insurance or anything?

13          COMMISSIONER BROAD: Yeah.

14          MR. COCHRANE: No. I'm, right now, just  
15 seasonal.

16          COMMISSIONER BROAD: So nobody gets health  
17 insurance?

18          MR. COCHRANE: No, sir. Oh, we do have -- we do  
19 have an accident insurance, you know, like if you're out  
20 free skiing on your own or something. It'll -- it'll  
21 cover emergency costs and such like that. We do have a  
22 package for that.

23          COMMISSIONER BROAD: And do you get anything  
24 like vacations, paid vacation or holidays off?

1 MR. COCHRANE: No, sir. I'm on -- still on  
2 seasonal status. Those people that do get those benefits  
3 would be like Don, which is classified as a full-time,  
4 year-round regular.

5 COMMISSIONER BROAD: So that's the -- maybe the  
6 2,000 out of the 16,000?

7 MR. COCHRANE: Yeah.

8 COMMISSIONER BROAD: Now, so what about like  
9 someone who's a fry cook? Do they get -- are they  
10 minimum wage employees?

11 MR. COCHRANE: I'm sure that they start them off  
12 at something more than minimum wage. I really couldn't  
13 tell you about, you know, the pay scale for other  
14 departments.

15 COMMISSIONER BROAD: Well, okay. Well, I'll ask  
16 somebody else.

17 Okay. I'm done.

18 MR. ROBERTS: Don?

19 MR. WOLCOTT: I'm Don Wolcott. I'm in charge of  
20 the snow cats at Snow Summit.

21 I really can't add a whole lot to what Brian has  
22 mentioned, except like we're at the mercy of the weather.  
23 We had a bad season this year.

24 Usually, in my department, I can bring in three

1 seasonals to help with the snow cats. These three are --  
2 they're locals who live in the valley. This year I could  
3 only bring in one. And for twelve snow cats, trying to  
4 keep them going constantly, it was a little overwhelming,  
5 us putting in 10-, 12-hour days six days a week.

6 Sometimes I've worked two weeks straight.

7 I really -- that's just kind of the impact the  
8 weather has on us. We can't afford to bring these people  
9 in. And they want us to do more. Usually I can keep one  
10 or two, even during the summer. And this year, they're -  
11 - they're gone.

12 COMMISSIONER BROAD: Well, how is it that you've  
13 determined that you can't afford to bring those people  
14 on?

15 MR. WOLCOTT: That's just the way it comes down  
16 with the budget. In fact, our budget disappeared when we  
17 went through a December without any storms. We had a  
18 budget, and the next thing you know, we didn't have a  
19 budget. We were trying to -- we couldn't buy any parts  
20 for the snow cats. We couldn't afford the extra labor.

21 I'm not upstairs. I don't know who makes these  
22 decisions, but I just know that we didn't have a budget.  
23 I couldn't afford these parts, I couldn't do this, I  
24 couldn't do that, I couldn't bring these people in that I



1 was hoping to bring in. And that's the bottom line. It  
2 was a bad year.

3 MR. ROBERTS: Okay. Glenn, did you want to add  
4 something to that or --

5 MR. KREIS: What -- what you were saying on the  
6 snow cat, these things aren't cheap machines. They're a  
7 quarter-million-dollar machines. Parts -- we have Piston  
8 Bullys -- they're from Germany -- Piston Bullys. Fuel  
9 caps are \$20, just for a fuel cap, plastic, shipped over  
10 from -- and this is how we groom. We've got Bombardiers  
11 -- they're in Canada -- and we've got Piston Bullys and  
12 Leitners and Pernoths. They're from Europe, and they are  
13 not cheap machines. The only other thing -- I think  
14 Tucker's still in business in Oregon, but that's mainly a  
15 transport vehicle, not a grooming machine.

16 And so, no budget, no parts. And they're  
17 hydraulic nightmares. I mean they are --

18 MR. WOLCOTT: They're all hydraulics.

19 MR. KREIS: -- very expensive to drive. So,  
20 it's expensive to keep each machine running.

21 We have a fleet -- I don't know any more -- are  
22 on-line groomers are -- we have twelve, we've got four or  
23 five to the snowboard park, we've got transfer -- we  
24 probably have forty machines there, sitting around.

1 MR. WOLCOTT: Yeah. We were putting them down.  
2 I mean, no parts, just -- they were just red-tagged for  
3 the season. And towards the end, we lost two cats.

4 MR. ROBERTS: Tim, do you want to --

5 MR. BROADHAM: My name's Tim Broadham. I work  
6 at Mammoth in the personnel function.

7 I came to the industry five years ago from a  
8 retail background, distribution background, here in  
9 southern California. And I'd never heard of exemptions  
10 from the overtime law prior to coming to the ski  
11 industry. I worked in retail warehouses, where we  
12 routinely sent people home at seven and a half hours or  
13 39-hour weeks and things like that, because we just  
14 couldn't afford to pay time and a half or double time for  
15 people to stay on the clock.

16 And now that I'm in the ski industry -- I  
17 started out as a lift operator and worked as a snow  
18 maker, worked in our bicycle park building bike trails  
19 and such in the summer. And I'm very aware of how, in my  
20 first couple seasons, the management was very alert to  
21 the budget these guys are talking about, because it's a -  
22 - it's a pretty thin-margin business, and a lot thinner  
23 than other businesses that I've been in, anyway. And I  
24 wasn't aware of that my first couple years.

1           And in the past couple seasons, I've been  
2 working in the personnel function for Mammoth, and I'm  
3 very aware of the issues associated with seasonal  
4 workforce. It's difficult to recruit, at Mammoth, for  
5 instance, 1,800 seasonal people every year we bring in.  
6 And to be able to go through the kind of season that we  
7 just went through, where we basically didn't open the  
8 resort for 45 days to the extent that we normally would,  
9 we have to take some pretty drastic measures to keep  
10 people around.

11           As an example, we had about 410 people in  
12 employee housing this year because housing's an issue in  
13 mountain communities. It's a major -- major issue. We  
14 served employee dinners for 44 nights straight, all  
15 through December and January, for free for employees, and  
16 we served almost 19,000 dinners for our employees, just  
17 to have them stay on, because they were getting limited  
18 hours. There just weren't -- if the revenues aren't  
19 there, the guests aren't coming. Los Angeles, San Diego,  
20 Santa Barbara people look at the weather report, and if  
21 there's no snow at Mammoth, they don't drive five hours,  
22 six hours, seven hours to Mammoth to go skiing because  
23 there isn't any skiing. They don't come to town. There  
24 isn't any business in the town, so all of our employees

1 don't work. And as a result, they're still having to  
2 incur costs for housing and kind of hanging in there  
3 hoping that -- that, you know, the snow will come any day  
4 and they're going to be able to get to work and -- and  
5 have the experience they came -- came to our resort to  
6 have.

7           So, we did some pretty drastic things, like the  
8 employee dinners that I was mentioning, as an example.  
9 And we just think -- at least, there are a number of us  
10 who've talked about this in terms of the budget  
11 management -- that -- that overtime at 40 hours could be  
12 a really significant change for our resort, similar to  
13 what Glenn was talking about. And I don't have the  
14 experience he did, you know, ten years ago. But I'm  
15 pretty convinced that the management of Mammoth will --  
16 will see 40 hours as a limiting factor, and they will  
17 send people home at 40 hours as opposed to paying time  
18 and a half, because the budgets just aren't there. And  
19 labor is a huge piece of our -- of our operation.

20           MR. ROBERTS: Okay. I'd just like to say one  
21 last thing, sort of globally. We -- we are -- for many -  
22 - most of these communities, Mount Shasta, all the way  
23 down through Lake Tahoe, Mammoth, Sonora, Big Bear Lake,  
24 Wrightwood, we're kind of the economic engines for these

1 communities. And so, it's a struggle. It's a -- it's a  
2 very challenging business. I think all of us are in this  
3 because of the lifestyle. We got into it because we like  
4 the -- we like the industry, we like the people.

5 No one's getting filthy rich. Wall Street's  
6 turned its back. For one company that went public at 18  
7 is now between \$1.50 and \$2.00 a share. And so, you get  
8 some idea that over the last two years, while the rest of  
9 the world has taken off, the good old ski industry has  
10 kind of languished.

11 So, for us, it's an economic issue, and we're  
12 trying to find that balance and make it right. And  
13 that's why what we are proposing at the 48-hour and the  
14 40 in the  
15 -- in the summer, we think, is both a fair and a correct  
16 approach.

17 COMMISSIONER BROAD: Mr. Roberts, you mentioned  
18 that you had \$300 million in sales. Is that including  
19 year-round activities or just seasonal?

20 MR. ROBERTS: No, that's -- that's year-round,  
21 from the ski resort, because some of them have a few  
22 small ancillary activities. But that doesn't -- most of  
23 the resorts don't own their own hotels or -- they have  
24 restaurants in the lodges, but it varies from place to

1 place. But it's primarily the operations from the  
2 running of the resort, not real estate or other kinds of  
3 things.

4           COMMISSIONER BROAD: Okay. Well, let me ask you  
5 this question. Let's get into some of these issues here.  
6 We have lots of seasonal industries in California, like  
7 canneries, that have shorter seasons than you, that are  
8 dependent on the weather and on crops and agriculture in  
9 a way equally as dependent as you are, where we pay daily  
10 overtime and have always paid daily overtime. And they  
11 are the major employers in the communities in which they  
12 operate in the Central Valley. And those employees  
13 depend on that overtime to get them through the rest of  
14 the year. And it's understood that that's what's  
15 important about overtime, particularly for those seasonal  
16 industries.

17           What's so different about the ski industry?

18           MR. ROBERTS: Well, for one thing, in most of  
19 those industries you've mentioned, commissioner, they  
20 don't have the public showing up at nine o'clock in the  
21 morning. One of the great concerns that we have is  
22 safely preparing our mountains so that when people show  
23 up -- it may have stormed all night or for three days or  
24 whatever -- we have to -- we have a -- we have a

1 tremendous safety requirement to make our facilities safe  
2 for the public.

3           If I'm a farmer, I don't have -- unless I've got  
4 people coming in to pick -- pick and buy my crops, I  
5 don't have to deal with the public every morning on an  
6 ongoing basis. And that's one of the big differences in  
7 our industry, is the fact that we have to be ready for  
8 the public on a daily basis. And most people in weather-  
9 driven industries, they're kind of removed from the final  
10 consumer a step or two.

11           COMMISSIONER BROAD: This Commission has  
12 received, I would say, an unprecedented amount of  
13 communication from just regular old employees in your  
14 industry, and the Legislature received a lot of letters.  
15 And these were not these canned letters generated by some  
16 group or other; these were heartfelt personal letters  
17 sent by hundreds of people in your industry, saying --  
18 begging us to cover -- to cover employees under the daily  
19 overtime rule, that conditions are oppressive, that  
20 employees are made to work at or near minimum wage, under  
21 \$7, \$8, \$9 an hour, whatever, to work weeks at a time  
22 straight for 10, 12, 14 hours, sometimes without breaks  
23 and meal periods, which you're not exempted from -- so  
24 I'd like to have you address that question. And

1 probably, we've received more mail of that sort, where  
2 it's clear that it was not orchestrated and that people  
3 very much felt this than in any other of the mounds of  
4 communication we've received since AB 60.

5 Do you have any comments on that?

6 MR. ROBERTS: Well, having not seen any of the  
7 record, it's hard for me to react specifically to that,  
8 but the conditions are unique.

9 And again, part of it is, with this tremendous  
10 body of seasonal work -- and are these coming from  
11 seasonal temporary workers, the seasonal people, or are  
12 these coming from the year-round? There's a real  
13 difference, I believe, between these two different  
14 elements. But they're all necessary to work together to  
15 make it work.

16 And we have, right now, the employment in our  
17 industry, not just in California, but everywhere -- it's  
18 almost globalized -- the fact that we have probably this  
19 year about 1,000 young people coming in under these J-1  
20 visas and working for 90 days, for the experience, for  
21 the language, or whatever. And so, we have this  
22 tremendous turnover within the resorts.

23 And so, I think there might be one -- it's hard  
24 for me to react specifically without kind of generically



1 knowing where they are coming from, commissioner.

2 COMMISSIONER BROAD: Well, tell me about breaks.

3 Gentlemen, do you get breaks?

4 COMMISSIONER DOMBROWSKI: Give your names.

5 MR. WOLCOTT: Don Wolcott, Snow Summit. We get  
6 two 15-minute breaks a day.

7 COMMISSIONER BROAD: Two 50-minute breaks?

8 MR. WOLCOTT: 15-minute breaks.

9 COMMISSIONER BROAD: 15-minute breaks?

10 MR. WOLCOTT: Yes. And we get a 30-minute lunch  
11 period.

12 COMMISSIONER BROAD: In a 10-hour day, a 12-hour  
13 day?

14 MR. WOLCOTT: This is just a regular 8-hour day.  
15 You get more breaks. It depends on if we're working  
16 really hard, we get more breaks. We get longer lunches  
17 if we're working longer periods of time. I mean, there's  
18 no one there cracking the whip. It's -- it's -- all my  
19 employees, including myself, are happy where we are, in  
20 our part of Snow Summit, in the shop. It's -- really,  
21 it's a nice place to work. We get breaks. We get plenty  
22 of time. There's no pressure, except other than getting  
23 the machines running, obviously.

24 But we -- we take our breaks. I have never

1 heard of a complaint.

2 COMMISSIONER BROAD: Do the rest of you want to  
3 comment?

4 MR. JOHNSTON: Kevin Johnston, Dodge Ridge. We  
5 get breaks on a regular basis, one, you know, 15-minute  
6 break in the morning and afternoon, and lunch. The only  
7 time we wouldn't get a break, say, if a lift was down and  
8 you had 200 or 300 people hanging out on a lift and it  
9 was snowing. And, you know, our priority is to get that  
10 lift going. So, that would be the only case where we --  
11 you know, we might work through our break period, for the  
12 safety of the public..

13 COMMISSIONER BROAD: Okay. Let me ask this  
14 question about the safety of the public and hours. You  
15 folks are operating some pretty heavy equipment. I have  
16 a concern with this, again, since -- especially given  
17 some of the correspondence we received -- people  
18 operating heavy equipment that the public's dependent on  
19 getting very tired, working very long hours. I'm  
20 concerned that fatigue could compromise safety.

21 We received letters from people on the ski  
22 patrol, who, obviously, have a very significant safety  
23 function, who seem to be working very long hours at  
24 straight time.

1           And I'm wondering what your thoughts are about  
2 whether you, for example, would think if some of these  
3 hours were reduced. Let's assume that you didn't lose  
4 any compensation, but that some of these hours were  
5 reduced. It might make you less tired, more alert on the  
6 job.

7           MR. JOHNSTON: Well, in a way, I think it -- of  
8 course, it might, but since, in our area, there's me and  
9 one other person, actually, that knows all the little  
10 things that goes on the lifts, the little idiosyncrasies,  
11 it's kind of -- you know, one of us has to be there, no  
12 matter what, because there's nobody else. And you can't  
13 just train somebody overnight to know all these little  
14 things on the lift.

15           So, you know, there's times when you do have to  
16 put a lot of hours in, and maybe you're not -- you're not  
17 as sharp as you would be if you had less hours. But in  
18 the long run, it's better that you're there than not  
19 there. You'd best have someone there that knows -- knows  
20 what's going on.

21           COMMISSIONER BROAD: Okay. Thank you.

22           COMMISSIONER DOMBROWSKI: No questions?

23           Thank you.

24           MR. ROBERTS: Thank you.

1 COMMISSIONER DOMBROWSKI: Pam Mitchell.

2 AUDIENCE MEMBER: (Not using microphone) She'll  
3 be right back.

4 COMMISSIONER DOMBROWSKI: Marcie Berman, and Tom  
5 Rankin.

6 Is there anybody else who wanted to talk about  
7 the ski industry?

8 COMMISSIONER DOMBROWSKI: You've got to identify  
9 yourself for the recorder.

10 MS. MITCHELL: I'm Pam Mitchell. I'm a Mammoth  
11 Mountain seasonal ski area employee, and I'm also an  
12 employee of Von's in Mammoth Lakes -- that's my second  
13 job  
14 -- although I'm temporarily on disability because of an  
15 injury at Von's, not at the ski area.

16 And I'm here today because of my concerns about  
17 California Mammoth ski resort exemptions which allow them  
18 to work us 56 hours a week before they pay overtime. And  
19 I feel that this is a very unjust exemption, a very  
20 unjust law.

21 I hope you've all had a chance to read these.  
22 These are letters from employees stating how they feel  
23 about this exemption and how it's affected them over the  
24 last twenty years and how it's impacted them directly.

1 And I think one of the important things, in reading all  
2 these letters from these employees, is to realize that  
3 these are individuals. These are people who've lived and  
4 worked in Mammoth Lakes for ten, twenty, thirty years,  
5 and these people have made a career out of the ski  
6 industry, whether they are on cat crews, ski patrol, ski  
7 instructing, housekeeping individuals, people in the  
8 restaurants and bars, people working in the summer  
9 activities that go on. But these are people who live and  
10 work in Mammoth Lakes on a year-round basis. These  
11 letters are representative of over 200 people that I've  
12 spoken with directly and personally and on a regular  
13 basis. They're representative of last year and this  
14 year.

15           They're -- the seasonality, the snow falling and  
16 the snow not falling, does affect our business. But the  
17 conditions remain the same every year in Mammoth. Last  
18 year the complaints about working long hours many days in  
19 a row without being paid overtime was the exact same  
20 thing last year. And last year we had snow at a  
21 reasonable time. It does fluctuate.

22           The overtime, whether -- we work overtime  
23 whenever we work. And we're not asking for something  
24 special when we're not working. What we're asking for is

1 overtime when we do work these long hours. If there's no  
2 snow, we're not asking for anything. If there's no work,  
3 we're not asking for anything. We're asking that we be  
4 treated the same as the rest of the California employees,  
5 and that when we work these long hours and many days in a  
6 row, that we are compensated for our efforts.

7           At one time, maybe the perspective was, back  
8 when this exemption came in -- I don't know why it came  
9 in -- but twenty years ago when this exemption came in,  
10 maybe the perspective was that we were all a bunch of ski  
11 bums, a bunch of ski kids, or we were just college  
12 students out on a break, you know, having a fling for the  
13 winter. But I'm asking you to look at what the situation  
14 is now and how, over these years, how this exemption has  
15 affected us economically and socially.

16           It's always been difficult to make a living, at  
17 least in Mammoth Lakes. I don't know about the other ski  
18 resorts. We're isolated. There's not a lot of employers  
19 to choose from. And our jobs are real important to us.  
20 People involved in this type of work do love what they're  
21 doing. There are many, many dedicated employees. They  
22 love the mountains and the skiing and braving the  
23 elements. And they have been very willing to do with  
24 very little in order to work at the ski area and in order

1 to keep this lifestyle going.

2           It's been -- in the last couple years, Mammoth  
3 Mountain ski area has formed some type of -- they've  
4 combined in some way with InterWest, which is a major ski  
5 developer in the country. And as a result of that, the  
6 rents and property values have gone up so drastically.  
7 And where we were having a hard time making it before,  
8 we're having -- we're not surviving there now. Many of  
9 us, if we -- depending -- this overtime could make a  
10 difference for us in how we're able to maintain.

11           I think it's important for us employees for you  
12 to realize that these are careers. There are seasonal  
13 people who come in every season. I don't know the exact  
14 number, but my estimate is that there's 800 -- minimally  
15 800, to 1,000 people who work at the ski resort year  
16 after year and live in the town of Mammoth Lakes.

17           The ski industry is a booming business. The ski  
18 industry is a booming business all over the country and  
19 in other countries. Since the merger with InterWest and  
20 looking at the development of resorts, it's a growing,  
21 huge business, and it employs -- can't even imagine how  
22 many people it employs, people who are dependent on that.  
23 And our employees, some of these employees, have been  
24 here ten, twenty, thirty years, have come to depend on

1 Mammoth Mountain ski area for their living. There is --  
2 there are not other places to go if you are not making  
3 wages there. You don't just leave your job, you have to  
4 leave your town and the community that you've been living  
5 in. It's real small and isolated.

6 Things are going up at an incredible rate. It's  
7 just appalling, on how much the rents are going up and  
8 how everything is rising. Our wages haven't risen, and  
9 we have not been receiving overtime. It's created a very  
10 low-income group of people for a large part of our  
11 population.

12 Our permanent population is approximately 5,000  
13 people a year, and it goes up in the winter. And, of  
14 course, I guess, on a weekend it goes up to 30,000, the  
15 temporary people that come in. And when business is  
16 booming and we have this income and these people come in,  
17 we're just asking that we be paid overtime for these long  
18 hours.

19 I think that -- to finish up -- and what we're  
20 asking is that we be treated like the rest of California  
21 employees and be paid overtime and be rewarded for when  
22 we do put in long hours.

23 And I think, last, I want to point out -- I  
24 mean, maybe this is a known, but we work without a



1 contract. We have no contract. And in our employee  
2 manual, it states, of course, that we're -- you know,  
3 we're at-will, we can be terminated at any time, with or  
4 without reason. But -- and maybe this is in all  
5 contracts, but I want to point it out to you, that in our  
6 employee manual, that it states that the company reserves  
7 full discretion to modify, add, or delete any provisions  
8 and policies of this manual, at any time, without notice,  
9 and that we are always living on -- on an edge, partly  
10 because of weather, but this is not all due to weather.  
11 This is due to other things besides this weather.

12           And probably you may be hearing from more  
13 people. It's a very courageous thing for people to stand  
14 up or write letters because for years we have been  
15 threatened with having our hours cut, for various  
16 reasons. And this is just one -- one of those reasons.

17           COMMISSIONER BROAD: Excuse me. I think you can  
18 rest assured that anybody who communicates to this  
19 Commission and is retaliated against will be protected.  
20 And I'm sure that the industry will never do a thing like  
21 that.

22           MS. MITCHELL: Thank you.

23           COMMISSIONER DOMBROWSKI: I have a question.  
24 What is -- in your correspondence, one of the articles

1 has you listed of the "Mammoth employees organization."

2 What is that?

3 MS. MITCHELL: I started a Mammoth employee  
4 organization a couple years ago and was having a really  
5 hard time making it in Mammoth, making a financial living  
6 in Mammoth. I have a couple children I'm raising there.  
7 No matter how many hours I worked, it didn't seem like I  
8 was making a living.

9 And in talking and listening with other people,  
10 I realized that I wasn't unique, that this was -- this  
11 was what was going on with all employees. And through  
12 that and through discussions, we decided -- a few people  
13 decided to try to get some kind of organization started  
14 and going so that we might be able to do something to  
15 change our conditions there, because, if we don't, a lot  
16 of us aren't going to be living there any more.

17 COMMISSIONER DOMBROWSKI: How many people are in  
18 this organization?

19 MS. MITCHELL: A little over 200.

20 MR. RANKIN: Tom Rankin, California Labor  
21 Federation.

22 As you look at this issue, I think the most  
23 important thing to remember is the Legislature's words  
24 that they put in the statute regarding their intent. And

1 they are very clear that they think an 8-hour day is a  
2 basic labor right in California. And I would submit that  
3 a much better case has to be made for keeping any kind of  
4 exception for the ski industry than was made.

5           It's very clear that the employees in the  
6 industry want daily overtime. They need it to make ends  
7 meet. And they feel very strongly that they shouldn't  
8 have different conditions from other workers. What's the  
9 difference between a housekeeper who works in a ski lodge  
10 and a housekeeper who works in a hotel, in terms of their  
11 duties? A cook? A store clerk? It's simply not just,  
12 for those folks.

13           The wages are low in this industry. Overtime is  
14 not going to break the industry.

15           There are safety problems with people working  
16 long hours, and some of these letters talk to that.

17           There are tremendous -- if these letters are  
18 correct, from the employees -- there are a tremendous  
19 number of wage and hour law violations. And in many  
20 cases, people weren't even being paid overtime when they  
21 worked over 56 hours a week. They were put off the  
22 clock.

23           Other industries are able to plan for overtime  
24 that are seasonal industries. My understanding is that

1 most of the overtime actually in this industry occurs  
2 around Christmas break. That's certainly foreseeable  
3 every year, and that can be planned for. Agriculture, as  
4 was mentioned, is an industry that's dependent on the  
5 weather and has seasonal fluctuations. They've lived  
6 with overtime for years.

7           In terms of another point -- and this actually  
8 differentiates this industry from agriculture --  
9 agriculture, there's always been sort of a state policy  
10 that agriculture has been taken care of, subsidized, and  
11 the idea is that people need inexpensive food. This  
12 industry is a luxury, and most of the people who take  
13 part in the activities are affluent people. If there's a  
14 real problem, I am sure that lift tickets could go up a  
15 buck, or whatever, to pay for the overtime.

16           And finally, our neighboring state, one of the  
17 few other states that has daily overtime, Nevada, which  
18 has a ski industry, does not make any exemption for the  
19 ski industry. They pay overtime after 8 hours a day.

20           One other point in terms of the comment on the  
21 10-hour, the vote. Certainly regulations can be crafted  
22 here  
23 -- they will have to be in the construction industry --  
24 to deal with the nature of employment and when the vote

1 takes place and who gets to vote. So, I don't see that  
2 as a major problem that this industry would have, if the  
3 employees indeed are put in the same position as all  
4 other employees, in terms of being able to vote for  
5 different alternative workweeks under 10 hours a day, 10  
6 or under. They should -- election procedures should be  
7 able to be worked out to deal with that.

8 Thank you.

9 MS. BERMAN: My name is Marcie Berman, and I'm  
10 here as a representative of the California Employment  
11 Lawyers Association, which is an organization of about  
12 250 attorneys in California that represent employees in  
13 various types of employment matters, including wage and  
14 hour disputes.

15 I would like to just say that CELA supports  
16 providing the same level of overtime protection to these  
17 employees as to other employees covered under the law  
18 after AB 60. I didn't hear anything from the industry  
19 that convinced me that there's a distinction there that  
20 would justify giving these employees less protection.  
21 And I would agree with what the other two witnesses said.

22 A couple other things I -- additional things I  
23 wanted to say are that it's my understanding, from  
24 talking to employees in this industry, that the employers

1 don't retain them on a fixed schedule week in and week  
2 out, regardless of the workload, but instead, that they  
3 call people in only when they're needed. And therefore,  
4 they don't have any down side risk for their payroll  
5 overhead. And it seems to me that they want to have  
6 their cake and eat it here. They want to maintain the  
7 situation where they have no down side risk, but then,  
8 when it's busy and they're bringing in money, they don't  
9 want to have to then pay people overtime during those  
10 periods. That doesn't make any sense to me.

11           The other thing I wanted to point out is that  
12 the industry may be seasonal in the respect that there's  
13 only snow during part of the year, but it's been my  
14 experience that at least some of the ski resorts are  
15 fully functioning and very active, with a lot of people  
16 there paying them money, during the summer months. For  
17 example, Squaw Valley is a, you know, Four Season resort.  
18 North -- what's it called?

19           COMMISSIONER DOMBROWSKI: Northstar?

20           MS. BERMAN: Northstar is filled with hundreds  
21 of people during the summer. They have big tennis  
22 programs, swimming pools, mountain biking. Homewood has  
23 a laser tag program operating all summer, so that it's  
24 got its lifts going all day.

1           So I think it's a bit of a misnomer to treat it  
2 as a seasonal industry, even though there may be  
3 different activities going on throughout the year.

4           That's all.

5           COMMISSIONER BROAD: I'd actually like to ask  
6 Mr. Roberts a question about that, if you could come back  
7 up.

8           MR. ROBERTS: Sure.

9           COMMISSIONER BROAD: How many ski resorts are  
10 there in the state?

11          MR. ROBERTS: Yes. I'm Bob Roberts. There are  
12 38 resorts, alpine and cross-country, because they all  
13 have very similar kinds. But they're primarily downhill,  
14 or alpine, as we would say in ski resorts.

15          COMMISSIONER BROAD: And breaking out between  
16 alpine and cross-country, how many?

17          MR. ROBERTS: We have -- cross-country is a  
18 little -- I mean, a year like this year, a cross-country  
19 resort may not function at all. It may change ownership.  
20 So, we have essentially 10 of those resorts are cross-  
21 country, and the other 18 -- the other 28 are downhill.

22          COMMISSIONER BROAD: Of those 28, because I  
23 assume that's what we'd be talking about --

24          MR. ROBERTS: Um-hmm.

1           COMMISSIONER BROAD:  -- how many are open all  
2 year round in some form?

3           MR. ROBERTS:  In some form, probably 14 or 15.

4           COMMISSIONER BROAD:  And of the ones that are  
5 closed, how many months of the year are they closed?

6           MR. ROBERTS:  They are generally -- and, again,  
7 a normal season is between four and five months.  Five  
8 months is what we really aim for.  Mid-November through  
9 April would be -- would be a normal operating season.  
10 And an operating -- again, like Dodge Ridge this year  
11 opened in late January and closed in either late March or  
12 early April.  So, it's a very skewed thing.

13           Of our larger resorts, the larger resorts,  
14 clearly, because they carry larger year-round staffs, try  
15 and engage in some kind of summer activity to justify the  
16 overhead.  They've got -- they've got a much larger  
17 overhead.  So -- but to my records and my understanding,  
18 all of those would still qualify as seasonal recreational  
19 businesses under the Fair Labor Standards, which means  
20 that in a six-month period, no more -- you earn no more  
21 than a third of your income in that six-month period, so  
22 that two-thirds of your income or your revenues are done  
23 during your, quote, winter season or your busy season.

24           COMMISSIONER BROAD:  Okay.  Now, let me ask



1 COMMISSIONER BROAD: Well, they're not here.

2 MR. ROBERTS: Yes.

3 COMMISSIONER DOMBROWSKI: Oh, you don't know!

4 COMMISSIONER BROAD: Well, at least they'll be  
5 here next time.

6 MR. ROBERTS: Yeah.

7 (Laughter)

8 MR. ROBERTS: No, it varies. For example,  
9 resorts up in this -- in southern California here  
10 traditionally do not have hotels. They are -- they have  
11 a day market. People drive up for the day. A lot of our  
12 resorts are day market -- Dodge Ridge, Boreal -- are day  
13 resorts, where people simply come for the day.

14 COMMISSIONER BROAD: Thank you.

15 MR. ROBERTS: Okay.

16 COMMISSIONER DOMBROWSKI: Any other speakers on  
17 the ski industry?

18 Okay.

19 (Pause)

20 COMMISSIONER DOMBROWSKI: I'm sorry. We'll go  
21 on to the next issue, with the meal periods break.

22 Make sure you identify yourself.

23 MS. PATACK: Sure. Chairman Dombrowski and  
24 members of the IWC, my name is Melissa Patack, on behalf

1 of the Motion Picture Association of America, California  
2 Group, and our member companies, which include the Walt  
3 Disney Company, 20th Century Fox, MGM, Paramount  
4 Pictures, Sony Pictures Entertainment, Universal Studios,  
5 Warner Brothers, and CBS. I'm accompanied today by Carol  
6 Lombardini, senior vice president of the Alliance of  
7 Motion Picture and Television Producers, our sister trade  
8 association to the MPAA. And Carol handles collective  
9 bargaining for our member companies.

10 First of all, thank you very much for convening  
11 this public meeting to address the issue of meal periods,  
12 among other subjects, under AB 60 and the new interim  
13 wage order. We appreciate the opportunity to bring to  
14 your attention an unusual result, a requirement that  
15 motion picture employers provide two distinct meal  
16 periods for employees, caused by the application of the  
17 new law. And we welcome the chance to request that you  
18 take appropriate action to remedy this situation.

19 Let me first speak to the issue of your  
20 authority to remedy the double meal periods now required.  
21 AB 60 itself recognizes your authority to take  
22 appropriate action in this situation. Section 516 of the  
23 Labor Code, which was Section 10 of the bill, states  
24 that, quote,

1           "Notwithstanding any other provision of  
2           law, the Industrial Welfare Commission may adopt  
3           or amend working conditions -- work condition  
4           orders with respect to break periods, meal  
5           periods, and days of rest for any workers in  
6           California, consistent with the health and  
7           safety of those workers."

8           The Legislature clearly authorized the IWC to  
9           have the final say on appropriate working conditions, so  
10          long as the IWC's orders are consistent with the health  
11          and safety of California employees. Our request to you  
12          falls within the parameters of Section 516.

13          I will briefly outline the problem. Under  
14          Section 11 of Wage Order 12-80 -- that's the wage order  
15          that affects our industry, which has been in effect since  
16          1979 -- all motion picture employees are entitled to a  
17          meal period after six hours of work. In addition, our  
18          collective bargaining contracts, which number thirty and  
19          cover over 200,000 employees, also provide for a meal  
20          period after six hours of work. Because Section 11 of  
21          the wage order applies to all employees within our  
22          industry, regardless of whether they are covered by a  
23          collective bargaining contract, motion picture employers  
24          are able to provide a uniform and consistent meal period

1 to all employees on a production.

2           Section 512 of the Labor Code, which was Section  
3 6 of the bill, of AB 60, now requires a meal period after  
4 five hours of work. However, Labor Code Section 514  
5 provides for an exemption from the meal period  
6 requirement, as well as other provisions of the law, for  
7 employees covered by a qualifying collective bargaining  
8 agreement. Your interim wage order tracks the statute by  
9 requiring a meal period after five hours, Section 9 of  
10 the interim wage order, and provides for an exemption for  
11 those covered by a qualified collective bargaining  
12 contract, Section 7 of your wage order.

13           This new provision in the law requires motion  
14 picture employers to provide two different meal periods  
15 where employees covered by a collective bargaining  
16 contract are working side by side with employees not  
17 under a contract's provisions. And let me, if I can,  
18 illustrate how this situation arises.

19           If the motion picture calls for a large assembly  
20 of actors to fill an auditorium or a stadium, the  
21 production will, pursuant to an applicable -- the  
22 relevant and applicable collective bargaining contracts,  
23 hire extras, that is, people unaffiliated with the union  
24 and not covered by a collective bargaining agreement. In

1 these circumstances, the employer must provide a meal  
2 period after five hours for these extras, and an  
3 additional meal period for the rest of the crew covered  
4 by the contract after six hours. This dual meal period  
5 disrupts the production schedule, adding delay and  
6 accompanying cost increases.

7           The production may not be able to continue with  
8 part of the crew stopped for a lunch break. The dual  
9 meal period may effectively shut down a production for a  
10 part of the working day. In addition, the requirement of  
11 a second meal period will arise sooner for those  
12 employees entitled to a meal period after five hours,  
13 further delaying the production schedule.

14           Moreover, motion picture companies provide lunch  
15 at no cost to employees by hiring a catering company.  
16 Clearly, the requirement of a dual meal period will add  
17 to the cost of catering, creating further expense to  
18 movies made in California.

19           Our request to you is for uniformity,  
20 consistency, and the ability to adhere to our collective  
21 bargaining contracts, all of which we had prior to the  
22 enactment of AB 60 and the implementing wage order.

23           We believe you have the authority under Labor  
24 Code Section 516 to amend the interim wage order and

1 affirm Section 11 of our existing wage order, 12-80.  
2 This would enable motion picture employers to provide a  
3 single meal period after six hours, an industry practice  
4 and standard for more than twenty years.

5 AB 60 was intended for the purpose of restoring  
6 daily overtime for California employees. In the motion  
7 picture industry, we never ended the practice of daily  
8 overtime in 1998 when the IWC repealed the daily overtime  
9 requirement. And so, therefore, AB 60 really was never  
10 aimed at our industry. However, the collateral provision  
11 on meal periods contained in AB 60 is a hardship on the  
12 motion picture employers by increasing costs of  
13 production and causing disruption to production  
14 schedules.

15 In the last year, there's been much attention to  
16 the issue of runaway production, which refers to  
17 productions moving out of California to other states and  
18 countries which now aggressively compete for this  
19 business. There are several bills pending in the  
20 Legislature to address ways California can stay  
21 competitive, and Governor Davis is considering programs  
22 to combat runaway production. We would urge the IWC to  
23 help keep California film-friendly by correcting this  
24 anomaly in the overtime law and affirm a single meal

1 period after six hours, consistent with Wage Order 12-80  
2 and our industry collective bargaining contracts.

3 Thank you, and Carol and I would be happy to  
4 answer any questions you might have.

5 COMMISSIONER BROAD: Thank you. I have -- I've  
6 had a number of discussions with Jim Neff over this  
7 because I have, for many years, dealt with  
8 representatives in Sacramento, because I represent the  
9 Teamsters, who have a jurisdiction in the movie industry,  
10 and we talk a lot.

11 And I'm not as convinced as you are that we can  
12 change the statutory requirement. However, I do believe  
13 that in this unique situation, that your industry might  
14 consider applying for the exemption that the Division can  
15 give in Section 17 of the wage order.

16 MS. PATACK: Of our existing wage order?

17 COMMISSIONER BROAD: Of your existing wage  
18 order. And it's in all the wage orders, and no one is  
19 suggesting it be removed, which -- if I can read it to  
20 you, it says,

21 "If, in the opinion of the Division after due  
22 investigation, it is found that the enforcement  
23 of any provision contained in Section 7,  
24 reference 11, 'Meal Periods'; 12, 'Rest Periods'

1 -- "

2 -- et cetera --

3 " -- would not materially affect the welfare or  
4 comfort of employees or would work an undue  
5 hardship on the employees, exemption may be made  
6 at the discretion of the Division."

7 It seems to me that your case is a prime candidate  
8 for that sort of situation. One, you're --it's an  
9 hour's difference. It's based on the unique  
10 situation in which you are following a collective  
11 bargaining agreement, which you are bound to follow,  
12 and which spills over into employees not covered by  
13 collective bargaining. You are paying for the meal  
14 period. As I understand it, in my experience,  
15 limited experience, to actually be in one movie --  
16 it's available --

17 COMMISSIONER DOMBROWSKI: I won't even ask!

18 (Laughter)

19 COMMISSIONER BROAD: I could show it to  
20 you. It's a very bad movie.

21 (Laughter)

22 COMMISSIONER COLEMAN: That wasn't your  
23 fault.

24 COMMISSIONER BROAD: Anyway, it's available



1 on video. My wife and I are Amish people at a  
2 wedding, for one second in the movie.

3                   Anyway --

4                   COMMISSIONER DOMBROWSKI: But we digress.

5 All right. All right.

6                   COMMISSIONER BROAD: That could come up  
7 before my confirmation.

8                   (Laughter)

9                   COMMISSIONER BROAD: Anyway --

10                  COMMISSIONER DOMBROWSKI: Okay.

11                  COMMISSIONER BROAD: But I think that  
12 you're a prime candidate for that, and it might  
13 solve the problem rather expeditiously, rather than  
14 raising what might be a legal problem for the  
15 Commission, taking a statutory requirement saying  
16 that meals happen after five hours, and changing it  
17 to six hours, and possibly creating a challenge.

18                  And I -- my sense -- and I talked to Jim  
19 Neff about this -- is I would encourage you to  
20 pursue that.

21                  MS. PATACK: So, that would be a letter to

22 --

23                  COMMISSIONER BROAD: To the Division of  
24 Labor -- the Labor Commissioner.

1 MS. PATAK: -- to the Labor Commissioner.

2 COMMISSIONER BROAD: Under Section 17.

3 MS. PATAK: Yeah, I had -- right. I know.

4 I read that, and I just wasn't sure. It seemed to  
5 me that it might be over a particular violation. I  
6 didn't know if you would do it on a policy basis or  
7 sort of an across-the-board basis. But if --

8 COMMISSIONER BROAD: Well, I don't think  
9 it's -- I don't -- I mean, Mr. Locker is here, and  
10 you can talk to him about it, you know, how the  
11 application -- my understanding is that it's not  
12 intended after a violation has occurred, but for --

13 MS. PATAK: Okay.

14 COMMISSIONER BROAD: -- specifically for  
15 the type of situation you're talking about, an  
16 employer comes in -- where there's something unique  
17 here. And we're not talking about getting rid of  
18 this, we're just -- we have some unique  
19 circumstance, and you want to kind of do it this  
20 way, and that it would not materially harm the  
21 employees in any way or deny them any benefit. And  
22 that's clearly what you're suggesting here. It's an  
23 hour's difference between an existing -- the  
24 statutory meal period and the meal period you're

1 providing.

2 MS. PATACK: Okay.

3 COMMISSIONER BROAD: And so, I would  
4 encourage you to do that. I don't know how the rest  
5 of the Commission feels, but that would be my  
6 reaction.

7 MS. PATACK: Thank you.

8 COMMISSIONER COLEMAN: I was just going to  
9 see if our legal counsel had a comment on that.

10 MS. STRICKLIN: I'm not sure about that  
11 particular provision of the wage order. I was just  
12 wondering about your concern under 516, why it could  
13 not be done that way. What do you foresee as the  
14 legal challenge?

15 COMMISSIONER BROAD: Well, I think the bill  
16 establishes a pretty clear standard.

17 MS. STRICKLIN: 516 of the Labor Code --

18 COMMISSIONER DOMBROWSKI: My understanding  
19 is there's a law the Industrial Welfare Commission  
20 may adopt and then working condition orders with  
21 respect to break periods, meal periods, and days of  
22 rest for any workers in California consistent with  
23 the health and welfare.

24 COMMISSIONER BROAD: Well, my -- I think if

1 you read the two sections together, I'm not sure  
2 that that's suggesting that you can diminish the  
3 statutory standard. That would suggest that we  
4 could eliminate all meal periods if we decided it  
5 was in the health and welfare of employees, or  
6 breaks, when you have a statutory requirement that  
7 there must be a meal period.

8           And so, I think you have to read those two  
9 sections together. I think, read together, it's  
10 suggesting that California could increase its  
11 protections for workers, but couldn't go beneath the  
12 statutory standard set forth in the Labor Code.  
13 Otherwise, that section would have no meaning  
14 whatsoever.

15           And it is the more specific section, rather  
16 than the more general section, and would have to be  
17 given some meaning and judicial interpretation.

18           That would be my argument for why I think  
19 it would not -- would not necessarily be the most  
20 prudent course, from a legal perspective.

21           MS. PATACK: Okay. I understand that  
22 there's -- you don't take any decisional --

23           COMMISSIONER DOMBROWSKI: Right.

24           MS. STRICKLIN: No.

1 MS. PATAK: -- action today.

2 COMMISSIONER DOMBROWSKI: What Commissioner  
3 Broad is suggesting doesn't preempt anything else we  
4 could do. So, it's -- I think it's in your interest  
5 to pursue that as well as --

6 MS. PATAK: Wait for a decision from you.  
7 Okay.

8 Thank you very much.

9 COMMISSIONER COLEMAN: Thank you.

10 COMMISSIONER DOMBROWSKI: Thank you.

11 Marcie Berman.

12 MS. BERMAN: My name is Marcie Berman, as I  
13 said before, and I'm here once again representing  
14 the California Employment Lawyers Association on the  
15 issue of rest periods and meal periods.

16 In general, I would like to advocate that  
17 the IWC seriously consider requiring break periods  
18 longer than the ones that have been in the wage  
19 orders to date. I have a copy of Wage Order 4, from  
20 1998, and it requires rest periods at the rate of  
21 every ten minutes net rest time for four hours or a  
22 major fraction thereof, and also says that insofar  
23 as practicable, shall be in the middle of each work  
24 period.

1           And I wanted to make a point about certain  
2 types of employees in particular who I think need  
3 longer breaks than the net ten minutes that's  
4 specified here every four hours. One type are  
5 employees who are working in safety-sensitive jobs  
6 where their concentration may be affected by working  
7 continuously without breaks. And especially since  
8 the on-site construction industries are henceforth  
9 going to be covered by the wage orders, I can  
10 envision that there would be real serious safety  
11 hazards with ironworkers, you know, standing up  
12 there without having any kind of breaks, or even  
13 just a ten-minute break in four hours doesn't seem  
14 like a lot to me.

15           The second type of workers that we're  
16 particular concerned about are workers whose jobs  
17 entail repetitive movements, including factory  
18 workers, food processing workers, and all variety of  
19 office workers who are working at the ubiquitous  
20 computer terminals. I think we're all familiar with  
21 the news that's been very widely disseminated in the  
22 past ten years about repetitive stress injuries.  
23 These injuries are permanent. Once they occur,  
24 they're permanent, there's nothing you can do about

1 them. You can certainly do a lot to prevent them,  
2 but once they're that, that human being's body is  
3 ruined. And I've met factory workers who are  
4 grandmothers in their fifties and can never lift  
5 their grandchildren because of these injuries that  
6 they've got. So it's a serious matter.

7 I brought some news articles from some very  
8 prominent, well respected newspapers, and I'll leave  
9 a copy with the Commission, talking about this  
10 problem and including recommendations from medical  
11 experts that people who are involved in these  
12 repetitive type of jobs have breaks of fifteen  
13 minutes every few hours. In some of these articles,  
14 they talk about having a five-minute break every  
15 hour or two.

16 So, I think it's incumbent upon the IWC to  
17 seriously consider increasing the rest periods that  
18 you require of employees -- of employers.

19 The other issue I wanted to point out is  
20 this word "net" that's in Section 12 of the wage  
21 orders. I did some legislative regulatory history  
22 research and, unfortunately, forgot to bring what I  
23 found. But what I found were some minutes or  
24 findings from a past IWC, where there had been labor

1 proposals to increase the rest period to twenty  
2 minutes based on their concerns that by the time  
3 somebody actually gets out the door, in order to be  
4 able to get some fresh air or walk around and  
5 stretch, they may use up their whole ten minutes.  
6 You know, in an office building, just waiting for  
7 the elevator to go up and down before you can get  
8 outside may take ten minutes, or in a factory, just  
9 getting out or taking off your gear.

10           So the concern was that the time period  
11 needed to be longer. And what the IWC did was to  
12 say, "Well, we'll call this a 'net' ten minutes,"  
13 "net" implicitly to mean that -- it means, by the  
14 time you're outside of your workplace, you get the  
15 ten minutes. So maybe something the IWC could do is  
16 to, you know, work with that language. I don't  
17 think anybody knows what that means. It's certainly  
18 not clear on its face. You might want to -- excuse  
19 me.

20           MS. STRICKLIN: What order are you  
21 referring to? Is it 4?

22           MS. BERMAN: Right now I'm talking about in  
23 general, but I've got in front of me Wage Order 4-  
24 98.



1 MS. STRICKLIN: And so, it's 12? Is it  
2 Section 12?

3 MS. BERMAN: Yeah, Section 12, yes.

4 MS. STRICKLIN: Okay.

5 MS. BERMAN: So you might want to think  
6 about defining that word more specifically so people  
7 know what it means, and also definitely increasing  
8 the time period.

9 Also, what it says in this Section 12 is --  
10 "insofar as practicable, shall be in the middle of  
11 each work period" sort of implies to me that the  
12 employer only needs to allow the person one break  
13 somewhere in the middle of the period. And from  
14 what I'm reading from these various health experts,  
15 it may be better for these people with repetitive  
16 injuries to have several breaks. And I wouldn't  
17 want employers to think that they can restrict  
18 employees and only allow one break when, in fact,  
19 several breaks may be better.

20 I think this is something that helps  
21 everybody. Obviously, it's better for employers if  
22 employees are productive. And some of these studies  
23 show that if you give people breaks and let them  
24 just stretch and exercise, that they will be more

1 productive. And obviously, injuries hurt everybody,  
2 although they hurt most the people who are injured,  
3 obviously.

4           The only other point I want to make about  
5 the rest periods is that I believe that employers  
6 don't necessarily take this very seriously. And  
7 it's been my experience that it's sort of routinely  
8 ignored. And I don't know what the enforcement is  
9 like at the Labor Commissioner, but I would expect  
10 that it's a problem because there's no sanction,  
11 there's no disincentive to employers to ignore it.  
12 So, that's something that you might want to take  
13 into account.

14           I don't know what the scope of your  
15 authority is to do something about that, but maybe  
16 one thing that you could do is to penalize an  
17 employer who doesn't require these rest periods by  
18 having to pay the employees, you know, double time  
19 or some increased amount of hourly rate for those  
20 rest periods that they don't get.

21           With respect to the meal periods, the half-  
22 hour meal periods, the only thing that I wanted to  
23 say about that is that there's language in this Wage  
24 Order 4-98, Section 11(A), that says that an on-duty

1 meal period shall be permitted only when the nature  
2 of the work prevents an employee from being relieved  
3 from all duty, and when by written agreement between  
4 the parties.

5           That seems to me to be a pretty loose  
6 standard and could be an exception that swallows the  
7 rule. I bet a lot of employers who are busy feel  
8 that circumstances justify requiring the employee to  
9 skip their lunch. But that's -- that doesn't seem  
10 to me to be the right balance to end up with. And I  
11 would recommend that you -- that you establish some  
12 higher threshold for that type of arrangement.

13           (Fire alarm sounds)

14           COMMISSIONER DOMBROWSKI: There we go,  
15 eleven o'clock.

16           MS. BERMAN: Oh. Let me just -- I just  
17 wanted to finish by putting on the record three  
18 newspaper articles. I have a January 23rd, 1997,  
19 article from the *Chicago Tribune*; a February 28th,  
20 1996, article from the *New York Times*; and a June  
21 9th, 1999, article from the *Sacramento Bee*.

22           MR. RANKIN: Tom Rankin, California Labor  
23 Federation.

24           Ms. Berman has basically covered our

1 concerns. Just a couple other comments maybe.

2           In terms of meal periods and breaks, we  
3 might need to look at things sort of order by order,  
4 because there are particular situations. The farm  
5 workers have expressed problems, not necessarily  
6 with the length of breaks, but with the availability  
7 of hand-washing facilities, because oftentimes they  
8 eat a breakfast, a meal, at their first break. And  
9 if they don't have nearby hand-washing facilities,  
10 given the fact that they are often working in dirty  
11 conditions and sometimes pesticides are around, it  
12 makes it very difficult to do what they need to do  
13 within a break, period.

14           I think also that it's important that you  
15 look at maybe defining a break period more  
16 explicitly so it's clear, you know, that a worker's  
17 not just getting ten minutes to sit at the desk, or  
18 fifteen minutes. And a lot of union contracts, by  
19 the way, have longer rest periods than the IWC  
20 orders; I think probably most of them do. I think  
21 it's important to consider lengthening, and also, in  
22 certain cases where there's work involving  
23 repetitive stress, as Ms. Berman stated, to consider  
24 perhaps more -- shorter, spread out break periods,

1 because I think the evidence that break periods are  
2 necessary in those jobs to prevent repetitive stress  
3 injuries is pretty convincing.

4           Finally, I think the biggest problem we  
5 have had with meal periods and break periods is the  
6 problem of enforcement. And I know that your  
7 abilities here are limited. There's no good remedy.  
8 But I think you could create a remedy in terms of  
9 your -- within your authority by looking at, as I  
10 think Ms. Berman suggested, double pay or time and a  
11 half pay for -- in cases where these meal periods  
12 are violated.

13           And finally, I would like to -- although we  
14 do have a bill in the Legislature, which maybe you  
15 want to take a look at, actually, which would deal  
16 with the problem of the lack of penalties for these  
17 periods -- and that's AB 2509, by Darrell Steinberg.

18           Finally, Pam Mitchell would like to say a  
19 couple more words in terms of what the real  
20 situation is with break periods in her industry,  
21 where she works, at least.

22           MS. MITCHELL: Hi. Again, I'm Pam  
23 Mitchell, Mammoth Mountain ski area employee.

24           And in my industry, and from some of my

1 employees, cat crew employees have reported to me  
2 that they -- when they're rearranging snow, they  
3 drive cats -- do their whole shift with no breaks.  
4 Frequently they are eating their lunches while  
5 they're driving these cat machines. And by the way,  
6 these are \$7.50-an-hour employees driving \$250-  
7 million cats, that when, every time it snows, they  
8 minimally work two to four hours overtime and  
9 without breaks.

10           On our ski patrol, ski patrol doesn't take  
11 breaks. They take lunches at usually designated  
12 times, of course, if there's not some type of  
13 emergency going on. Ski patrol can sometimes start  
14 at 4:30 in the morning because they have to blast  
15 and prepare the slopes prior to the lifts opening  
16 up. And they don't  
17 -- they don't have breaks. They also have to wear  
18 their uniforms and be in the cafeteria and be on  
19 duty during the lunch period to be available in case  
20 there's any type of emergency.

21           Our ski instructors have very erratic  
22 breaks. Frequently after a lesson, especially if  
23 they're working with children, they end up  
24 babysitting and taking care of the children for

1 fifteen minutes, half an hour, forty-five minutes,  
2 once they're through with a lesson. And they don't  
3 have breaks.

4           And our lift maintenance operators, many of  
5 them do not have restroom facilities at the tops of  
6 lifts. And they don't have breaks. They literally  
7 pee behind a tree, between -- between tourists. The  
8 ones that do have restroom facilities -- we just  
9 received a memo which I'm sorry I don't have a copy  
10 -- that hantavirus is a thing that we're aware of up  
11 in the mountains where I live, and that their --  
12 their lift facilities, their restroom facilities,  
13 have been so dirty -- not -- not dirt dirty, but  
14 from not being cleaned for so many years, that  
15 there's been memos issued on warnings on hantavirus,  
16 where the lift operators themselves are going to be  
17 cleaning them out in order to get them ready.

18           Ski patrol is not allowed to use many of  
19 the lift operators' restroom facilities, who do have  
20 restroom facilities, because they fill up too  
21 quickly  
22 -- quote, "they fill up too quickly," and we don't  
23 have the facilities to go pump them out.

24           And in my industry, the breaks are erratic.

1 In the cafeteria at Canyon Lodge, which is where I  
2 was, many of the employees who were working worked  
3 straight through without breaks, or the breaks are  
4 erratic. And in working with these long hours and  
5 the erratic break times, it causes immense  
6 tiredness.

7 Thank you for your time.

8 COMMISSIONER DOMBROWSKI: Juli Broyles.

9 MS. BROYLES: Hi. I believe it's still  
10 good morning, Mr. Chairman, members of the  
11 Industrial Welfare Commission. I'm Julianne  
12 Broyles, from the California Chamber of Commerce.

13 First of all, I'd like, if it's possible,  
14 have distributed to the Commission an article that  
15 was published on April 13th -- that's the High  
16 Desert paper -- talking about how the rules put out  
17 by the Industrial Welfare Commission have  
18 specifically cost, in this one community's instance,  
19 800 jobs from coming to that High Desert town,  
20 specifically because of the Industrial Welfare  
21 Commission rules and the state law changing to such  
22 an extent 8-hour overtime applications in the State  
23 of California.

24 And I knew that Mr. Broad has asked on a



1 number of occasions for additional information.  
2 We're starting to put together quite a book, but  
3 this one was particularly telling that they had lost  
4 a very specific -- most companies will not come  
5 forward and say, "Well, it was just the overtime  
6 rules," but many employers have come to the  
7 California Chamber and said that they are either  
8 considering moving or will not be moving here to the  
9 State of California. And we have been documenting  
10 that for an overall submission to the Industrial  
11 Welfare Commission.

12           One large food processor down in Fresno  
13 County literally has promised us that they're doing  
14 the same thing, that they're moving to Texas, taking  
15 their entire processing facility away and the 1,200  
16 jobs that that particular facility has in the Fresno  
17 area.

18           One of the items I did also want to address  
19 today, and it's really more in response to some of  
20 the comments that were made on the meal breaks and  
21 rest break period, it's interesting to have issues  
22 that are more appropriate for the Cal OSHA Standards  
23 Board here than to have here in this Commission's  
24 purview, particularly the issue of repetitive motion

1 industries. On this issue, I've had a lot of  
2 experience. I chair a very large employer coalition  
3 on cumulative injuries, on repetitive motion  
4 injuries and ergonomics, and spent several weeks  
5 last month in Washington, D.C., testifying on this  
6 issue to fed OSHA on ergonomics and the need for  
7 breaks and that issue. But it is not appropriate  
8 for it to be addressed by this Commission. There is  
9 another statutory body appointed by the Governor to  
10 deal with this issue, and it is not appropriate for  
11 this Commission to take it on.

12           And so, for those reasons, I do want to  
13 make sure that you know that we have very strong  
14 problems with that even being brought up here as an  
15 issue for you to take up.

16           Do you have any questions?

17           We did submit substantial comments, both in  
18 January and in March, regarding a number of issues  
19 that were on the table today, including the  
20 managerial issue and the meal break issue. And if  
21 we can answer any questions on those now, we'd be  
22 happy to.

23           COMMISSIONER BROAD: Yeah, I have a  
24 question. And I've read the article, and I'm glad

1 to know that they're getting a casino, so --

2 MS. BROYLES: It's such a -- it's so good  
3 to know.

4 COMMISSIONER BROAD: They have a casino,  
5 because, you know, the gamblers won't go to Texas.

6 MS. BROYLES: No, they won't go to Texas.  
7 But it's only 300 jobs in place of 800. So, it's  
8 really not the -- not the type of revenue source in  
9 the sense, you know, from the business community.  
10 It is both good news and bad news when you have the  
11 casinos come in, because until some of the compacts  
12 are completed, there are legitimate issues on both  
13 the employee side and the employer side in terms of  
14 competitiveness, fair wages, how workers'  
15 compensation is handled, and how OSHA is handled.

16 So, certainly, we find ourselves on the  
17 same side on that issue.

18 COMMISSIONER BROAD: Let me ask you this  
19 question about breaks.

20 MS. BROYLES: Sure.

21 COMMISSIONER BROAD: Marcie Berman and Tom  
22 Rankin mentioned this. The breaks are ten minutes  
23 net rest time. Obviously, that means you have sort  
24 of travel time to the break. It's sort of included

1 in that. And -- but I'm not sure -- and I'd  
2 actually like Miles to come up here in a minute.

3 COMMISSIONER DOMBROWSKI: No, I won't put  
4 Miles in a position of having to --

5 COMMISSIONER BROAD: No, no. I want to ask  
6 him about enforcement questions anyway.

7 But here's my question. Are you guys  
8 averse to, say, changing this thing from ten minutes  
9 to fifteen minutes, but maybe clarifying what this  
10 "net" thing means. And I don't know; it may be  
11 observed and breached, or not observed at all.

12 MS. BROYLES: At this point, I would  
13 probably have to see what was proposed. And  
14 certainly, we'll be more than willing to discuss it,  
15 but I cannot give any indication that we agree to a  
16 change where you're adding the time on, to an  
17 overall fifteen-minute -- as you were pointing out --  
18 -- an undefined term of "net" -- away from the place  
19 of work. In some cases, that would be totally  
20 unrealistic because you're walking 15 feet out to go  
21 outside the door to be away from it, versus someone  
22 who might be in a different type of job.

23 COMMISSIONER BROAD: So, is it your sense  
24 that -- just -- and obviously, I don't know what the

1 answer is, at all, but I have the impression that in  
2 lots of workplaces in California, really the  
3 standard is two fifteen-minute breaks in an 8-hour  
4 period, not two ten-minute breaks.

5 MS. BROYLES: The standard that I'm aware  
6 of is two ten-minute breaks. But normally, if -- it  
7 depends, again, on the culture in that workplace,  
8 almost always. There are some employers that have  
9 one fifteen-minute break in the morning and a ten-  
10 minute break in the afternoon, depending on customer  
11 flow. There are some that have a number of five-  
12 minute breaks, two five-minute breaks every hour, if  
13 they are doing a different type of issue. But  
14 again, it's what fits that company's culture, what  
15 that employer feels free to do with the  
16 productivity.

17 Sometimes, you know, you have the  
18 differences between lunch hours. You have people  
19 that have half-hour lunch hours, you have people who  
20 have hour lunch hours. And the employers that  
21 supply the one-hour lunch hour feel that that gives  
22 the -- does not then constitute a need to extend a  
23 ten-minute break in the morning and in the afternoon  
24 in any way.

1                   So, I mean, you have a lot of different  
2 factors that come in there.

3                   COMMISSIONER DOMBROWSKI: Okay. Does  
4 anyone else want to speak about the meal periods?

5                   COMMISSIONER BROAD: I'd just like to ask  
6 Miles some questions about enforcement in this  
7 area.

8                   COMMISSIONER DOMBROWSKI: If Miles is  
9 comfortable with it. I don't want to put him on the  
10 spot.

11                   COMMISSIONER BROAD: Miles, don't answer  
12 any question that you feel uncomfortable with.

13                   MR. LOCKER: Thank you. Okay. Thank you.

14                   COMMISSIONER BROAD: This issue was raised  
15 about what is the remedy when an employer doesn't  
16 give workers meal periods of rest breaks. I'd just  
17 like to ask you what enforcement issues there are in  
18 this  
19 area.

20                   MR. LOCKER: It's -- yeah, I do feel  
21 comfortable answering that one because it's an issue  
22 that's come up quite a bit with us.

23                   And the problem is, although the law or the  
24 IWC orders are quite clear in terms of the right

1 that workers would have to a meal period or rest  
2 periods, as a practical matter, the only means that  
3 we would have for enforcing either of those would be  
4 -- and once we do an investigation and determine  
5 that workers are not being given the proper meal  
6 period or rest period -- we could then go to court.  
7 We could file an action for injunctive relief and  
8 get a court order ordering an employer to provide  
9 the workers with -- the employees with the  
10 appropriate meal and rest periods.

11 In all honesty, I have to tell you that as  
12 a basic enforcement matter, that presents a huge  
13 difficulty. It's simply a situation where -- I  
14 think, truthfully, unless we were doing a civil  
15 action involving other matters, in terms of  
16 compensation or so, minimum wages, overtime, and the  
17 like, then if we are aware there's a problem with  
18 meal periods and rest periods, we would put that  
19 into that civil action. But to expend the kind of  
20 resources, the staff time and the attorney time,  
21 court time, to actually file a civil action for  
22 injunctive relief to enforce this right, we -- you  
23 know, that's something that we just don't have the  
24 staffing to be able to do that. It's not a good way

1 to enforce something. It's a problem.

2 COMMISSIONER BROAD: Now, I was surprised  
3 to learn -- and I'd like you to confirm this -- that  
4 there is no Fair Labor Standards Act enforcement in  
5 this area, there's nothing in the Fair Labor  
6 Standards Act governing breaks or meal periods.

7 MR. LOCKER: That's my understanding, that  
8 under the FLSA there are no requirements as to meal  
9 periods or rest periods.

10 COMMISSIONER BROAD: So, we have a  
11 situation, then, where this may be a statute that,  
12 when it's breached, there's no real effective remedy  
13 or regulation when it's breached. There's no  
14 effective remedy.

15 MR. LOCKER: The remedy, as I say, would be  
16 -- it's an expensive thing to bring about that  
17 remedy. And then, of course, the remedy, if we were  
18 to get the injunctive relief, the remedy would be  
19 basically a court order telling the employer, "You  
20 can't do this ever again." It's prospective.

21 COMMISSIONER BROAD: Well, I guess what we  
22 could do -- I'm not asking you to comment on this --  
23 but as a general comment to my fellow commissioners,  
24 I guess what we could do is require the payment of



1 premium pay for the time that was not given, or  
2 require that any employer that doesn't give rest  
3 periods or a meal period in accordance with our  
4 rules would have to, say, pay the employee one hour  
5 at their regular rate of pay, in addition to all  
6 hours worked on that day, or something so that there  
7 would be an economic disincentive to violate the  
8 rule, and that it would be more self-enforced.

9 MR. LOCKER: That's -- you know, I mean, I  
10 -- I don't want to comment much on that, other than  
11 to say that given our -- given our limited  
12 enforcement, we like self-enforcement. We do like  
13 self-enforcement.

14 (Laughter)

15 MR. LOCKER: We do like.

16 COMMISSIONER DOMBROWSKI: All right.

17 It's the end of the day.

18 The next item on the agenda is the duties  
19 which meet the test for an exemption for executive,  
20 administrative and professional employees.

21 Laura Ho.

22 MS. HO: Yeah. I don't have anything to  
23 present. I just wanted to respond to if there are  
24 any other --

1                   COMMISSIONER DOMBROWSKI: Does anyone else  
2 want to talk about it?

3                   (No response)

4                   COMMISSIONER DOMBROWSKI: This is going to  
5 be a first.

6                   AUDIENCE MEMBER: (Not using microphone)  
7 We're waiting for the next meeting.

8                   COMMISSIONER DOMBROWSKI: Okay. The next  
9 item is the licensed pharmacists. Again, the only  
10 person I have is Laura Ho.

11                   MS. HO: Again, I have the same --

12                   COMMISSIONER DOMBROWSKI: Okay.

13                   Anyone have any other business they want to  
14 bring before the Commission?

15                   (No response)

16                   COMMISSIONER DOMBROWSKI: Do I have a  
17 motion to adjourn?

18                   COMMISSIONER BROAD: So moved.

19                   COMMISSIONER DOMBROWSKI: Second?

20                   COMMISSIONER COLEMAN: Second.

21                   COMMISSIONER DOMBROWSKI: All in favor, say  
22 "aye."

23                   (Chorus of "ayes")

24                   (Thereupon, at 11:45 a.m., the public meeting

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was adjourned.)

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AMENDED IN SENATE AUGUST 25, 2000  
AMENDED IN SENATE AUGUST 7, 2000  
AMENDED IN SENATE JULY 6, 2000  
AMENDED IN SENATE JUNE 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2509**

Introduced by Assembly Member Steinberg

February 24, 2000

An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 and 1174 of, and to add Sections 218.6, 226.7, 226.8, and 245 and 226.7 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSELS DIGEST

AB 2509, as amended, Steinberg. Employment: remedies for employment law violations.

~~Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.~~

~~This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.~~



Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for recovery of wages, penalties, and other demands for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law requires these awards for unpaid wages to accrue interest at a specified adjusted annual rate determined under the tax laws.

This bill would instead require this rate to be the same as the legal rate of interest payable upon a contract obligation in default where the contract does not otherwise specify the rate of interest.

Existing law provides that any order, decision, or award made by the Labor Commissioner in these administrative proceedings may be appealed by filing an action in the municipal or superior court. If the appealing party is unsuccessful, existing law requires the court to award costs and attorney's fees to the other parties.

This bill would exempt these appeal proceedings from provisions respecting submission of certain matters in specified municipal and superior courts to mandatory arbitration. The bill would require employers filing such an appeal to post a prescribed undertaking and would provide for disposition thereof. The bill would require an award of costs and attorney's fees against an unsuccessful appellant regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Under existing law, any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious. Existing law requires that, if the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill would specify that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the

United States Department of Labor. The bill would require the Labor Commissioner, within 15 days of receiving these findings, either to notify the parties of the reopening of the investigation or to issue a new determination of the complaint. The bill would also expressly provide that an employee may file a civil judicial action without exhausting any administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

Under existing law, an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill would make this penalty applicable to all employers, as specified, and would make related conforming and technical, nonsubstantive changes.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would add an express exception for employee actions to recover underpayment of the minimum wage or specified overtime wages, in which a prevailing employee but not the employer is expressly authorized to recover attorney's fees. The bill would also require the court, in an action to recover unpaid wages, to award interest, as specified.

Under existing law, employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these requirements is a misdemeanor. Under existing law, an employee suffering injury as a result of the employer's



knowing or intentional failure to comply with this requirement is entitled to recover the greater of actual damages or \$100, plus costs and reasonable attorney's fees.

This bill would provide that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation. The bill would impose a state-mandated local program by requiring disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis and by requiring disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate. The bill would revise the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$50 for the initial pay period in which a violation occurs and \$100 per employer for each subsequent pay period in which the violation occurs up to \$10,000 \$4,000, plus costs and reasonable attorney's fees. The bill would authorize an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

Existing law makes employers liable for prescribed civil penalties, based upon the number of employees and number of citations, for failure to provide employee wage deduction statements or keep certain employee pay records.

This bill would specify that if the employer fails to maintain records identifying the affected employees, these penalties are to be computed in accordance with a prescribed formula. The bill would make a technical, clarifying change in related provisions that specify employer record-keeping requirements.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make require any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to pay the employee for twice the employee's average hourly or piecework one hour's pay for each workday that the meal or rest period is not provided. An

aggrieved employee could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.

This bill would provide that if an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall either purchase the tools or equipment from the employee in an amount equal to the price paid by the employee or pay sufficient wages to the employee to qualify for an exemption to the wage order, as provided.

Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for 10 days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to 6 months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would also be conditioned on payment of such an unsatisfied judgment. The bill would make conforming related changes.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with



specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law prohibits employers from receiving or deducting gratuities intended for employees from wages otherwise payable. Violation is a misdemeanor. Under existing law, this prohibition is not applicable to an employee that has a guaranteed wage or salary that is at least the higher of the federal or state minimum wage.

This bill would delete the above exemption, thereby imposing a state-mandated local program. As so revised, the bill would make these provisions applicable to amounts paid by patrons directly to a dancer subject to specified orders of the commission. The bill would also impose a state-mandated local program by requiring employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

Existing law requires employers to keep specified payroll records.

This bill would require these payroll records to identify the number of piece-rate units earned by employees and any applicable piece rate paid to employees.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 3 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.

Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to

additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award these damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.

This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 92 of the Labor Code is amended  
2 to read:

3 92. (a) The Labor Commissioner and his or her  
4 deputies and agents may issue subpoenas to compel the  
5 attendance of witnesses and parties and the production of  
6 books, papers and records; administer oaths; examine  
7 witnesses under oath; take the verification;  
8 acknowledgment, or proof of written instruments; and  
9 take depositions and affidavits for the purpose of carrying  
10 out the provisions of this code and all laws that the  
11 division is to enforce.

12 (b) In any adjudicatory hearing before the Labor  
13 Commissioner, a notice in lieu of a subpoena may be used



1 of the division a copy of the order, decision, or award. The  
 2 order, decision, or award shall include a summary of the  
 3 hearing and the reasons for the decision. Upon filing of  
 4 the order, decision, or award, the Labor Commissioner  
 5 shall serve a copy of the decision personally or by  
 6 first-class mail on the parties. The notice shall also advise  
 7 the parties of their right to appeal the decision or award  
 8 and further advise the parties that failure to do so within  
 9 the period prescribed by this chapter shall result in the  
 10 decision or award becoming final and enforceable as a  
 11 judgment by the appropriate municipal or superior court,  
 12 in accordance with the appropriate rules of jurisdiction.

13 (b) For the purpose of this section, an award shall  
 14 include any sums found owing, damages proved, and any  
 15 penalties awarded pursuant to this code.

16 (c) All awards granted pursuant to a hearing under  
 17 this chapter shall accrue interest on all due and unpaid  
 18 wages at the same rate as prescribed by subdivision (b)  
 19 of Section 3289 of the Civil Code. The interest shall accrue  
 20 until the wages are paid from the date that the wages  
 21 were due and payable as provided in Part 1 (commencing  
 22 with Section 200) of Division 2.

SEC. 3.

24 SEC. 2. Section 98.2 of the Labor Code is amended to  
 25 read:

26 98.2. (a) Within 10 days after service of notice of an  
 27 order, decision, or award the parties may seek review by  
 28 filing an appeal to the municipal or superior court, in  
 29 accordance with the appropriate rules of jurisdiction,  
 30 where the appeal shall be heard de novo. A copy of the  
 31 appeal request shall be served upon the Labor  
 32 Commissioner by the appellant. For purposes of  
 33 computing the 10-day period after service, Section 1013  
 34 of the Code of Civil Procedure shall be applicable. The  
 35 appeal proceedings in the municipal or superior court  
 36 shall be exempt from Section 144.11 of the Code of Civil  
 37 Procedure.

38 (b) Whenever an employer files an appeal pursuant to  
 39 this section, the employer shall post an undertaking with  
 40 the reviewing court in the amount of the order, decision,

1 to compel the attendance of a party, a person for whose  
 2 benefit the proceeding is prosecuted or defended, or any  
 3 officer, director, or managing agent of a party or such a  
 4 person. The service of a subpoena in these cases is not  
 5 required if written notice requesting the witness to  
 6 attend, with the time and place of the hearing, is served  
 7 upon the party or person, or his or her attorney of record.  
 8 The notice shall be served at least 10 days before the time  
 9 requested for attendance unless the hearing officer  
 10 prescribes a shorter time. The giving of the notice shall  
 11 have the same effect as service of a subpoena on the  
 12 witness. Section 1013 of the Code of Civil Procedure shall  
 13 be applicable to service of these notices.

14 (e) The notice specified in subdivision (b) may  
 15 include a request that the party or person bring with him  
 16 or her books, papers, records, documents, or other things.  
 17 The notice shall state the exact materials or things to be  
 18 produced and that the party or person has them in his or  
 19 her possession or under his or her control.

20 (d) A party or person required to attend or produce  
 21 records at a hearing pursuant to notice under subdivision  
 22 (b) may object to the notice as provided in Section  
 23 1450.30 of the Government Code.

24 (e) Notice under subdivision (b) has the same force  
 25 and effect as a subpoena issued by the Labor  
 26 Commissioner pursuant to subdivision (a) and may be  
 27 enforced, and wilful disobedience punished, in  
 28 accordance with Section 93.

29 (f) Any subpoena specified in subdivision (a) or any  
 30 notice specified in subdivision (b) may include a request  
 31 that the party or person deliver to the Labor  
 32 Commissioner and to the requesting party a copy of the  
 33 books, papers, records, documents, or other things  
 34 subject to the subpoena or notice not less than five days  
 35 prior to the hearing.  
 36 SEC. 2.

37 SECTION 1. Section 98.1 of the Labor Code is  
 38 amended to read:

39 98.1. (a) Within 15 days after the hearing is  
 40 concluded, the Labor Commissioner shall file in the office



1 or award. The undertaking shall consist of an appeal bond  
 2 issued by a licensed surety or a cash deposit with the court  
 3 in the amount of the order, decision, or award. The  
 4 employer shall provide written notification to the other  
 5 parties and the Labor Commissioner of the posting of the  
 6 undertaking. The undertaking shall be on the condition  
 7 that, if any judgment is entered in favor of the employee,  
 8 the employer shall pay the amount owed pursuant to the  
 9 judgment, and if the appeal is withdrawn or dismissed  
 10 without entry of judgment, the employer shall pay the  
 11 amount owed pursuant to the order, decision, or award of  
 12 the Labor Commissioner unless the parties have executed  
 13 a settlement agreement for payment of some other  
 14 amount, in which case the employer shall pay the amount  
 15 that the employer is obligated to pay under the terms of  
 16 the settlement agreement. If the employer fails to pay the  
 17 amount owed within 10 days of entry of the judgment,  
 18 dismissal, or withdrawal of the appeal, or the execution of  
 19 a settlement agreement, a portion of the undertaking if  
 20 equal to the amount owed, or the entire undertaking if  
 21 the amount owed exceeds the undertaking, shall be  
 22 forfeited to the employee.

23 (c) If the party seeking review by filing an appeal to  
 24 the municipal or superior court is unsuccessful in the  
 25 appeal, the court shall determine the costs and reasonable  
 26 attorney's fees incurred by the other parties to the appeal,  
 27 regardless of whether the successful party is represented  
 28 by his or her attorney or by the Labor Commissioner  
 29 pursuant to Section 98.4, and shall assess that amount  
 30 as a cost upon the party filing the appeal.

31 (d) If no notice of appeal of the order, decision, or  
 32 award is filed within the period set forth in subdivision  
 33 (a), the order, decision, or award shall, in the absence of  
 34 fraud, be deemed the final order.

35 (e) The Labor Commissioner shall file, within 10 days  
 36 of the order becoming final pursuant to subdivision (d),  
 37 a certified copy of the final order with the clerk of the  
 38 municipal or superior court, in accordance with the  
 39 appropriate rules of jurisdiction, of the appropriate  
 40 county unless a settlement has been reached by the

1 parties and approved by the Labor Commissioner.  
 2 Judgment shall be entered immediately by the court  
 3 clerk in conformity therewith. The judgment so entered  
 4 shall have the same force and effect as, and shall be  
 5 subject to all of the provisions of law relating to, a  
 6 judgment in a civil action, and may be enforced in the  
 7 same manner as any other judgment of the court in which  
 8 it is entered. Enforcement of the judgment shall receive  
 9 court priority.

10 (f) In order to ensure that judgments are satisfied, the  
 11 Labor Commissioner may serve upon the judgment  
 12 debtor, personally or by first-class mail at the last known  
 13 address of the judgment debtor listed with the division,  
 14 a form similar to, and requiring the reporting of the same  
 15 information as, the form approved or adopted by the  
 16 Judicial Council for purposes of subdivision (a) of Section  
 17 116.830 of the Code of Civil Procedure to assist in  
 18 identifying the nature and location of any assets of the  
 19 judgment debtor.

20 The judgment debtor shall complete the form and  
 21 cause it to be delivered to the division at the address listed  
 22 on the form within 35 days after the form has been served  
 23 on the judgment debtor, unless the judgment has been  
 24 satisfied. In case of willful failure by the judgment debtor  
 25 to comply with this subdivision, the division or the  
 26 judgment creditor may request the court to apply the  
 27 sanctions provided in Section 708.170 of the Code of Civil  
 28 Procedure.

29 (g) Notwithstanding subdivision (e), the Labor  
 30 Commissioner may stay execution of any judgment  
 31 entered upon an order, decision, or award that has  
 32 become final upon good cause appearing therefor and  
 33 may impose the terms and conditions of the stay of  
 34 execution. A certified copy of the stay of execution shall  
 35 be filed with the clerk entering the judgment.

36 (h) When a judgment is satisfied in fact, otherwise  
 37 than by execution, the Labor Commissioner may, upon  
 38 the motion of either party or on its own motion, order  
 39 entry of satisfaction of judgment. The clerk of the court



1 shall enter a satisfaction of judgment upon the filing of a  
2 certified copy of the order.

3 (i) The Labor Commissioner shall make every  
4 reasonable effort to ensure that judgments are satisfied,  
5 including taking all appropriate legal action and  
6 requiring the employer to deposit a bond as provided in  
7 Section 240.

8 (j) The judgment creditor, or the Labor  
9 Commissioner as assignee of the judgment creditor, shall  
10 be entitled to court costs and reasonable attorney fees for  
11 enforcing the judgment that is rendered pursuant to this  
12 section.

13 SEC. 4. Section 98.7 of the Labor Code is amended to  
14 read:

15 98.7. (a) Any person who believes that he or she has  
16 been discharged or otherwise discriminated against in  
17 violation of any provision of this code under the  
18 jurisdiction of the Labor Commissioner may file a  
19 complaint with the division within six months after the  
20 occurrence of the violation. The six month period may be  
21 extended for good cause. The complaint shall be  
22 investigated by a discrimination complaint investigator in  
23 accordance with this section. The Labor Commissioner  
24 shall establish procedures for the investigation of  
25 discrimination complaints. A summary of the procedures  
26 shall be provided to each complainant and respondent at  
27 the time of initial contact. The Labor Commissioner shall  
28 inform complainants charging a violation of Section 6310  
29 or 6311, at the time of initial contact, of his or her right to  
30 file a separate, concurrent complaint with the United  
31 States Department of Labor within 30 days after the  
32 occurrence of the violation.

33 (b) Each complaint of unlawful discharge or  
34 discrimination shall be assigned to a discrimination  
35 complaint investigator, who shall prepare and submit a  
36 report to the Labor Commissioner based on an  
37 investigation of the complaint. The Labor Commissioner  
38 may designate the chief deputy or assistant Labor  
39 Commissioner or the chief counsel to receive and review  
40 the reports. The investigation shall include, where

1 appropriate, interviews with the complainant,  
2 respondent, and any witnesses who may have  
3 information concerning the alleged violation, and a  
4 review of any documents that may be relevant to the  
5 disposition of the complaint. The identity of witnesses  
6 shall remain confidential unless the identification of a  
7 witness becomes necessary to proceed with the  
8 investigation or to prosecute an action to enforce a  
9 determination. The investigation report submitted to the  
10 Labor Commissioner or designee shall include the  
11 statements and documents obtained in the investigation  
12 and the findings of the investigator concerning whether  
13 a violation occurred. The Labor Commissioner may hold  
14 an investigative hearing whenever the Labor  
15 Commissioner determines, after review of the  
16 investigation report, that a hearing is necessary to fully  
17 establish the facts. In the hearing the investigation report  
18 shall be made a part of the record and the complainant  
19 and respondent shall have the opportunity to present  
20 further evidence. The Labor Commissioner shall issue,  
21 serve, and enforce any necessary subpoenas.

22 (c) If the Labor Commissioner determines a violation  
23 has occurred, he or she shall notify the complainant and  
24 respondent and direct the respondent to cease and desist  
25 from the violation and take action as deemed necessary  
26 to remedy the violation, including, where appropriate,  
27 rehiring or reinstatement, reimbursement of lost wages  
28 and interest thereon, payment of reasonable attorney's  
29 fees associated with any hearing held by the Labor  
30 Commissioner in investigating the complaint, and the  
31 posting of notices to employees. If the respondent does  
32 not comply with the order within 10 working days  
33 following notification of the Labor Commissioner's  
34 determination, the Labor Commissioner shall bring an  
35 action promptly in an appropriate court against the  
36 respondent. If the Labor Commissioner fails to bring an  
37 action in court promptly, the complainant may bring an  
38 action against the Labor Commissioner in any  
39 appropriate court for a writ of mandate to compel the  
40 Labor Commissioner to bring an action in court against



1 the respondent. If the complainant prevails in his or her  
 2 action for a writ of mandate, the court shall award the  
 3 complainant court costs and reasonable attorney's fees,  
 4 notwithstanding any other provision of law. Regardless of  
 5 any delay in bringing an action in court, the Labor  
 6 Commissioner shall not be divested of jurisdiction. In the  
 7 action, the court may permit the claimant to intervene as  
 8 a party plaintiff to the action and shall have jurisdiction,  
 9 for cause shown, to restrain the violation and to order all  
 10 appropriate relief. Appropriate relief includes, but is not  
 11 limited to, rehiring or reinstatement of the complainant,  
 12 reimbursement of lost wages and interest thereon, and  
 13 any other compensation or equitable relief that is  
 14 appropriate under the circumstances of the case. The  
 15 Labor Commissioner shall petition the court for  
 16 appropriate temporary relief or a restraining order unless  
 17 he or she determines good cause exists for not doing so.

18 (d) If the Labor Commissioner determines no  
 19 violation has occurred, he or she shall notify the  
 20 complainant and respondent and shall dismiss the  
 21 complaint. The Labor Commissioner may direct the  
 22 complainant to pay reasonable attorney's fees associated  
 23 with any hearing held by the Labor Commissioner if the  
 24 Labor Commissioner finds the complaint was frivolous,  
 25 unreasonable, groundless, and was brought in bad faith.  
 26 The complainant may, after notification of the Labor  
 27 Commissioner's determination to dismiss a complaint,  
 28 bring an action in an appropriate court, which shall have  
 29 jurisdiction to determine whether a violation occurred,  
 30 and if so, to restrain the violation and order all  
 31 appropriate relief to remedy the violation. Appropriate  
 32 relief includes, but is not limited to, rehiring or  
 33 reinstatement of the complainant, reimbursement of lost  
 34 wages and interest thereon, and other compensation or  
 35 equitable relief that is appropriate under the  
 36 circumstances of the case. When dismissing a complaint,  
 37 the Labor Commissioner shall advise the complainant of  
 38 his or her right to bring an action in an appropriate court  
 39 if he or she disagrees with the determination of the Labor  
 40 Commissioner, and in the case of an alleged violation of

1 Section 6310 or 6311, to file a complaint against the state  
 2 program with the United States Department of Labor.  
 3 The filing of a timely complaint against the state program  
 4 with the United States Department of Labor shall vacate  
 5 the Labor Commissioner's dismissal of the person's  
 6 complaint against the respondent, pending the issuance  
 7 of findings by the United States Department of Labor.  
 8 Within 15 days of the receipt of these findings the Labor  
 9 Commissioner shall notify the parties of the reopening of  
 10 the investigation of the person's complaint against the  
 11 respondent, or shall issue a new determination of the  
 12 complaint pursuant to subdivision (c) or this subdivision.  
 13 (e) The Labor Commissioner shall notify the  
 14 complainant and respondent of his or her determination  
 15 under subdivision (c) or (d) not later than 60 days after  
 16 the filing of the complaint. Determinations by the Labor  
 17 Commissioner under subdivision (c) or (d) may be  
 18 appealed by the complainant or respondent to the  
 19 Director of Industrial Relations within 10 days following  
 20 notification of the determination. The appeal shall set  
 21 forth specifically and in full detail the grounds upon  
 22 which the appealing party considers the Labor  
 23 Commissioner's determination to be unjust or unlawful,  
 24 and every issue to be considered by the director. The  
 25 director may consider any issue relating to the initial  
 26 determination and may modify, affirm, or reverse the  
 27 Labor Commissioner's determination. The director's  
 28 determination shall be the determination of the Labor  
 29 Commissioner. The director shall notify the complainant  
 30 and respondent of his or her determination within 10 days  
 31 of receipt of the appeal.

32 (f) The rights and remedies provided by this section  
 33 do not preclude an employee from pursuing any other  
 34 rights and remedies under any other provision of law. An  
 35 employee may file a civil judicial action without  
 36 exhausting his or her administrative remedies concerning  
 37 the alleged violation of any of the discrimination  
 38 provisions under the jurisdiction of the Labor  
 39 Commissioner, and may seek whatever relief would be  
 40 available from the Labor Commissioner under this



~~1 section, in addition to any other relief that may be~~  
~~2 available under any other provision of law. The limitation~~  
~~3 period for filing a complaint with the Labor~~  
~~4 Commissioner under subdivision (a) shall not apply to~~  
~~5 any civil action filed by an employee under this~~  
~~6 subdivision.~~  
~~7 SEC. 5:~~

8 SEC. 3. Section 203.1 of the Labor Code is amended  
 9 to read:

10 203.1. If an employer pays an employee in the regular  
 11 course of employment or in accordance with Section 201,  
 12 201.5, 201.7, or 202 any wages or fringe benefits, or both,  
 13 by check, draft or voucher, which check, draft or voucher  
 14 is subsequently refused payment because the employer  
 15 or maker has no account with the bank, institution, or  
 16 person on which the instrument is drawn, or has  
 17 insufficient funds in the account upon which the  
 18 instrument is drawn at the time of its presentation, so long  
 19 as the same is presented within 30 days of receipt by the  
 20 employee of the check, draft or voucher, those wages or  
 21 fringe benefits, or both, shall continue as a penalty from  
 22 the due date thereof at the same rate until paid or until  
 23 an action therefor is commenced. However, those wages  
 24 and fringe benefits shall not continue for more than 30  
 25 days and this penalty shall not apply if the employer can  
 26 establish to the satisfaction of the Labor Commissioner or  
 27 an appropriate court of law that the violation of this  
 28 section was unintentional. This penalty is in addition to,  
 29 and independent and apart from, any other penalty in  
 30 this article. also shall not apply in any case in which an  
 31 employee recovers the service charge authorized by  
 32 Section 1719 of the Civil Code in an action brought by the  
 33 employee thereunder.

34 ~~SEC. 6:~~

35 SEC. 4. Section 218.5 of the Labor Code is amended  
 36 to read:

37 218.5. In any action brought for the nonpayment of  
 38 wages, fringe benefits, or health and welfare or pension  
 39 fund contributions, the court shall award reasonable  
 40 attorney's fees and costs to the prevailing party if any

1 party to the action requests attorney's fees and costs upon  
 2 the initiation of the action. This section shall not apply to  
 3 an action brought by the Labor Commissioner. This  
 4 section shall not apply to a surety issuing a bond pursuant  
 5 to Chapter 9 (commencing with Section 7000) of Division  
 6 3 of the Business and Professions Code or to an action to  
 7 enforce a mechanics lien brought under Chapter 2  
 8 (commencing with Section 3109) of Title 15 of Part 4 of  
 9 Division 3 of the Civil Code.

10 This section does not apply to any action for which  
 11 attorney's fees are recoverable under Section 1194.

12 ~~SEC. 7:~~

13 SEC. 5. Section 218.6 is added to the Labor Code, to  
 14 read:

15 218.6. In any action brought for the nonpayment of  
 16 wages, the court shall award interest on all due and  
 17 unpaid wages at the rate of interest specified in  
 18 subdivision (b) of Section 3289 of the Civil Code, which  
 19 shall accrue from the date that the wages were due and  
 20 payable as provided in Part 1 (commencing with Section  
 21 200) of Division 2.

22 ~~SEC. 8:~~

23 SEC. 6. Section 226 of the Labor Code is amended to  
 24 read:

25 226. (a) Every employer shall, semimonthly or at the  
 26 time of each payment of wages, furnish each of his or her  
 27 employees, either as a detachable part of the check, draft,  
 28 or voucher paying the employee's wages, or separately  
 29 when wages are paid by personal check or cash, an  
 30 itemized statement in writing showing (1) gross wages  
 31 earned, (2) total hours worked by the employee, except  
 32 for any employee whose compensation is solely based on  
 33 a salary and who is exempt from payment of overtime  
 34 under subdivision (a) of Section 515 or any applicable  
 35 order of the Industrial Welfare Commission, (3) the  
 36 number of piece-rate units earned and any applicable  
 37 piece rate if the employee is paid on a piece-rate basis, (4)  
 38 all deductions, provided, that all deductions made on  
 39 written orders of the employee may be aggregated and  
 40 shown as one item, (5) net wages earned, (6) the



1 inclusive dates of the period for which the employee is  
 2 paid, (7) the name of the employee and his or her social  
 3 security number, (8) the name and address of the legal  
 4 entity that is the employer, and (9) all applicable hourly  
 5 rates in effect during the pay period and the  
 6 corresponding number of hours worked at each hourly  
 7 rate by the employee.

8 The deductions made from payments of wages shall be  
 9 recorded in ink or other indelible form, properly dated,  
 10 showing the month, day, and year, and a copy of the  
 11 statement or a record of the deductions shall be kept on  
 12 file by the employer for at least three years at the place  
 13 of employment or at a central location within the State of  
 14 California.

15 An employer that is required by this code or any  
 16 regulation adopted pursuant to this code to keep the  
 17 information required by this section shall afford current  
 18 and former employees the right to inspect or copy the  
 19 records pertaining to that current or former employee,  
 20 upon reasonable request to the employer. The employer  
 21 may take reasonable steps to assure the identity of a  
 22 current or former employee. If the employer provides  
 23 copies of the records, the actual cost of reproduction may  
 24 be charged to the current or former employee.

25 This section does not apply to any employer of any  
 26 person employed by the owner or occupant of a  
 27 residential dwelling whose duties are incidental to the  
 28 ownership, maintenance, or use of the dwelling,  
 29 including the care and supervision of children, or whose  
 30 duties are personal and not in the course of the trade,  
 31 business, profession, or occupation of the owner or  
 32 occupant.

33 (b) Any employee suffering injury as a result of a  
 34 knowing and intentional failure by an employer to  
 35 comply with subdivision (a) shall be entitled to recover  
 36 the greater of all actual damages or one hundred dollars  
 37 (\$100) for each pay period in which a violation occurs;  
 38 not fifty dollars (\$50) for the initial pay period in which  
 39 a violation occurs and one hundred dollars (\$100) per  
 40 employee for each violation in a subsequent pay period,



1 not exceeding an aggregate penalty of ten four thousand  
 2 dollars (\$10,000) (\$4,000), and shall be entitled to an  
 3 award of costs and reasonable attorney's fees. Any  
 4 aggrieved employee may seek recovery of the damages  
 5 or penalty provided for in this section by filing a  
 6 complaint pursuant to subdivision (a) of Section 98 or  
 7 bringing a civil action.

8 (c) This section does not apply to the state, or any city,  
 9 county, city and county, district, or any other  
 10 governmental entity.

11 SEC. 9. Section 226.3 of the Labor Code is amended  
 12 to read:

13 ~~226.3. Any employer that violates subdivision (a) of~~  
 14 ~~Section 226 shall be subject to a civil penalty in the~~  
 15 ~~amount of two hundred fifty dollars (\$250) per employee~~  
 16 ~~per violation in an initial citation and one thousand dollars~~  
 17 ~~(\$1,000) per employee for each violation in a subsequent~~  
 18 ~~citation, for which the employer fails to provide the~~  
 19 ~~employee a wage deduction statement or fails to keep the~~  
 20 ~~records required in subdivision (a) of Section 226. In the~~  
 21 ~~event that an employer fails to maintain records that~~  
 22 ~~identify each employee to whom wages are paid, the~~  
 23 ~~penalties under this section shall be computed by~~  
 24 ~~multiplying the number of employees employed on the~~  
 25 ~~date the penalty is assessed by the 24 semimonthly pay~~  
 26 ~~periods of the immediately preceding 12 months, but the~~  
 27 ~~employer may affirmatively establish that the evidence~~  
 28 ~~supports a lesser penalty based upon proof of a lesser~~  
 29 ~~number of affected employees. The civil penalties~~  
 30 ~~provided for in this section are in addition to any other~~  
 31 ~~penalty provided by law. In enforcing this section, the~~  
 32 ~~Labor Commissioner shall take into consideration~~  
 33 ~~whether the violation was inadvertent and, in his or her~~  
 34 ~~discretion, may decide not to penalize an employer for a~~  
 35 ~~first violation when that violation was due to a clerical~~  
 36 ~~error or inadvertent mistake.~~

37 SEC. 10.

38 SEC. 7. Section 226.7 is added to the Labor Code, to  
 39 read:



226.7. (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) An employer that violates this section shall be subject to both of the following:

(1) A civil penalty of fifty dollars (\$50) per employee per violation.

(2) Payment to the aggrieved employee of an amount equal to twice his or her average hourly rate of compensation for the full length of the meal or rest periods during which the employee was required to perform any work. An employee paid on a piecework basis shall be entitled to an amount equal to twice the amount of piecework units earned during those periods, but in no event shall the amount be less than the applicable state minimum wage for the full length of those time periods during which any work was performed.

(c) Any employee aggrieved by a violation of this section may do either of the following:

(1) Seek recovery of payments under paragraph (2) of subdivision (b) through a complaint filed pursuant to subdivision (a) of Section 98.

(2) Seek recovery of payments under paragraph (2) of subdivision (b) in a civil action. The court shall award a prevailing plaintiff in such an action reasonable attorney's fees.

SEC. 11. Section 226.8 is added to the Labor Code, to read:

226.8. If an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall do one of the following, whichever results in a greater sum being paid to the employee:

(a) Purchase the tools or equipment from the employee in an amount equal to the price paid by the employee for the tools or equipment.

(b) Pay sufficient wages to the employee for a period of six months, as stated in the applicable wage order, to qualify for an exemption to the wage order.

SEC. 12. Section 240 of the Labor Code is amended to read:

240. (a) If any employer has been convicted of a violation of any provision of this article, or if any judgment against an employer for unpaid wages, interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner remains unsatisfied for a period of 10 days after the time to appeal therefrom has expired, and no appeal therefrom is then pending, the Labor Commissioner may require the employer to deposit a bond in a sum that the Labor Commissioner deems sufficient and adequate in the circumstances. The bond shall be payable to the Labor Commissioner and shall be conditioned that the employer shall, for a definite future period, not exceeding six months, pay the employees in accordance with the provisions of this article, and shall be further conditioned upon the payment by the employer of any unsatisfied judgment against the employer for unpaid wages, interest, penalties, or other demands within the jurisdiction of the Labor Commissioner.

(b) If within 10 days after demand for the bond, which demand may be made by mail, the employer fails to deposit the bond, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against the employer in a court of competent jurisdiction to compel the employer to furnish the bond or to cease doing business until the employer has done so. The employer has the burden of proving either that the bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond, and that the bond is reasonably necessary or proper to secure prompt payment of any unsatisfied judgment against the employer for unpaid wages, interest, penalties, or other demands within the jurisdiction of the Labor Commissioner or for the employer's compliance with the provisions of this article;



1 the court may enjoin the employer, whether an  
 2 individual, partnership, corporation, company, trust, or  
 3 association, and any other person or persons that may  
 4 have been or may be concerned with, or in any way  
 5 participated in, the failure to pay the wages resulting in  
 6 the judgment, from doing business until the requirement  
 7 is met, and make other and further orders appropriate to  
 8 compel compliance with the requirement.  
 9 SEC. 13. Section 245 is added to the Labor Code, to  
 10 read:

11 245. Whenever the Labor Commissioner makes an  
 12 award against an employer pursuant to this chapter, upon  
 13 finding that the employer has engaged in a pattern and  
 14 practice of violating wage and hours laws, the Labor  
 15 Commissioner shall also make an order requiring the  
 16 employer to post a notice at the place of employment  
 17 where the affected employees are or were employed  
 18 containing a description of the nature of the violation, a  
 19 declaration by the employer stating that it will not engage  
 20 in these unlawful acts in the future, and the address and  
 21 telephone number of the Labor Commissioner. The  
 22 notice, on a form approved by the Labor Commissioner,  
 23 shall be posted conspicuously by the employer for a  
 24 period of not less than 60 days. The notice shall bear the  
 25 seal of the State of California and of the Labor  
 26 Commissioner and the signature of the employer or a  
 27 representative or agent of the employer. The cost of  
 28 producing and posting the notice shall be paid by the  
 29 employer. The failure or refusal of an employer to post  
 30 the notice in accordance with this section shall subject the  
 31 employer to a civil penalty, to be assessed and collected  
 32 by the Labor Commissioner, in the amount of five  
 33 hundred dollars (\$500) for each instance in which the  
 34 employer fails or refuses to post a notice as required by  
 35 this section, and the employer shall be required to  
 36 properly post the notice.  
 37 SEC. 14.

38 \* (b) If an employer fails to provide an employee a meal  
 39 period or rest period in accordance with an applicable  
 40 order of the Industrial Welfare Commission, the

1 employer shall pay the employee one additional hour of  
 2 pay at the employee's regular rate of compensation for  
 3 each work day that the meal or rest period is not  
 4 provided.

5 SEC. 8. Section 350 of the Labor Code is amended to  
 6 read:

7 350. As used in this article, unless the context indicates  
 8 otherwise:

9 (a) "Employer" means every person engaged in any  
 10 business or enterprise in this state that has one or more  
 11 persons in service under any appointment, contract of  
 12 hire, or apprenticeship, express or implied, oral or  
 13 written, irrespective of whether the person is the owner  
 14 of the business or is operating on a concessionaire or other  
 15 basis.

16 (b) "Employee" means every person, including aliens  
 17 and minors, rendering actual service in any business for  
 18 an employer, whether gratuitously or for wages or pay,  
 19 whether the wages or pay are measured by the standard of  
 20 of time, piece, task, commission, or other method of  
 21 calculation, and whether the service is rendered on a  
 22 commission, concessionaire, or other basis.

23 (c) "Employing" includes hiring, or in any way  
 24 contracting for, the services of an employee.

25 (d) "Agent" means every person other than the  
 26 employer having the authority to hire or discharge any  
 27 employee or supervise, direct, or control the acts of  
 28 employees.

29 (e) "Gratuity" includes any tip, gratuity, money, or  
 30 part thereof that has been paid or given to or left for an  
 31 employee by a patron of a business over and above the  
 32 actual amount due the business for services rendered or  
 33 for goods, food, drink, or articles sold or served to the  
 34 patron. Any amounts paid directly by a patron to a dancer  
 35 employed by an employer subject to Industrial Welfare  
 36 Commission Order No. 5 or 10 shall be deemed a gratuity.

37 (f) "Business" means any business establishment or  
 38 enterprise, regardless of where conducted.  
 39 SEC. 15.

1 SEC. 9. Section 351 of the Labor Code is amended to  
2 read:

3 351. No employer or agent shall collect, take, or  
4 receive any gratuity or a part thereof that is paid, given  
5 to, or left for an employee by a patron, or deduct any  
6 amount from wages due an employee on account of a  
7 gratuity, or require an employee to credit the amount, or  
8 any part thereof, of a gratuity against and as a part of the  
9 wages due the employee from the employer. Every  
10 gratuity is hereby declared to be the sole property of the  
11 employee or employees to whom it was paid, given, or left  
12 for. An employer that permits patrons to pay gratuities by  
13 credit card shall pay the employees the full amount of the  
14 gratuity that the patron indicated on the credit card slip,  
15 without any deductions for any credit card payment  
16 processing fees or costs that may be charged to the  
17 employer by the credit card company. Payment of  
18 gratuities made by patrons using credit cards shall be  
19 made to the employees not later than the next regular  
20 payday following the date the patron authorized the  
21 credit card payment.

22 ~~SEC. 16:~~

23 SEC. 10. Section 1174 of the Labor Code is amended  
24 to read:

25 1174. Every person employing labor in this state shall:  
26 (a) Furnish to the commission, at its request, reports  
27 or information that the commission requires to carry out  
28 this chapter. The reports and information shall be verified  
29 if required by the commission or any member thereof.

30 (b) Allow any member of the commission or the  
31 employees of the Division of Labor Standards  
32 Enforcement free access to the place of business or  
33 employment of the person to secure any information or  
34 make any investigation that they are authorized by this  
35 chapter to ascertain or make. The commission may  
36 inspect or make excerpts, relating to the employment of  
37 employees, from the books, reports, contracts, payrolls,  
38 documents, or papers of the person.

39 (c) Keep a record showing the names and addresses of  
40 all employees employed and the ages of all minors.

1 (d) Keep, at a central location in the state or at the  
2 plants or establishments at which employees are  
3 employed, payroll records showing the hours worked  
4 daily by and the wages paid to, and the number of  
5 piece-rate units earned by and any applicable piece rate  
6 paid to, employees employed at the respective plants or  
7 establishments. These records shall be kept in accordance  
8 with rules established for this purpose by the commission,  
9 but in any case shall be kept on file for not less than two  
10 years.

11 ~~SEC. 17. Section 1174.5 of the Labor Code is amended  
12 to read:~~

13 ~~1174.5. Any person employing labor who willfully fails  
14 to maintain the records required by subdivision (e) of  
15 Section 1174 or accurate and complete records required  
16 by subdivision (d) of Section 1174 or by the applicable  
17 wage orders of the Industrial Welfare Commission, or to  
18 allow any member of the commission or employees of the  
19 division to inspect records pursuant to subdivision (b) of  
20 Section 1174, shall be subject to a civil penalty of one  
21 hundred dollars (\$100) per employee for each payroll  
22 period during which the violation occurs, up to a  
23 maximum period of three years.~~

24 ~~SEC. 18. Section 1194.2 of the Labor Code is amended  
25 to read:~~

26 ~~1194.2. (a) In any proceeding before the Labor  
27 Commissioner, or any action under Section 1193.6 or 1194,  
28 to recover wages because of the payment of a wage less  
29 than the minimum wage fixed by an order of the  
30 commission, an employee shall be entitled additionally to  
31 recover liquidated damages in an amount equal to the  
32 wages unlawfully unpaid and interest thereon. Nothing in  
33 this subdivision shall be construed to authorize the  
34 recovery of liquidated damages for failure to pay  
35 overtime compensation.~~

36 ~~(b) Notwithstanding subdivision (a), if the employer  
37 demonstrates to the satisfaction of the Labor  
38 Commissioner or the court that the act or omission giving  
39 rise to the action was in good faith and that the employer  
40 had reasonable grounds for believing that the act or~~



1 omission was not a violation of any provision of the Labor  
 2 Code relating to minimum wage, or an order of the  
 3 commission, the Labor Commissioner or the court may,  
 4 in the discretion of the Labor Commissioner or the court  
 5 as the case may be, refuse to award liquidated damages  
 6 or award any amount of liquidated damages not  
 7 exceeding the amount specified in subdivision (a).

8 (e) This section only applies to civil actions  
 9 commenced on or after January 1, 1992.  
 10 SEC. 19. Section 1197.1 of the Labor Code is amended  
 11 to read:

12 1197.1. (a) Any employer or other person, acting  
 13 either individually or as an officer, agent, or employee of  
 14 another person, who pays or causes to be paid to any  
 15 employee a wage less than the minimum fixed by an  
 16 order of the commission shall be subject to a civil penalty  
 17 and restitution as follows:

18 (1) For any initial violation that is intentionally  
 19 committed, fifty dollars (\$50) for each underpaid  
 20 employee for each pay period for which the employee is  
 21 underpaid, in addition to an amount sufficient to recover,  
 22 on behalf of the affected employees, all underpaid wages,  
 23 any owed interest thereon, and statutory liquidated  
 24 damages.

25 (2) For each subsequent violation for the same specific  
 26 offense, two hundred fifty dollars (\$250) for each  
 27 underpaid employee for each pay period for which the  
 28 employee is underpaid, regardless of whether the initial  
 29 violation is intentionally committed, in addition to an  
 30 amount sufficient to recover, on behalf of the affected  
 31 employees, all underpaid wages, any interest owed  
 32 thereon, and statutory liquidated damages.

33 (b) If, upon inspection or investigation, the Labor  
 34 Commissioner determines that a person has paid or  
 35 caused to be paid a wage less than the minimum, the  
 36 Labor Commissioner may issue a citation to the person in  
 37 violation. The citation may be served personally or by  
 38 registered mail in accordance with subdivision (e) of  
 39 Section 11505 of the Government Code. Each citation  
 40 shall be in writing and shall describe the nature of the

1 violation, including reference to the statutory provision  
 2 alleged to have been violated. The Labor Commissioner  
 3 promptly shall take all appropriate action, in accordance  
 4 with this section, to enforce the citation and to recover  
 5 the civil penalty and restitution assessed in connection  
 6 with the citation.

7 (e) If a person desires to contest a citation or the  
 8 proposed assessment of a civil penalty or restitution  
 9 therefor, the person shall, within 15 business days after  
 10 service of the citation, notify the office of the Labor  
 11 Commissioner that appears on the citation of his or her  
 12 request for an informal hearing. The Labor  
 13 Commissioner or his or her deputy or agent shall, within  
 14 30 days, hold a hearing at the conclusion of which the  
 15 citation or proposed assessment of a civil penalty and  
 16 restitution shall be affirmed, modified, or dismissed.

17 The decision of the Labor Commissioner shall consist of  
 18 a notice of findings, findings, and an order, all of which  
 19 shall be served on all parties to the hearing within 15 days  
 20 after the hearing by regular first-class mail at the last  
 21 known address of the party on file with the Labor  
 22 Commissioner. Service shall be completed pursuant to  
 23 Section 1013 of the Code of Civil Procedure. Any amount  
 24 found due by the Labor Commissioner as a result of a  
 25 hearing shall become due and payable 45 days after notice  
 26 of the findings and written findings and order have been  
 27 mailed to the party assessed. A writ of mandate may be  
 28 taken from this finding to the appropriate superior court.  
 29 The party shall pay any judgment and costs ultimately  
 30 rendered by the court against the party for the  
 31 assessment. The writ shall be taken within 45 days of  
 32 service of the notice of findings, findings, and order  
 33 thereon.

34 (d) A person to whom a citation has been issued may,  
 35 in lieu of contesting a citation pursuant to this section,  
 36 transmit to the office of the Labor Commissioner  
 37 designated on the citation the amount of the civil penalty  
 38 and restitution specified for the violation within 15  
 39 business days after issuance of the citation.



1 SEC. 12. No reimbursement is required by this act  
 2 pursuant to Section 6 of Article XIII B of the California  
 3 Constitution because the only costs that may be incurred  
 4 by a local agency or school district will be incurred  
 5 because this act creates a new crime or infraction,  
 6 eliminates a crime or infraction, or changes the penalty  
 7 for a crime or infraction, within the meaning of Section  
 8 17556 of the Government Code, or changes the definition  
 9 of a crime within the meaning of Section 6 of Article  
 10 XIII B of the California Constitution.

1 ~~(e) When no petition objecting to a citation or the~~  
 2 ~~proposed assessment of a civil penalty and restitution is~~  
 3 ~~filed, a certified copy of the citation or proposed civil~~  
 4 ~~penalty and restitution may be filed by the Labor~~  
 5 ~~Commissioner in the office of the clerk of the superior~~  
 6 ~~court in any county in which the person assessed has or~~  
 7 ~~had a place of business. The clerk, immediately upon the~~  
 8 ~~filing, shall enter judgment for the state against the~~  
 9 ~~person assessed in the amount shown on the citation or~~  
 10 ~~proposed assessment of a civil penalty and restitution.~~

11 ~~(f) When findings and the order thereon are made~~  
 12 ~~affirming or modifying a citation or proposed assessment~~  
 13 ~~of a civil penalty and restitution after hearing, a certified~~  
 14 ~~copy of these findings and the order entered thereon may~~  
 15 ~~be entered by the Labor Commissioner in the office of the~~  
 16 ~~clerk of the superior court in any county in which the~~  
 17 ~~person assessed has property or in which the person~~  
 18 ~~assessed has or had a place of business. The clerk,~~  
 19 ~~immediately upon the filing, shall enter judgment for the~~  
 20 ~~state against the person assessed in the amount shown on~~  
 21 ~~the certified order.~~

22 ~~(g) A judgment entered pursuant to this section shall~~  
 23 ~~bear the same rate of interest and shall have the same~~  
 24 ~~effect as other judgments and be given the same~~  
 25 ~~preference allowed by the law on other judgments~~  
 26 ~~rendered for claims for taxes. The clerk shall make no~~  
 27 ~~charge for the service provided by this section to be~~  
 28 ~~performed by him or her.~~

29 ~~(h) The civil penalties and restitution provided for in~~  
 30 ~~this section are in addition to any other penalty or remedy~~  
 31 ~~provided by law.~~

32 ~~(i) This section shall not apply to any order of the~~  
 33 ~~commission relating to household occupations.~~  
 34 ~~SEC. 20.~~

35 *SEC. 11. The amendments to Section 218.5 of the*  
 36 *Labor Code made by Section 4 of this act do not constitute*  
 37 *a change in, but are declaratory of, the existing law, and*  
 38 *these amendments are intended to reflect the holding of*  
 39 *the Court of Appeal in Early v. Superior Court (2000) 79*  
 40 *Cal.App.4th 1420.*





AMENDED IN SENATE AUGUST 25, 2000

CALIFORNIA LEGISLATURE--1999-2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2857**

**Introduced by ~~Committee on Labor and Employment~~  
(~~Steinberg (Chair), Gallegos, Knox, Migden, Romero, and~~  
~~Shelley) Assembly Member Steinberg~~**

March 2, 2000

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An act to amend ~~Section 98.2 of Sections 92, 98.2, 1174.5,~~  
~~1194.2, and 1197.1 of, and to add Sections 226.7 and 245 to, the~~  
Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2857, as amended, ~~Committee on Labor and~~  
~~Employment Steinberg.~~ Wage and hour remedies.

*Existing law authorizes the Labor Commissioner, his or her  
deputies, and agents to issue subpoenas for the purpose of  
carrying out the laws which the Division of Labor Standards  
Enforcement is responsible for enforcing.*

*This bill would authorize using a prescribed notice in lieu  
of a subpoena in adjudicatory proceedings before the Labor  
Commissioner to compel attendance of a party, person for  
whose benefit the proceeding is prosecuted or defended, or  
any officer, director, or managing agent thereof. The notice  
would have the same force and effect as a subpoena.*

Existing law provides a procedure for the adjudication of  
wage claims within the Department of Labor Standards  
Enforcement. This procedure includes its initiation through  
an employee complaint, investigation, administrative hearing

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before a hearing officer, and decision and award by the Labor Commissioner. Existing law also provides for the right of appeal of that decision with a hearing de novo by a municipal or superior court.

This bill would exempt that appeal to the municipal or superior court from the requirement of judicial arbitration applicable to specified civil proceedings in those courts.

*Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.*

*This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.*

*Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.*

*This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.*

*Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.*

*This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 2 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.*



*Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.*

*This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.*

*Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.*

*This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.*

*Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.*

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 92 of the Labor Code is amended
- 2 to read:
- 3 92. (a) The Labor Commissioner, and his or her
- 4 deputies and agents; may issue ~~subpenas~~ subpoenas to
- 5 compel the attendance of witnesses and parties and the
- 6 production of books, papers and records; administer
- 7 oaths; examine witnesses under oath; take the
- 8 verification, acknowledgment, or proof of written
- 9 instruments; and take depositions and affidavits for the
- 10 purpose of carrying out the provisions of this code and all
- 11 laws which that the division is to enforce.



1 (b) In any adjudicatory hearing before the Labor  
2 Commissioner, a notice in lieu of a subpoena may be used  
3 to compel the attendance of a party, a person for whose  
4 benefit the proceeding is prosecuted or defended, or any  
5 officer, director, or managing agent of a party or such a  
6 person. The service of a subpoena in these cases is not  
7 required if written notice requesting the witness to  
8 attend, with the time and place of the hearing, is served  
9 upon the party or person, or his or her attorney of record.  
10 The notice shall be served at least 10 days before the time  
11 requested for attendance unless the hearing officer  
12 prescribes a shorter time. The giving of the notice shall  
13 have the same effect as service of a subpoena on the  
14 witness. Section 1013 of the Code of Civil Procedure shall  
15 be applicable to service of these notices.

16 (c) The notice specified in subdivision (b) may  
17 include a request that the party or person bring with him  
18 or her books, papers, records, documents, or other things.  
19 The notice shall state the exact materials or things to be  
20 produced and that the party or person has them in his or  
21 her possession or under his or her control.

22 (d) A party or person required to attend or produce  
23 records at a hearing pursuant to notice under subdivision  
24 (b) may object to the notice as provided in Section  
25 11450.30 of the Government Code.

26 (e) Notice under subdivision (b) has the same force  
27 and effect as a subpoena issued by the Labor  
28 Commissioner pursuant to subdivision (a) and may be  
29 enforced, and willful disobedience punished, in  
30 accordance with Section 93.

31 SEC. 2. Section 98.2 of the Labor Code is amended to  
32 read:

33 98.2. (a) Within 10 days after service of notice of an  
34 order, decision, or award the parties may seek review by  
35 filing an appeal to the municipal or superior court, in  
36 accordance with the appropriate rules of jurisdiction,  
37 where the appeal shall be heard de novo. The de novo  
38 proceedings in the municipal or superior court shall be  
39 exempt from Section 1141.11 of the Code of Civil  
40 Procedure. A copy of the appeal request shall be served

1 upon the Labor Commissioner by the appellant. For  
2 purposes of computing the 10-day period after service,  
3 Section 1013 of the Code of Civil Procedure shall be  
4 applicable.

5 (b) If the party seeking review by filing an appeal to  
6 the municipal or superior court is unsuccessful in the  
7 appeal, the court shall determine the costs and reasonable  
8 attorney's fees incurred by the other parties to the appeal,  
9 and assess that amount as a cost upon the party filing the  
10 appeal.

11 (c) If no notice of appeal of the order, decision, or  
12 award is filed within the period set forth in subdivision  
13 (a), the order, decision, or award shall, in the absence of  
14 fraud, be deemed the final order.

15 (d) The Labor Commissioner shall file, within 10 days  
16 of the order becoming final pursuant to subdivision (c),  
17 a certified copy of the final order with the clerk of the  
18 municipal or superior court, in accordance with the  
19 appropriate rules of jurisdiction, of the appropriate  
20 county unless a settlement has been reached by the  
21 parties and approved by the Labor Commissioner.  
22 Judgment shall be entered immediately by the court  
23 clerk in conformity therewith. The judgment so entered  
24 shall have the same force and effect as, and shall be  
25 subject to all of the provisions of law relating to, a  
26 judgment in a civil action, and may be enforced in the  
27 same manner as any other judgment of the court in which  
28 it is entered. Enforcement of the judgment shall receive  
29 court priority.

30 (e) In order to ensure judgments are satisfied, the  
31 Labor Commissioner may serve upon the judgment  
32 debtor personally or by first-class mail at the last known  
33 address of the judgment debtor listed with the division,  
34 a form similar to, and requiring the reporting of the same  
35 information as, the form approved or adopted by the  
36 Judicial Council for purposes of subdivision (b) of Section  
37 117.19 of the Code of Civil Procedure to assist in  
38 identifying the nature and location of any assets of the  
39 judgment debtor.



1 The judgment debtor shall complete the form and  
2 cause it to be delivered to the division at the address listed  
3 on the form within 35 days after the form has been served  
4 on the judgment debtor, unless the judgment has been  
5 satisfied. In case of willful failure by the judgment debtor  
6 to comply with this subdivision, the division or the  
7 judgment creditor may request the court to apply the  
8 sanctions provided in Section 708.170 of the Code of Civil  
9 Procedure.

10 (f) Notwithstanding subdivision (d), the Labor  
11 Commissioner may stay execution of any judgment  
12 entered upon an order, decision, or award which has  
13 become final upon good cause appearing therefore and  
14 may impose the terms and conditions of the stay of  
15 execution. A certified copy of the stay of execution shall  
16 be filed with the clerk entering the judgment.

17 (g) When a judgment is satisfied in fact, otherwise  
18 than by execution, the Labor Commissioner may, upon  
19 the motion of either party or on its own motion, order  
20 entry of satisfaction of judgment. The clerk of the court  
21 shall enter a satisfaction of judgment upon the filing of a  
22 certified copy of the order.

23 (h) The Labor Commissioner shall make every  
24 reasonable effort to ensure that judgments are satisfied,  
25 including taking all appropriate legal action and  
26 requiring the employer to deposit a bond as provided in  
27 Section 240.

28 (i) The judgment creditor, or the Labor  
29 Commissioner as assignee of the judgment creditor, shall  
30 be entitled to court costs and reasonable attorney fees for  
31 enforcing the judgment which is rendered pursuant to  
32 this section.

33 *SEC. 3. Section 226.7 is added to the Labor Code, to*  
34 *read:*

35 *226.7. (a) No employer shall require any employee to*  
36 *work during any meal or rest period mandated by an*  
37 *applicable order of the Industrial Welfare Commission.*

38 *(b) An employer that violates this section shall be*  
39 *subject to both of the following:*



1 (1) A civil penalty of fifty dollars (\$50) per employee  
2 per violation.

3 (2) Payment to the aggrieved employee of an amount  
4 equal to twice his or her average hourly rate of  
5 compensation for the full length of the meal or rest  
6 periods during which the employee was required to  
7 perform any work. An employee paid on a piecework  
8 basis shall be entitled to an amount equal to twice the  
9 amount of piecework units earned during those periods,  
10 but in no event shall the amount be less than the  
11 applicable state minimum wage for the full length of  
12 those time periods during which any work was  
13 performed.

14 (c) Any employee aggrieved by a violation of this  
15 section may do either of the following:

16 (1) Seek recovery of payments under paragraph (2) of  
17 subdivision (b) through a complaint filed pursuant to  
18 subdivision (a) of Section 98.

19 (2) Seek recovery of payments under paragraph (2) of  
20 subdivision (b) in a civil action. The court shall award a  
21 prevailing plaintiff in such an action reasonable  
22 attorney's fees.

23 SEC. 4. Section 245 is added to the Labor Code, to  
24 read:

25 245. Whenever the Labor Commissioner makes an  
26 award against an employer pursuant to this chapter, upon  
27 finding that the employer has engaged in a pattern and  
28 practice of violating wage and hours laws, the Labor  
29 Commissioner shall also make an order requiring the  
30 employer to post a notice at the place of employment  
31 where the affected employees are or were employed  
32 containing a description of the nature of the violation, a  
33 declaration by the employer stating that it will not engage  
34 in those unlawful acts in the future, and the address and  
35 telephone number of the Labor Commissioner. The  
36 notice, on a form approved by the Labor Commissioner,  
37 shall be posted conspicuously by the employer for a  
38 period of not less than 60 days. The notice shall bear the  
39 seal of the State of California and of the Labor  
40 Commissioner and the signature of the employer or a



1 representative or agent of the employer. The cost of  
2 producing and posting the notice shall be paid by the  
3 employer. The failure or refusal of an employer to post  
4 the notice in accordance with this section shall subject the  
5 employer to a civil penalty, to be assessed and collected  
6 by the Labor Commissioner, in the amount of five  
7 hundred dollars (\$500) for each instance in which the  
8 employer fails or refuses to post a notice as required by  
9 this section, and the employer shall be required to  
10 properly post the notice.

11 SEC. 5. Section 1174.5 of the Labor Code is amended  
12 to read:

13 1174.5. (a) Any person employing labor who willfully  
14 fails to maintain the records required by subdivision (c)  
15 of Section 1174 or accurate and complete records  
16 required by subdivision (d) of Section 1174 or by the  
17 applicable wage orders of the Industrial Welfare  
18 Commission, or to allow any member of the commission  
19 or employees of the division to inspect records pursuant  
20 to subdivision (b) of Section 1174, shall be subject to a civil  
21 penalty of ~~five~~ one hundred dollars (~~\$500~~) (\$100) per  
22 employee for each payroll period during which the  
23 violation occurs, up to a maximum period of two years.

24 SEC. 6. Section 1194.2 of the Labor Code is amended  
25 to read:

26 1194.2. (a) In any proceeding before the Labor  
27 Commissioner, or any action under Section 1193.6 or  
28 Section 1194, to recover wages because of the payment of  
29 a wage less than the minimum wage fixed by an order of  
30 the commission, an employee shall be entitled  
31 additionally to recover liquidated damages in an amount  
32 equal to the wages unlawfully unpaid and interest  
33 thereon. Nothing in this subdivision shall be construed to  
34 authorize the recovery of liquidated damages for failure  
35 to pay overtime compensation.

36 (b) Notwithstanding subdivision (a), if the employer  
37 demonstrates to the satisfaction of the Labor  
38 Commissioner or the court that the act or omission giving  
39 rise to the action was in good faith and that the employer  
40 had reasonable grounds for believing that the act or

1 omission was not a violation of any provision of the Labor  
2 Code relating to minimum wage, or an order of the  
3 commission, the *Labor Commissioner or the court may,*  
4 *in its the discretion of the Labor Commissioner or the*  
5 *court as the case may be,* refuse to award liquidated  
6 damages or award any amount of liquidated damages not  
7 exceeding the amount specified in subdivision (a).

8 (c) This section only ~~shall apply~~ *applies* to civil actions  
9 commenced on or after January 1, 1992.

10 *SEC. 7. Section 1197.1 of the Labor Code is amended*  
11 *to read:*

12 1197.1. (a) Any employer or other person, acting  
13 either individually or as an officer, agent, or employee of  
14 another person, who pays or causes to be paid to any  
15 employee a wage less than the minimum fixed by an  
16 order of the commission shall be subject to a civil penalty  
17 *and restitution* as follows:

18 (1) For any initial violation that is intentionally  
19 committed, fifty dollars (\$50) for each underpaid  
20 employee for each pay period for which the employee is  
21 underpaid, *in addition to an amount sufficient to recover,*  
22 *on behalf of the affected employees, all underpaid wages,*  
23 *any owed interest thereon, and statutory liquidated*  
24 *damages.*

25 (2) For each subsequent violation for the same specific  
26 offense, two hundred fifty dollars (\$250) for each  
27 underpaid employee for each pay period for which the  
28 employee is underpaid, regardless of whether the initial  
29 violation is intentionally committed, *in addition to an*  
30 *amount sufficient to recover, on behalf of the affected*  
31 *employees, all underpaid wages, any interest owed*  
32 *thereon, and statutory liquidated damages.*

33 (b) If, upon inspection or investigation, the Labor  
34 Commissioner determines that a person has paid or  
35 caused to be paid a wage less than the minimum, the  
36 Labor Commissioner may issue a citation to the person in  
37 violation. The citation may be served personally or by  
38 registered mail in accordance with subdivision (c) of  
39 Section 11505 of the Government Code. Each citation  
40 shall be in writing and shall describe the nature of the

1 violation, including reference to the statutory provision  
2 alleged to have been violated. The Labor Commissioner  
3 promptly shall take all appropriate action, in accordance  
4 with this section, to enforce the citation and to recover  
5 the civil penalty *and restitution* assessed in connection  
6 with the citation.

7 (c) If a person desires to contest a citation or the  
8 proposed assessment of a civil penalty *or restitution*  
9 therefor, the person shall, within 15 business days after  
10 service of the citation, notify the office of the Labor  
11 Commissioner that appears on the citation of his or her  
12 request for an informal hearing. The Labor  
13 Commissioner or his or her deputy or agent shall, within  
14 30 days, hold a hearing at the conclusion of which the  
15 citation or proposed assessment of a civil penalty *and*  
16 *restitution* shall be affirmed, modified, or dismissed.

17 The decision of the Labor Commissioner shall consist of  
18 a notice of findings, findings, and an order, all of which  
19 shall be served on all parties to the hearing within 15 days  
20 after the hearing by regular first-class mail at the last  
21 known address of the party on file with the Labor  
22 Commissioner. Service shall be completed pursuant to  
23 Section 1013 of the Code of Civil Procedure. Any amount  
24 found due by the Labor Commissioner as a result of a  
25 hearing shall become due and payable 45 days after notice  
26 of the findings and written findings and order have been  
27 mailed to the party assessed. A writ of mandate may be  
28 taken from this finding to the appropriate superior court.  
29 The party shall pay any judgment and costs ultimately  
30 rendered by the court against the party for the  
31 assessment. The writ shall be taken within 45 days of  
32 service of the notice of findings, findings, and order  
33 thereon.

34 (d) A person to whom a citation has been issued ~~shall~~  
35 *may*, in lieu of contesting a citation pursuant to this  
36 section, transmit to the office of the Labor Commissioner  
37 designated on the citation the amount *of the civil penalty*  
38 *and restitution* specified for the violation within 15  
39 business days after issuance of the citation.



1 (e) When no petition objecting to a citation or the  
2 proposed assessment of a civil penalty *and restitution* is  
3 filed, a certified copy of the citation or proposed civil  
4 penalty *and restitution* may be filed by the Labor  
5 Commissioner in the office of the clerk of the superior  
6 court in any county in which the person assessed has or  
7 had a place of business. The clerk, immediately upon the  
8 filing, shall enter judgment for the state against the  
9 person assessed in the amount shown on the citation or  
10 proposed assessment of a civil penalty *and restitution*.

11 (f) When findings and the order thereon are made  
12 affirming or modifying a citation or proposed assessment  
13 of a civil penalty *and restitution* after hearing, a certified  
14 copy of these findings and the order entered thereon may  
15 be entered by the Labor Commissioner in the office of the  
16 clerk of the superior court in any county in which the  
17 person assessed has property or in which the person  
18 assessed has or had a place of business. The clerk,  
19 immediately upon the filing, shall enter judgment for the  
20 state against the person assessed in the amount shown on  
21 the certified order.

22 (g) A judgment entered pursuant to this section shall  
23 bear the same rate of interest and shall have the same  
24 effect as other judgments and be given the same  
25 preference allowed by the law on other judgments  
26 rendered for claims for taxes. The clerk shall make no  
27 charge for the service provided by this section to be  
28 performed by him or her.

29 (h) The civil penalties *and restitution* provided for in  
30 this section are in addition to any other penalty *or remedy*  
31 provided by law.

32 (i) This section shall not apply to any order of the  
33 commission relating to household occupations.





## CONCURRENCE IN SENATE AMENDMENTS

AB 2509 (Steinberg)

As Amended August 25, 2000

Majority vote

ASSEMBLY: 41-32 (May 25, 2000)

SENATE: 22-14 (August 29, 2000)

Original Committee Reference: L. & E.

SUMMARY: Revises statutes relating to the administrative and civil enforcement of wage and hour laws including wage collection and enforcement procedures before the Labor Commissioner (Commissioner).

The Senate amendments:

- 1) Delete provisions of this bill:
  - a) Allowing the use of a notice in lieu of subpoena.
  - b) Waiving judicial arbitration in wage claim appeals.
  - c) Specifying the right of the Commissioner to be awarded attorneys fees.
  - d) Revising the provisions related to complaints of unlawful discrimination.
  - e) Providing for wage liability for substantial shareholders in a corporation.
  - f) Providing for wage liability for a successor employer, as specified.
  - g) Specifying computation of the number of employees where wage records are missing.
  - h) Related to use and application of a wage bond under Labor Code section 240.
  - i) Requiring posting of a workplace notice concerning specified labor law violations.
  - j) Increasing civil penalties for an employer who fails to maintain specified payroll records.
  - k) Allowing the Commissioner to award liquidated damages.
  - l) Combining specified proceedings for wages and penalties before the Commissioner.
- 2) Reduce the damages that may be recovered by an employee for a knowing and intentional violation of itemized wage statement requirements from \$ 100 per pay period, to \$50 for the initial pay period, and \$100 for each of the subsequent pay periods, and reduce the maximum aggregate penalty from \$10,000 to \$4,000. Delete the provision specifying that an employee may bring a complaint before the Commissioner or file a civil action for damages or



penalties, and attorney's fees.

- 3) State that the amendment to the provision related an award of attorneys fees for an employee in cases involving failure to pay minimum wage and overtime wages is declaratory of existing law.
- 4) Delete the provisions related to penalties for an employer who fails to provide a meal or rest period, and instead codify the lower penalty amounts adopted by the Industrial Welfare Commission (IWC).
- 5) Provide that in "bounced" payroll check cases, an employee cannot recover waiting time penalties if they also recover a service charge in a civil action, as specified.

EXISTING LAW establishes a framework of administrative and civil remedies for violations of wage and hour laws. The administrative procedures include a Berman hearing before the Commissioner. On appeal, the courts review an order decision or award of the Commissioner through a de novo trial.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Provided that in an administrative wage claim proceeding (Berman hearing) before the Commissioner, a notice for production of documents may be used in lieu of subpoena.
- 2) Provided that the legal rate of interest on due and unpaid wages at a Berman hearing and in a civil action for wages shall be at the rate established by Civil Code Section 3289(b), which is 10%.
- 3) Provided that following a Berman hearing, an employer filing an appeal shall post an undertaking in the amount of the Commissioner's final order, decision or award. Provided that the requirement of judicial arbitration does not apply in such proceedings. Provided for Commissioner attorney fees in specified cases.
- 4) Provided for the Commissioner to take specified steps if the United States Department of Labor (Labor Department) determines that the Commissioner has erred in dismissing the complaint of an employee of unlawful retaliation. Provided that an employee may file a civil action for unlawful retaliation without first filing a discrimination claim before the Commissioner, and that the administrative limitation periods do not apply in a civil action.
- 5) Provided that the parent of and substantial shareholders in a corporation are jointly and severally liable with the corporation for unpaid wages and penalties. Provided that a successor, as defined, to an employer who owes wages to his or her former employees is liable for those wages.
- 6) Provided for waiting time penalties in all industries rather than the building and construction trades when payroll checks are refused payment due to insufficient funds.



- 7) Clarified that Labor Code Section 1194, which provides for an award of attorneys fees for an employee in cases involving failure to pay minimum wage and overtime wages, is separate from, and not controlled by Labor Code Section 218.5, which provides for prevailing party attorneys fees in other wage cases.
- 8) Provided that an employer's itemized wage statement shall include, among other information, the number of piecework units earned and any applicable piece rate if paid on a piecework basis, and for non-exempt employees, the applicable hourly rates in effect during the pay period and the hourly rate of pay and hours worked, where applicable. Provided, in the case of a knowing and intentional failure by an employer to comply with the itemized wage statement requirements, for an employee to recover a penalty of up to \$100 per payroll period up to a maximum of \$10,000. Provided that an employee may bring a complaint before the Commissioner or file a civil action for damages or penalties, and attorney's fees. Provided that an employer shall maintain payroll records showing the number of piece-rate units earned by and any applicable piece rate paid to employees.
- 9) Provided that in a case where an employer fails to maintain records that identify each employee to whom wages are paid, penalties shall be computed by multiplying the number of employees employed on the date the penalty for the preceding year, unless the employer affirmatively establishes evidence that supports a lesser penalty based upon proof of a lesser number of affected employees.
- 10) Provided for penalties for an employer who violates the requirement that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC). Provided for penalties of \$50 per employee per pay period and payment of an amount equal to twice the average hourly rate of compensation for the employee for the full length of the meal or rest period. Provided that an employee may bring a complaint before the Commissioner or file a civil action or for damages or penalties, and attorney's fees.
- 11) Provided that in cases where the Commissioner orders an employer to post a bond, under specified conditions, and the bond shall cover such interest, penalties, or other demands, as well as unpaid wages.
- 12) Provided that the Commissioner shall, under specified circumstances, order the employer to post a workplace notice describing the nature of a violation and related information.
- 13) Provided that any amounts paid directly by a patron to a dancer employed by an employer subject to IWC Order No. 5 or 10 shall be deemed a gratuity. Prohibited an employer from deducting from a gratuity indicated by a patron on a credit card slip any credit card payment processing fee or cost.
- 14) Provided that the civil penalty for an employer who willfully fails to maintain specified payroll records includes, in addition to records required by statute, records required by any applicable wage orders of IWC. Revised the penalty for a violation of this section from \$500 to \$100 per employee for each payroll period up to a maximum period of three years.



- 15) Provided that the liquidated damages for a violation of minimum wage laws may be awarded in a hearing before the Commissioner in the same manner as a civil action under current law.
- 16) Provided that with respect to a claim for a failure to pay minimum wages, the Commissioner may, in the same proceeding, order both payment of wages owed, interest thereon, statutory liquidated damages and civil penalties.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis, minor absorbable costs to the Department of Industrial Relations.

COMMENTS:

- 1) The Senate amendments deleted many of the provisions of the bill, including the two most controversial provisions related to shareholder and successor liability. They also reduce the penalty increases for a "knowingly and willfully" violating itemized wage statement requirements, and add an election of remedies provision regarding bounced payroll checks.
- 2) The remaining provisions include those related to: the legal rate of interest on wages; requiring an undertaking prior to an appeal of a final wage order; bounced payroll check penalties; including piece rate in itemized wage statements; meal and break period violations; and employee tipping issues.
- 3) Some of the provisions of AB 2509 have been amended into AB 2857 (Steinberg) pending in the Senate. Others have been dropped and not included in either bill. Among the provisions dropped were several which codified existing case law relating to the right to file a civil action without filing an administrative claim and relating to attorney's fees.

Analysis Prepared by: Ralph Lightstone / L. & E. / (916) 319-2091

FN: 0006959



AMENDED IN SENATE AUGUST 30, 2000

AMENDED IN SENATE AUGUST 25, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2857**

**Introduced by Assembly Member Steinberg**

March 2, 2000

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An act to amend Sections 92, 98.2, 1174.5, 1194.2, and 1197.1 of, and to add Sections ~~226.7~~ and ~~245~~ Section 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2857, as amended, Steinberg. Wage and hour remedies.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law provides a procedure for the adjudication of wage claims within the Department of Labor Standards Enforcement. This procedure includes its initiation through an employee complaint, investigation, administrative hearing

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before a hearing officer, and decision and award by the Labor Commissioner. Existing law also provides for the right of appeal of that decision with a hearing de novo by a municipal or superior court.

This bill would exempt that appeal to the municipal or superior court from the requirement of judicial arbitration applicable to specified civil proceedings in those courts.

~~Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.~~

~~This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.~~

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 2 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.





Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.


This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 92 of the Labor Code is amended
- 2 to read:
- 3 92. (a) The Labor Commissioner and his or her
- 4 deputies and agents may issue subpoenas to compel the
- 5 attendance of witnesses and parties and the production of
- 6 books, papers and records; administer oaths; examine
- 7 witnesses under oath; take the verification,
- 8 acknowledgment, or proof of written instruments; and
- 9 take depositions and affidavits for the purpose of carrying
- 10 out the provisions of this code and all laws that the
- 11 division is to enforce.

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1 (b) In any adjudicatory hearing before the Labor  
2 Commissioner, a notice in lieu of a subpoena may be used  
3 to compel the attendance of a party, a person for whose  
4 benefit the proceeding is prosecuted or defended, or any  
5 officer, director, or managing agent of a party or such a  
6 person. The service of a subpoena in these cases is not  
7 required if written notice requesting the witness to  
8 attend, with the time and place of the hearing, is served  
9 upon the party or person, or his or her attorney of record.  
10 The notice shall be served at least 10 days before the time  
11 requested for attendance unless the hearing officer  
12 prescribes a shorter time. The giving of the notice shall  
13 have the same effect as service of a subpoena on the  
14 witness. Section 1013 of the Code of Civil Procedure shall  
15 be applicable to service of these notices.

16 (c) The notice specified in subdivision (b) may  
17 include a request that the party or person bring with him  
18 or her books, papers, records, documents, or other things.  
19 The notice shall state the exact materials or things to be  
20 produced and that the party or person has them in his or  
21 her possession or under his or her control.

22 (d) A party or person required to attend or produce  
23 records at a hearing pursuant to notice under subdivision  
24 (b) may object to the notice as provided in Section  
25 11450.30 of the Government Code.

26 (e) Notice under subdivision (b) has the same force  
27 and effect as a subpoena issued by the Labor  
28 Commissioner pursuant to subdivision (a) and may be  
29 enforced, and willful disobedience punished, in  
30 accordance with Section 93.

31 SEC. 2. Section 98.2 of the Labor Code is amended to  
32 read:

33 98.2. (a) Within 10 days after service of notice of an  
34 order, decision, or award the parties may seek review by  
35 filing an appeal to the municipal or superior court, in  
36 accordance with the appropriate rules of jurisdiction,  
37 where the appeal shall be heard de novo. The de novo  
38 proceedings in the municipal or superior court shall be  
39 exempt from Section 1141.11 of the Code of Civil  
40 Procedure. A copy of the appeal request shall be served

1 upon the Labor Commissioner by the appellant. For  
2 purposes of computing the 10-day period after service,  
3 Section 1013 of the Code of Civil Procedure shall be  
4 applicable.

5 (b) If the party seeking review by filing an appeal to  
6 the municipal or superior court is unsuccessful in the  
7 appeal, the court shall determine the costs and reasonable  
8 attorney's fees incurred by the other parties to the appeal,  
9 and assess that amount as a cost upon the party filing the  
10 appeal.

11 (c) If no notice of appeal of the order, decision, or  
12 award is filed within the period set forth in subdivision  
13 (a), the order, decision, or award shall, in the absence of  
14 fraud, be deemed the final order.

15 (d) The Labor Commissioner shall file, within 10 days  
16 of the order becoming final pursuant to subdivision (c),  
17 a certified copy of the final order with the clerk of the  
18 municipal or superior court, in accordance with the  
19 appropriate rules of jurisdiction, of the appropriate  
20 county unless a settlement has been reached by the  
21 parties and approved by the Labor Commissioner.  
22 Judgment shall be entered immediately by the court  
23 clerk in conformity therewith. The judgment so entered  
24 shall have the same force and effect as, and shall be  
25 subject to all of the provisions of law relating to, a  
26 judgment in a civil action, and may be enforced in the  
27 same manner as any other judgment of the court in which  
28 it is entered. Enforcement of the judgment shall receive  
29 court priority.

30 (e) In order to ensure judgments are satisfied, the  
31 Labor Commissioner may serve upon the judgment  
32 debtor personally or by first-class mail at the last known  
33 address of the judgment debtor listed with the division,  
34 a form similar to, and requiring the reporting of the same  
35 information as, the form approved or adopted by the  
36 Judicial Council for purposes of subdivision (b) of Section  
37 117.19 of the Code of Civil Procedure to assist in  
38 identifying the nature and location of any assets of the  
39 judgment debtor.



1 The judgment debtor shall complete the form and  
2 cause it to be delivered to the division at the address listed  
3 on the form within 35 days after the form has been served  
4 on the judgment debtor, unless the judgment has been  
5 satisfied. In case of willful failure by the judgment debtor  
6 to comply with this subdivision, the division or the  
7 judgment creditor may request the court to apply the  
8 sanctions provided in Section 708.170 of the Code of Civil  
9 Procedure.

10 (f) Notwithstanding subdivision (d), the Labor  
11 Commissioner may stay execution of any judgment  
12 entered upon an order, decision, or award which has  
13 become final upon good cause appearing therefore and  
14 may impose the terms and conditions of the stay of  
15 execution. A certified copy of the stay of execution shall  
16 be filed with the clerk entering the judgment.

17 (g) When a judgment is satisfied in fact, otherwise  
18 than by execution, the Labor Commissioner may, upon  
19 the motion of either party or on its own motion, order  
20 entry of satisfaction of judgment. The clerk of the court  
21 shall enter a satisfaction of judgment upon the filing of a  
22 certified copy of the order.

23 (h) The Labor Commissioner shall make every  
24 reasonable effort to ensure that judgments are satisfied,  
25 including taking all appropriate legal action and  
26 requiring the employer to deposit a bond as provided in  
27 Section 240.

28 (i) The judgment creditor, or the Labor  
29 Commissioner as assignee of the judgment creditor, shall  
30 be entitled to court costs and reasonable attorney fees for  
31 enforcing the judgment which is rendered pursuant to  
32 this section.

33 ~~SEC. 3. Section 226.7 is added to the Labor Code, to~~  
34 ~~read:~~

35 ~~226.7. (a) No employer shall require any employee to~~  
36 ~~work during any meal or rest period mandated by an~~  
37 ~~applicable order of the Industrial Welfare Commission.~~

38 ~~(b) An employer that violates this section shall be~~  
39 ~~subject to both of the following:~~



1 ~~(1) A civil penalty of fifty dollars (\$50) per employee~~  
2 ~~per violation.~~

3 ~~(2) Payment to the aggrieved employee of an amount~~  
4 ~~equal to twice his or her average hourly rate of~~  
5 ~~compensation for the full length of the meal or rest~~  
6 ~~periods during which the employee was required to~~  
7 ~~perform any work. An employee paid on a piecework~~  
8 ~~basis shall be entitled to an amount equal to twice the~~  
9 ~~amount of piecework units earned during those periods,~~  
10 ~~but in no event shall the amount be less than the~~  
11 ~~applicable state minimum wage for the full length of~~  
12 ~~those time periods during which any work was~~  
13 ~~performed.~~

14 ~~(c) Any employee aggrieved by a violation of this~~  
15 ~~section may do either of the following:~~

16 ~~(1) Seek recovery of payments under paragraph (2) of~~  
17 ~~subdivision (b) through a complaint filed pursuant to~~  
18 ~~subdivision (a) of Section 98.~~

19 ~~(2) Seek recovery of payments under paragraph (2) of~~  
20 ~~subdivision (b) in a civil action. The court shall award a~~  
21 ~~prevailing plaintiff in such an action reasonable~~  
22 ~~attorney's fees.~~

23 ~~SEC. 4.~~

24 ~~SEC. 3. Section 245 is added to the Labor Code, to~~  
25 ~~read:~~

26 245. Whenever the Labor Commissioner makes an  
27 award against an employer pursuant to this chapter, upon  
28 finding that the employer has engaged in a pattern and  
29 practice of violating wage and hours laws, the Labor  
30 Commissioner shall also make an order requiring the  
31 employer to post a notice at the place of employment  
32 where the affected employees are or were employed  
33 containing a description of the nature of the violation, a  
34 declaration by the employer stating that it will not engage  
35 in those unlawful acts in the future, and the address and  
36 telephone number of the Labor Commissioner. The  
37 notice, on a form approved by the Labor Commissioner,  
38 shall be posted conspicuously by the employer for a  
39 period of not less than 60 days. The notice shall bear the  
40 seal of the State of California and of the Labor



1 Commissioner and the signature of the employer or a  
2 representative or agent of the employer. The cost of  
3 producing and posting the notice shall be paid by the  
4 employer. The failure or refusal of an employer to post  
5 the notice in accordance with this section shall subject the  
6 employer to a civil penalty, to be assessed and collected  
7 by the Labor Commissioner, in the amount of five  
8 hundred dollars (\$500) for each instance in which the  
9 employer fails or refuses to post a notice as required by  
10 this section, and the employer shall be required to  
11 properly post the notice.

12 ~~SEC. 5.~~

13 *SEC. 4.* Section 1174.5 of the Labor Code is amended  
14 to read:

15 1174.5. (a) Any person employing labor who willfully  
16 fails to maintain the records required by subdivision (c)  
17 of Section 1174 or accurate and complete records  
18 required by subdivision (d) of Section 1174 or by the  
19 applicable wage orders of the Industrial Welfare  
20 Commission, or to allow any member of the commission  
21 or employees of the division to inspect records pursuant  
22 to subdivision (b) of Section 1174, shall be subject to a civil  
23 penalty of one hundred dollars (\$100) per employee for  
24 each payroll period during which the violation occurs, up  
25 to a maximum period of two years.

26 ~~SEC. 6.~~

27 *SEC. 5.* Section 1194.2 of the Labor Code is amended  
28 to read:

29 1194.2. (a) In any proceeding before the Labor  
30 Commissioner, or any action under Section 1193.6 or 1194,  
31 to recover wages because of the payment of a wage less  
32 than the minimum wage fixed by an order of the  
33 commission, an employee shall be entitled additionally to  
34 recover liquidated damages in an amount equal to the  
35 wages unlawfully unpaid and interest thereon. Nothing in  
36 this subdivision shall be construed to authorize the  
37 recovery of liquidated damages for failure to pay  
38 overtime compensation.

39 (b) Notwithstanding subdivision (a), if the employer  
40 demonstrates to the satisfaction of the Labor



1 Commissioner or the court that the act or omission giving  
2 rise to the action was in good faith and that the employer  
3 had reasonable grounds for believing that the act or  
4 omission was not a violation of any provision of the Labor  
5 Code relating to minimum wage, or an order of the  
6 commission, the Labor Commissioner or the court may,  
7 in the discretion of the Labor Commissioner or the court  
8 as the case may be, refuse to award liquidated damages  
9 or award any amount of liquidated damages not  
10 exceeding the amount specified in subdivision (a).

11 (c) This section only applies to civil actions  
12 commenced on or after January 1, 1992.

13 ~~SEC. 7.~~

14 SEC. 6. Section 1197.1 of the Labor Code is amended  
15 to read:

16 1197.1. (a) Any employer or other person, acting  
17 either individually or as an officer, agent, or employee of  
18 another person, who pays or causes to be paid to any  
19 employee a wage less than the minimum fixed by an  
20 order of the commission shall be subject to a civil penalty  
21 and restitution as follows:

22 (1) For any initial violation that is intentionally  
23 committed, fifty dollars (\$50) for each underpaid  
24 employee for each pay period for which the employee is  
25 underpaid, in addition to an amount sufficient to recover,  
26 on behalf of the affected employees, all underpaid wages,  
27 any owed interest thereon, and statutory liquidated  
28 damages.

29 (2) For each subsequent violation for the same specific  
30 offense, two hundred fifty dollars (\$250) for each  
31 underpaid employee for each pay period for which the  
32 employee is underpaid, regardless of whether the initial  
33 violation is intentionally committed, in addition to an  
34 amount sufficient to recover, on behalf of the affected  
35 employees, all underpaid wages, any interest owed  
36 thereon, and statutory liquidated damages.

37 (b) If, upon inspection or investigation, the Labor  
38 Commissioner determines that a person has paid or  
39 caused to be paid a wage less than the minimum, the  
40 Labor Commissioner may issue a citation to the person in

1 violation. The citation may be served personally or by  
2 registered mail in accordance with subdivision (c) of  
3 Section 11505 of the Government Code. Each citation  
4 shall be in writing and shall describe the nature of the  
5 violation, including reference to the statutory provision  
6 alleged to have been violated. The Labor Commissioner  
7 promptly shall take all appropriate action, in accordance  
8 with this section, to enforce the citation and to recover  
9 the civil penalty and restitution assessed in connection  
10 with the citation.

11 (c) If a person desires to contest a citation or the  
12 proposed assessment of a civil penalty or restitution  
13 therefor, the person shall, within 15 business days after  
14 service of the citation, notify the office of the Labor  
15 Commissioner that appears on the citation of his or her  
16 request for an informal hearing. The Labor  
17 Commissioner or his or her deputy or agent shall, within  
18 30 days, hold a hearing at the conclusion of which the  
19 citation or proposed assessment of a civil penalty and  
20 restitution shall be affirmed, modified, or dismissed.

21 The decision of the Labor Commissioner shall consist of  
22 a notice of findings, findings, and an order, all of which  
23 shall be served on all parties to the hearing within 15 days  
24 after the hearing by regular first-class mail at the last  
25 known address of the party on file with the Labor  
26 Commissioner. Service shall be completed pursuant to  
27 Section 1013 of the Code of Civil Procedure. Any amount  
28 found due by the Labor Commissioner as a result of a  
29 hearing shall become due and payable 45 days after notice  
30 of the findings and written findings and order have been  
31 mailed to the party assessed. A writ of mandate may be  
32 taken from this finding to the appropriate superior court.  
33 The party shall pay any judgment and costs ultimately  
34 rendered by the court against the party for the  
35 assessment. The writ shall be taken within 45 days of  
36 service of the notice of findings, findings, and order  
37 thereon.

38 (d) A person to whom a citation has been issued may,  
39 in lieu of contesting a citation pursuant to this section,  
40 transmit to the office of the Labor Commissioner





1 designated on the citation the amount of the civil penalty  
2 and restitution specified for the violation within 15  
3 business days after issuance of the citation.

4 (e) When no petition objecting to a citation or the  
5 proposed assessment of a civil penalty and restitution is  
6 filed, a certified copy of the citation or proposed civil  
7 penalty and restitution may be filed by the Labor  
8 Commissioner in the office of the clerk of the superior  
9 court in any county in which the person assessed has or  
10 had a place of business. The clerk, immediately upon the  
11 filing, shall enter judgment for the state against the  
12 person assessed in the amount shown on the citation or  
13 proposed assessment of a civil penalty and restitution.

14 (f) When findings and the order thereon are made  
15 affirming or modifying a citation or proposed assessment  
16 of a civil penalty and restitution after hearing, a certified  
17 copy of these findings and the order entered thereon may  
18 be entered by the Labor Commissioner in the office of the  
19 clerk of the superior court in any county in which the  
20 person assessed has property or in which the person  
21 assessed has or had a place of business. The clerk,  
22 immediately upon the filing, shall enter judgment for the  
23 state against the person assessed in the amount shown on  
24 the certified order.

25 (g) A judgment entered pursuant to this section shall  
26 bear the same rate of interest and shall have the same  
27 effect as other judgments and be given the same  
28 preference allowed by the law on other judgments  
29 rendered for claims for taxes. The clerk shall make no  
30 charge for the service provided by this section to be  
31 performed by him or her.

32 (h) The civil penalties and restitution provided for in  
33 this section are in addition to any other penalty or remedy  
34 provided by law.

35 (i) This section shall not apply to any order of the  
36 commission relating to household occupations.





VOLUME 2  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1999-2000 REGULAR SESSION

# ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS,  
CONCURRENT RESOLUTIONS,  
JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1998  
Recessed December 8, 1998  
Recessed March 25, 1999  
Recessed July 15, 1999  
Recessed September 10, 1999  
Recessed April 13, 2000  
Recessed July 6, 2000  
Reconvened January 4, 1999  
Reconvened April 5, 1999  
Reconvened August 16, 1999  
Reconvened January 3, 2000  
Reconvened April 24, 2000  
Reconvened August 7, 2000

Adjourned September 1, 2000  
Adjourned Sine Die November 30, 2000

Legislative Days ..... 225  
Calendar Days ..... 725

HON. ROBERT M. HERTZBERG  
*Speaker*

HON. FRED KEELEY  
*Speaker pro Tempore*

HON. KEVIN SHELLEY  
*Majority Floor Leader*

HON. HELEN THOMSON  
*Assistant Speaker pro Tempore*

HON. SCOTT R. BAUGH  
*Minority Floor Leader*

Compiled Under the Direction of  
E. DOTSON WILSON  
*Chief Clerk*

AMY LEACH  
*History Clerk*



## A.B. No. 2857—Steinberg.

An act to amend Sections 92, 98.2, 1174.5, 1194.2, and 1197.1 of, and to add Section 245 to, the Labor Code, relating to employment.

## 2000

- Mar. 2—Read first time. To print.
- Mar. 3—From printer. May be heard in committee April 2.
- Mar. 27—Referred to Com. on L. & E.
- May 4—From committee: Do pass. (Ayes 6. Noes 3.) (May 3).
- May 8—Read second time. To third reading.
- May 15—Read third time, passed, and to Senate. (Ayes 43. Noes 29. Page 6367.)
- May 15—In Senate. Read first time. To Com. on RLS. for assignment.
- May 23—Referred to Com. on I.R.
- June 29—From committee: Do pass. (Ayes 4. Noes 1.)
- July 3—Read second time. To third reading.
- Aug. 7—To inactive file on motion of Senator Solis.
- Aug. 25—From inactive file. To second reading. Read second time and amended. Ordered returned to second reading.
- Aug. 28—Read second time. To third reading. Re-referred to Com. on APPR. pursuant to Joint Rule 10.5.
- Aug. 30—From committee: Be placed on second reading file pursuant to Senate Rule 28.8 and be amended. Read second time, amended, and to third reading.
- Aug. 31—Read third time, passed, and to Assembly. (Ayes 23. Noes 14. Page 6384.)
- Aug. 31—In Assembly. Concurrence in Senate amendments pending. To inactive file on motion of Assembly Member Steinberg.
- Nov. 30—Died Concurrence pending.

## A.B. No. 2858—Committee on Labor and Employment (Steinberg (Chair), Gallegos, Knox, Migden, Romero, and Shelley).

An act to add Section 55.1 to the Labor Code, relating to employment.

## 2000

- Mar. 2—Read first time. To print.
- Mar. 3—From printer. May be heard in committee April 2.
- Mar. 27—Referred to Com. on L. & E.
- April 13—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 6. Noes 3.) (April 12).
- May 25—From committee: Do pass. (Ayes 14. Noes 7.) (May 24) Read second time. To third reading.
- May 30—Passed on file.
- May 31—Assembly Rule 69(b)(1) suspended.
- June 1—Read third time. Amendments refused adoption. To inactive file on motion of Assembly Member Steinberg.
- Nov. 30—Died on inactive file.

## A.B. No. 2859—Committee on Labor and Employment (Steinberg (Chair), Gallegos, Knox, Migden, Romero, and Shelley).

An act to add Section 1173.1 to the Labor Code, relating to employment.

## 2000

- Mar. 2—Read first time. To print.
- Mar. 3—From printer. May be heard in committee April 2.
- Mar. 27—Referred to Com. on L. & E.
- April 13—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 6. Noes 3.) (April 12).
- Nov. 30—From committee without further action.



VOLUME 2  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1999-2000 REGULAR SESSION

# ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS,  
CONCURRENT RESOLUTIONS,  
JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1998

Recessed December 8, 1998	Reconvened January 4, 1999
Recessed March 25, 1999	Reconvened April 5, 1999
Recessed July 15, 1999	Reconvened August 16, 1999
Recessed September 10, 1999	Reconvened January 3, 2000
Recessed April 13, 2000	Reconvened April 24, 2000
Recessed July 6, 2000	Reconvened August 7, 2000

Adjourned September 1, 2000

Adjourned Sine Die November 30, 2000

Legislative Days .....	225
Calendar Days .....	725

HON. ROBERT M. HERTZBERG  
*Speaker*

HON. FRED KEELEY  
*Speaker pro Tempore*

HON. KEVIN SHELLEY  
*Majority Floor Leader*

HON. HELEN THOMSON  
*Assistant Speaker pro Tempore*

HON. SCOTT R. BAUGH  
*Minority Floor Leader*

Compiled Under the Direction of  
E. DOTSON WILSON  
*Chief Clerk*

AMY LEACH  
*History Clerk*



## A.B. No. 2508—Washington.

An act to add Section 1797.41 to the Health and Safety Code, relating to emergency services.

## 2000

- Feb. 24—Assembly Rule 49(a) suspended. Read first time. To print.
- Feb. 26—From printer. May be heard in committee March 27.
- Mar. 16—Referred to Com. on HUM. S.
- Mar. 27—From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.
- Mar. 28—Re-referred to Com. on HUM. S.
- Mar. 30—Re-referred to Com. on HEALTH by unanimous consent.
- April 26—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 8. Noes 6.) (April 25).
- May 10—In committee: Set, first hearing. Referred to APPR. suspense file.
- May 24—In committee: Set, second hearing. Held under submission.
- Nov. 30—From committee without further action.

## A.B. No. 2509—Steinberg.

An act to amend Sections 98.1, 98.2, 203.1, 218.5, 226, 350, 351, and 1174 of, and to add Sections 218.6 and 226.7 to, the Labor Code, relating to employment.

## 2000

- Feb. 24—Assembly Rule 49(a) suspended. Read first time. To print.
- Feb. 25—From printer. May be heard in committee March 26.
- Mar. 16—Referred to Coms. on L. & E. and JUD.
- April 13—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 6. Noes 3.) (April 12).
- April 24—Re-referred to Com. on JUD. by unanimous consent.
- April 27—Re-referred to Com. on APPR. by unanimous consent.
- May 11—From committee: Do pass. (Ayes 14. Noes 7.) (May 10).
- May 15—Read second time. To third reading.
- May 25—Read third time and passed. (Ayes 41. Noes 32. Page 6572.) Motion to reconsider on the next legislative day made by Assembly Member McClintock. Motion to immediately take up today the motion to reconsider made by Assembly Member Shelley. Motion to reconsider by Assembly Member McClintock waived, Motion by Assembly Member Shelley withdrawn. To Senate.
- May 25—In Senate. Read first time. To Com. on RLS. for assignment.
- June 13—Referred to Coms. on I.R. and JUD.
- June 26—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on I.R.
- July 5—From committee: Amend, do pass as amended, and re-refer to Com. on JUD. (Ayes 4. Noes 1.)
- July 6—Read second time, amended, and re-referred to Com. on JUD.
- July 6—Joint Rule 61 (b)(12) suspended.
- Aug. 7—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
- Aug. 9—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 5. Noes 3.)
- Aug. 22—From committee: Do pass. (Ayes 7. Noes 5.) Read second time. To third reading.
- Aug. 25—Read third time, amended. To second reading.
- Aug. 28—Read second time. To third reading.
- Aug. 29—Read third time, passed, and to Assembly. (Ayes 22. Noes 14. Page 6222.)
- Aug. 29—In Assembly. Concurrence in Senate amendments pending.
- Aug. 30—Senate amendments concurred in. To enrollment. (Ayes 42. Noes 31. Page 8783.)
- Sept. 13—Enrolled and to the Governor at 10 a.m.
- Sept. 28—Approved by the Governor.
- Sept. 29—Chaptered by Secretary of State - Chapter 876, Statutes of 2000.







SENATE RULES COMMITTEE	AB 2857
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

Bill No: AB 2857  
 Author: Steinberg (D)  
 Amended: 8/25/00 in Senate  
 Vote: 21

SENATE INDUSTRIAL RELATIONS COMMITTEE : 4-1, 6/28/00  
 AYES: Alarcon, Figueroa, Karnette, and Solis  
 NOES: Mountjoy

ASSEMBLY FLOOR : 43-29, 5/15/00 - See last page for vote

SUBJECT : Wage and hour remedies

SOURCE : Author

DIGEST : This bill exempts civil court appeals of a wage claim decision of the Labor Commissioner from the requirement of pre-trial judicial arbitration.

Senate Floor Amendments of 8/25/00 change the author from the Assembly Labor Committee to Assemblyman Steinberg and greatly expand the scope of the bill to provide for a) liquidated damages for unpaid minimum wages, b) authorization to issue a formal notice requesting documents in lieu of a subpoena, c) penalties for violating meal and rest periods, and d) posting of notice violations in the workplace.

ANALYSIS : Existing law provides a framework for the enforcement of laws relating to the payment of wages and overtime compensation, and working conditions by the Labor

CONTINUED

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0

Commissioner, chief of the Division of Labor Standards Enforcement of the State Department of Industrial Relations.

An employee may file a claim with the Labor Commissioner over unpaid wages. Following an administrative hearing, an employer may seek a de novo review in civil courts of the Labor Commissioner's order, decision, or award.

Municipal and superior courts generally require a pre-trial arbitration where amounts are less than \$50,000.

This bill provides that appeals of the Labor Commissioner's action shall be exempt from pre-trial arbitration.

Subpoenas: mail notice

Existing law provides that the Labor commissioner in an administrative wage claim proceeding may obtain records relating to the claim by issuance of a subpoena served by personal service.

This bill permits the Labor Commissioner to obtain records through a notice by mail rather than by a subpoena, and to require all documents requested by subpoena or notice to be received not less than five days prior to a hearing.

Liquidated damages: unpaid minimum wages

A court may currently award liquidated damages in an amount equal to the unpaid wages and interest due thereon for violation of minimum wage laws.

The award may only be a result of a civil suit filed by the complainant or by the Labor Commissioner.

This bill permits the Labor Commissioner to award liquidated damages in the same manner as a court, instead of requiring the state agency to file a suit to recover such damages.

Rest and meal periods: right of private action

Existing applicable Orders of the Industrial Welfare Commission (IWC) require that employers must provide a

□

10-minute rest period every four hours and a 30-minute meal period every five hours. On-duty meal periods are

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permitted when the nature of the work performed so dictates.

This bill prohibits employers from requiring any employee to work during any meal or rest period mandated by an applicable IWC Order. Violators would be subject to a \$50 civil penalty and an amount twice the hourly rate of pay, or piece work pay, of the full meal or rest period. In addition to filing with the Labor Commissioner, the employee would have the option of filing a civil court action, and the award of attorney's fees and costs.

Posting of violation notices

Employers currently are required to post in the workplace specified information, including applicable Wage Orders of the Industrial Welfare Commission.

This bill requires that employers found engaging in a pattern and practice of violating wage and hour laws to post a notice issued by the Labor Commissioner for not less than 60 days, describing the nature of the violation and related information. Failure to post a notice subjects an employer to a \$500 civil penalty for each instance of refusal.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

SUPPORT : (Verified 6/28/00)

California Labor Federation, AFL-CIO

OPPOSITION : (Verified 6/28/00)

California Judges Association

ARGUMENTS IN SUPPORT : According to the author's office, judicial arbitration requirements, while appropriate in cases first filed in civil court, are redundant in wage claims which have been subject to the Labor Commissioner's administrative hearing process, an arbitration-like

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proceeding to which the appealing party disagrees. Workers who have prevailed in wage claim hearings have reportedly accepted less than the wages determined to be owed rather than wait for delayed payment of wages following the judicial appeals process.

The current three-step process (Commissioner's hearing,

arbitration, and de novo review) may further delay payment of wages due. The process should be reduced to two steps by eliminating judicial arbitration.

ARGUMENTS IN OPPOSITION : The California Judges Association opposes this measure as a reduction in judicial discretion, arguing that there is no evidence that discretion is being abused, as most judges would decline to send small wage cases to arbitration.

ASSEMBLY FLOOR

AYES: Alquist, Aroner, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Correa, Ducheny, Dutra, Firebaugh, Florez, Gallegos, Havice, Honda, Jackson, Keeley, Knox, Kuehl, Longville, Lowenthal, Machado, Mazzoni, Migden, Nakano, Papan, Reyes, Romero, Scott, Shelley, Steinberg, Strom-Martin, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Hertzberg

NOES: Aanestad, Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Brewer, Briggs, Campbell, Cox, Cunneen, Dickerson, Granlund, House, Kaloogian, Leach, Maddox, Maldonado, Margett, McClintock, Olberg, Robert Pacheco, Rod Pacheco, Pescetti, Runner, Strickland, Thompson, Zettel

NC:kb 8/28/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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**SENATE RULES COMMITTEE**  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

AB 2509

---

THIRD READING

---

Bill No: AB 2509  
Author: Steinberg (D)  
Amended: 8/25/00 in Senate  
Vote: 21

---

SENATE INDUSTRIAL RELATIONS COMMITTEE: 4-1, 6/28/00  
AYES: Alarcon, Figueroa, Karnette, Solis  
NOES: Mountjoy

SENATE JUDICIARY COMMITTEE: 5-3, 8/8/00  
AYES: Escutia, O'Connell, Peace, Sher, Schiff  
NOES: Haynes, Morrow, Wright

SENATE APPROPRIATIONS COMMITTEE: 7-5, 8/21/00  
AYES: Johnston, Bowen, Burton, Escutia, Karnette, Perata, Vasconcellos  
NOES: Johnson, Kelley, Leslie, McPherson, Mountjoy

ASSEMBLY FLOOR: 41-32, 5/25/00 - See last page for vote

---

SUBJECT: Employment: remedies for employment law violations

SOURCE: California Labor Federation

---

**DIGEST:** This bill makes various changes to the Labor Code relative to rights, remedies, and procedures. The bill streamlines and alters many enforcement and administrative procedures of wage and hour laws before the Labor Commissioner and the courts, increases civil penalties and damages for violations.



Senate Floor Amendments of 8/25/00 delete major provisions of this omnibus labor standards enforcement measure and make minor amendments. These amendments delete provisions relating to:

1. The consolidation of administrative proceedings.
2. Notice by mail as an option to subpoena.
3. Exemption from judicial arbitration.
4. Attorney's fees and costs relating to appeals.
5. Liquidated damage awards by the Labor Commissioner for unpaid wages.
6. Wage bond requirements to include interest penalties and other demands.
7. Shareholder liability.
8. Successor liability.
9. Increased penalties for payroll record violations relating to each employee.
10. Right of private action in discrimination complaints.
11. Posting of violation notices.
12. Penalties relating to failure to provide necessary tools and equipment.

### ANALYSIS:

#### Background

Existing law provides a framework for the enforcement of laws relating to the payment wages and overtime compensation, and working conditions by the Labor Commissioner, chief of the Division of Labor Standards Enforcement (DLSE) in the State Department of Industrial Relations (DIR).

Despite the efforts of DIR, California has a large and growing "underground economy" of employers who are chronic violators of wage and hour, safety, and tax laws. Such employers pay cash under the table or with checks that bounce, fail to report and pay employment taxes, work their employees long hours without rest breaks, and avoid paying wage judgments issued against them. In so doing, according to executive orders issued by Governor's Deukmejian and Wilson, it is estimated that the State's loss of income taxes alone increased from \$2 billion in 1986 to \$3 billion in 1993.

CONTINUED



Changes to existing law

1. Existing law provides that interest on all due and unpaid wages shall accrue at the rate established in Section 19269 of the Revenue and Taxation Code. This section of law has been repealed.

This bill provides that the legal rate of interest on due and unpaid wages shall be at the statutory rate established by Civil Code Section 3289(b), which is 10 percent.

2. Existing law does not require an appellant to post a bond as a condition of filing an appeal from an adverse Berman hearing decision.

This bill requires employers filing an appeal of the commissioner in a Berman hearing to post a prescribed undertaking and provides for disposition thereof.

3. Existing law provides that an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill makes this penalty applicable to all employers, as specified, and makes related conforming and technical, nonsubstantive changes.

4. Existing law provides that employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these requirements is a misdemeanor.

This bill provides that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation.

The bill requires disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis, and requires disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate.

CONTINUED





5. Existing law provides an employee suffering injury as a result of the employer's knowing or intentional failure to comply with the above disclosure requirement is entitled to recover the greater of actual damages or one hundred dollars (\$100), plus costs and reasonable attorney's fees.

This bill revises the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$50 for the initial pay period in which a violation occurs and \$100 per employer for each subsequent pay period in which the violation occurs up to \$4,000, plus costs and reasonable attorney's fees.

6. Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions. Under this authority, IWC Wage Orders require meal and rest periods.

Places into statute the existing provisions of the Industrial Welfare Commission requiring employers to provide a 10-minute rest period every four hours and a 30-minute meal period every five hours. On-duty meal periods are permitted when the nature of the work performed so dictates. Failure to provide such meal and rest periods would subject an employer to paying the worker one hour of wages for each work day when rest periods were not offered. The option of filing a right of private action is deleted.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Verified 8/8/00 – Unable to reverify due to time constraints)

California Professional Firefighters  
 Golden Gate University, School of Law, Women's Employment Rights  
 Clinic  
 Equal Rights Advocates  
 Legal Aid Society of San Francisco, Employment Law Center  
 Transport Workers Union of America  
 California Rural Legal Assistance Foundation  
 California Conference Board of the Amalgamated Transit Union  
 Engineers and Scientists of California  
 Region 8 States Council of the United Food & Commercial Workers  
 Hotel Employees, Restaurant Employees International Union

CONTINUED



California Conference of Machinists  
Service Employees International Union  
California Chapters of the National Electrical Contractors Association  
California Legislative Conference of the Plumbing, Heating and Piping  
Industry  
Western Wall and Ceiling Contractors Association  
Air Conditioning and Refrigeration Contractors Association  
California Association of Sheet Metal and Air Conditioning Contractors,  
National Association  
American Federation of State, County and Municipal Employees, AFL-CIO  
California Teamsters, Public Affairs Council  
California Labor Federation  
La Raza Centro Legal, Inc.  
Exotic Dancers Alliance  
Asian Law Caucus  
Mexican-American Legal Defense and Education Fund  
Asian Pacific Legal Center of Southern California

**OPPOSITION:** (Verified 8/8/00 – Unable to reverify due to time constraints)

Western Growers Association  
California Retailers Association  
Civil Justice Association of California  
California Grocers Association  
California Chamber of Commerce  
Roofing Contractors Association of California Associated General  
Contractors and Associated General Contractors San Diego  
Orange County Business Council  
Engineering Contractors' Association  
Marin Builders' Exchange  
Sacramento Builders' Exchange  
Fence Contractors' Association  
Flasher/Barricade Association  
Seismic Gas Valve Manufacturers'  
California Manufacturers and Technology Association  
California Employment Law Council  
San Rafael Chamber of Commerce  
California Farm Bureau Federation



**ASSEMBLY FLOOR**

AYES: Alquist, Aroner, Bock, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Davis, Ducheny, Dutra, Firebaugh, Floyd, Gallegos, Honda, Jackson, Keeley, Knox, Kuehl, Lempert, Longville, Lowenthal, Machado, Migden, Nakano, Reyes, Romero, Scott, Shelley, Steinberg, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Hertzberg

NOES: Aanestad, Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Brewer, Briggs, Campbell, Cox, Cunneen, Florez, Granlund, House, Kaloogian, Leach, Leonard, Maddox, Maldonado, Margett, Mazzone, McClintock, Olberg, Oller, Robert Pacheco, Rod Pacheco, Pescetti, Runner, Strickland, Thompson, Zettel

NC:kb 8/28/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*





CONCURRENCE IN SENATE AMENDMENTS  
AB 1652 (Labor Committee)  
As Amended September 8, 1999  
Majority Vote

ASSEMBLY: 68-9 (May 24, 1999) SENATE: 23-12  
(September 9, 1999)

Original Committee Reference: L. & E.

SUMMARY : Revises the wage claims process administered by the Labor Commissioner (Commissioner) and the courts. Revises statutes related to wages and hours including bounced payroll checks, payroll records, and meal periods.

The Senate amendments :

- 1) Require the Commissioner, when acting on behalf of a judgment creditor, to make reasonable collection efforts, as defined, unless the judgment creditor requests in writing that the Commissioner take no action. Clarify the court's jurisdiction in such trials.
- 2) Provide that an employer seeking judicial review of an adverse order, decision, or award by the Commissioner shall post an undertaking in the amount of the order, decision, or award.
- 3) Apply to all employers a provision of current law applying only to the building and construction industry that imposes up to 30 days waiting time penalties where wages (or fringe benefits) are paid with a check for which payment is refused due to insufficient funds.
- 4) Require an employer to provide each employee at the time of wage payment information concerning the number of piecework units earned and the applicable piece rate if the employee is paid on a piecework basis in addition to the information currently required to be provided.
- 5) Provide that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC). Provide for penalties for violation of this section.
- 6) Provide that an employer who knowingly and intentionally fails

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to maintain specified payroll records shall be subject to fines of \$50 for the initial pay period violation and \$100 per employee per each subsequent payroll period in which the records are not maintained up to a maximum of \$5,000.

7) Provide that the Commissioner shall, under specified circumstances, order the employer to post a workplace notice describing the nature of a violation and related information.

EXISTING LAW allows an employer to obtain a de novo review in court of an order, decision, or award of the Commissioner without posting of an undertaking. Provides that an employee may bring an action for nonpayment of wages, and the prevailing party in such an action shall be awarded reasonable attorney's fees and costs. Requires, under wage orders of the IWC, meal and rest periods.

AS PASSED BY THE ASSEMBLY , this bill required the Commissioner to develop a notice containing a clear explanation of each type of discrimination prohibited by the Labor Code and the legal remedy provided in this code for such discrimination.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis, minor, absorbable costs to the Department of Industrial Relations.

COMMENTS : The Senate amendments add to this bill some of the wage and hour provisions which were formerly included in AB 633 (Steinberg), pending in the Assembly, when it passed the Assembly in June.

The author did not include in this bill, some of the more controversial wage and hour provisions formerly contained in AB 633, including provisions authorizing private parties to seek penalties on behalf of the state, liquidated damages for overtime violations, and attorney fees for cases involving rest and meal period violations. The provision of sections 3 and 8 also reduce the penalty amounts previously specified in AB 633.

Section 4 of the bill prohibits any employer from requiring any employee to work any meal or rest period mandated by an applicable order of the IWC. This section does not repeal any existing exceptions or waivers to meal or rest period requirements that are contained in any wage order, such as those which permit work during meal periods when the nature of work

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prevents an employee from being relieved of all duty pursuant to a written agreement between the parties. This section also specifies that its provisions may be superseded by a collective bargaining agreement.

Analysis Prepared by : Ralph Lightstone / L. & E. / (916)  
319-2091

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Date of Hearing: June 26, 1986

SB 2570

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Richard E. Floyd, Chairman

SB 2570 (Lockyer) - As Amended: June 17, 1986 -

SUBJECT

Attorney's fees for wage claim actions.

DIGEST

Existing law requires the Labor Commissioner to accept claims for the non-payment of wages and fringe benefits and to enforce the various statutes relating to failure to pay wages and benefits. The Commissioner may hear claims and order payment on the basis of evidence presented. If the decision of the Commissioner is appealed, the claim is heard de novo in the municipal or superior court. However, if the appeal is unsuccessful, the party who filed the appeal must pay the court costs and attorney's fees of the other party.

Existing law also provides that where a party to a collective bargaining agreement prevails in an action to compel arbitration of a dispute, the court shall award the party costs and attorney's fees unless the other party has raised complex or significant questions of law or of fact. Additionally, the court must award costs and attorney's fees to a prevailing appellee in an appeal of the decision of an arbitrator of a collective bargaining dispute unless the appellant raises complex or significant questions of law.

This bill would require the award of reasonable attorney's fees and costs to the prevailing party in any action for the nonpayment of wages, fringe benefits, or health, welfare, and pension fund contributions unless the action was brought by the Labor Commissioner. The measure also requires the court to award attorney's fees to the prevailing party in an action to compel compliance with the decision of an arbitrator or grievance panel in a collective bargaining dispute.

FISCAL EFFECT

None.

COMMENTS

- 1) Unless there is a specific contractual provision to the contrary, each party in a legal action must generally pay his or her own attorney's fees. One of the statutory exceptions to this rule, known as the "American Rule", includes actions involving wage claims of less than \$300. In these instances, attorney's fees of not more than 20% of the award shall be

LIS-7

- continued -

SB 2570  
Page 1

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awarded to the party initiating the action (Section 1031, Civil Procedure Code).

Sponsors of this measure, the Teamsters Union, argue that the relatively small amounts involved in most nonpayment of wage cases preclude claimants from filing legal action against an employer.

- 2) Awarding attorney's fees to the prevailing party in an action to compel compliance with an arbitrator or grievance panel's decision, would appear to be equitable, particularly in view of the fact that the law now provides for attorney's fees to parties in actions to compel arbitration of disputes or where there is an appeal of an arbitrator's decision.



Date of Hearing: June 26, 1986

SB 2570

SUPPORT

California Teamsters Public Affairs Council

OPPOSITION

None registered





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### DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 955 of 1991. Senate Bill 955 was approved by the Legislature and was enacted as Chapter 825 of the Statutes of 1991.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 955 of 1991. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

#### **EXHIBIT A- SENATE BILL 955 OF 1991:**

1. All versions of Senate Bill 955 (Torres-1991);
  2. Procedural history of Senate Bill 955 from the 1991-92 Senate Final History;
  3. Analysis of Senate Bill 955 prepared for the Senate Committee on Industrial Relations;
  4. Material from the legislative bill file of the Senate Committee on Industrial Relations on Senate Bill 955;
  5. Material from the legislative bill file of the Senate Committee on Appropriations on Senate Bill 955;
    - a. Previously obtained material;
    - b. Up-to-date collection of material;
- +

6. Third Reading analysis of Senate Bill 955 prepared by the Office of Senate Floor Analyses;
7. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 955;
  - a. Previously obtained material;
  - + b. Up-to-date collection of material;
8. Analysis of Senate Bill 955 prepared for the Assembly Committee on Labor and Employment;
9. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Senate Bill 955;
  - a. Previously obtained material;
  - + b. Up-to-date collection of material;
10. Analysis of Senate Bill 955 prepared for the Assembly Committee on Ways and Means;
11. Material from the legislative bill file of the Assembly Committee on Ways and Means on Senate Bill 955;
12. Two Third Reading analysis of Senate Bill 955 prepared by the Assembly Committee on Labor and Employment;
13. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 955;
  - a. Previously obtained material;
  - + b. Up-to-date collection of material;
14. Unfinished Business analysis of Senate Bill 955 prepared by the Office of Senate Floor Analyses;
15. Post-enrollment documents regarding Senate Bill 955.

**EXHIBIT B- ASSEMBLY BILL 2139 OF 1991:**

1. All versions of Assembly Bill 2139 (Lee-1991);
2. Procedural history of Assembly Bill 2139 from the 1991-92 Senate Final History;
3. Analysis of Assembly Bill 2139 prepared for the Assembly Committee on Labor and Employment;
4. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Assembly Bill 2139;
5. Analysis of Assembly Bill 2139 prepared for the Assembly Committee on Ways and Means;
6. Material from the legislative bill file of the Assembly Committee on Ways and Means on Assembly Bill 2139;
7. Third Reading analysis of Assembly Bill 2139 prepared by the Assembly Committee on Labor and Employment;
8. Analysis of Assembly Bill 2139 prepared for the Senate Committee on Industrial Relations;
9. Third Reading analysis of Assembly Bill 2139 prepared by the Office of Senate Floor Analyses;

10. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 2139;
11. Governor's Veto Message on Assembly Bill 2139;
12. Post-enrollment documents regarding Assembly Bill 2139.

+

We have re-gathered these file materials and have noted this more recently accessed collection of documents as "up-to-date collection of material" in this declaration, which may duplicate documents previously gathered. It is not unusual for more materials to become publicly available after our initial research of legislation so our research protocols compel us to re-access a file to determine if additional documents are available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20<sup>th</sup> day of December, 2010 at Woodland, California.



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MARIA A. SANDERS

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### DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service undertook to locate and obtain all documents relevant to the enactment of Senate Bill 2570 of 1986. Senate Bill 2570 was approved by the Legislature and was enacted as Chapter 1211 of the Statutes of 1986.

The following list identifies all documents obtained by the staff of Legislative Intent Service on Senate Bill 2570 of 1986. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service. In compiling this collection, the staff of Legislative Intent Service operated under directions to locate and obtain all available material on the bill.

#### **SENATE BILL 2570 OF 1986:**

1. All versions of Senate Bill 2570 (Lockyer-1986);
2. Procedural history of Senate Bill 2570 from the 1985-86 Senate Final History;
3. Analysis of Senate Bill 2570 prepared for the Senate Committee on Judiciary;
4. Document from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 2570;
5. Third Reading analysis of Senate Bill 2570 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 2570;

- + 7. Analysis of Senate Bill 2570 prepared for the Assembly Committee on Labor and Employment;
8. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Senate Bill 2570;
- a. Previously obtained material;
- b. Up-to-date collection of material;
- + 9. Two analyses of Senate Bill 2570 prepared for the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 2570;
11. Third Reading analysis of Senate Bill 2570 prepared by the Assembly Committee on Labor and Employment;
12. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 2570;
13. Unfinished Business analysis of Senate Bill 2570 prepared by the Office of Senate Floor Analyses;
14. Legislative Counsel's Rule 26.5 analysis of Senate Bill 2570;
15. Material from the legislative bill file of Senator Bill Lockyer on Senate Bill 2570;
16. Post-enrollment documents regarding Senate Bill 2570;
17. Press Release #754 issued by the Office of the Governor on September 26, 1986 to announce that Senate Bill 2570 had been signed;
18. Material from the file of the Legislative Representative of the State Bar of California on Senate Bill 2570;
19. Excerpt regarding Senate Bill 2570 from the 1986 Summary Digest of Statutes Enacted and Resolutions Adopted prepared by Legislative Counsel.

+ We have re-gathered these file materials and have noted this more recently accessed collection of documents as "up-to-date collection of material" in this declaration, which may duplicate documents previously gathered. It is not unusual for more materials to become publicly available after our initial research of legislation so our research protocols compel us to re-access a file to determine if additional documents are available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10<sup>th</sup> day of December, 2010 at Woodland, California.



---

MARIA A. SANDERS





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I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 633 of 1999. Assembly Bill 633 was approved by the Legislature and was enacted as Chapter 554 of the Statutes of 1999.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 633 of 1999. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

### **EXHIBIT C - ASSEMBLY BILL 633 OF 1999 (RELATED PREDECESSOR):**

1. All versions of Assembly Bill 633 (Steinberg-1999);
2. Procedural history of Assembly Bill 633 from the 1999-2000 Assembly Final History;
3. Analysis of Assembly Bill 633 prepared for the Assembly Committee on Labor and Employment;
4. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Assembly Bill 633;
5. Analysis of Assembly Bill 633 prepared for the Assembly Committee on Appropriations;
6. Material from the legislative bill file of the Assembly Committee on Appropriations on Assembly Bill 633;
7. Two Third Reading analyses of Assembly Bill 633 prepared by the Assembly Committee on Labor and Employment;

8. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 633.
9. Analysis of Assembly Bill 633 prepared for the Senate Committee on Industrial Relations;
10. Material from the legislative bill file of the Senate Committee on Industrial Relations on Assembly Bill 633;
11. Fiscal Summary of Assembly Bill 633 prepared by the Senate Committee on Appropriations;
12. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 633;
13. Two Third Reading analyses of Assembly Bill 633 prepared by the Office of Senate Floor Analyses;
14. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 633;
15. Concurrence in Senate Amendments analysis of Assembly Bill 633 prepared by the Assembly Committee on Labor and Employment;
16. Post-enrollment documents regarding Assembly Bill 633;
17. Press Release issued by Assembly member Darrell Steinberg on Assembly Bill 633;
18. Article regarding Assembly Bill 633 entitled "Making the Industry Sweat" from the Daily Journal.

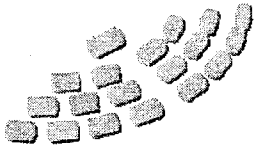
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of December, 2010 at Woodland, California.



---

MARIA A. SANDERS





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### DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 2509 of 2000. Assembly Bill 2509 was approved by the Legislature and was enacted as Chapter 876 of the Statutes of 2000.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 2509 of 2000. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

#### **EXHIBIT A - ASSEMBLY BILL 2509 OF 2000:**

1. All versions of Assembly Bill 2509 (Steinberg-2000);
2. Procedural history of Assembly Bill 2509 from the 1999-2000 Assembly Final History;
3. Analysis of Assembly Bill 2509 prepared for the Assembly Committee on Labor and Employment;
4. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Assembly Bill 2509;
5. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 2509;
6. Analysis of Assembly Bill 2509 prepared for the Assembly Committee on Appropriations;
7. Third Reading analysis of Assembly Bill 2509 prepared by the Assembly Committee on Labor and Employment;

8. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 2509;
9. Analysis of Assembly Bill 2509 prepared for the Senate Committee on Industrial Relations;
10. Material from the legislative bill file of the Senate Committee on Industrial Relations on Assembly Bill 2509;
11. Analysis of Assembly Bill 2509 prepared by the Senate Committee on Judiciary;
12. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 2509;
13. Fiscal Summary of Assembly Bill 2509 prepared by the Senate Committee on Appropriations;
14. Two Third Reading analyses of Assembly Bill 2509 prepared by the Office of Senate Floor Analyses;
15. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 2509;
16. Concurrence in Senate Amendments analysis of Assembly Bill 2509 prepared by the Assembly Committee on Labor and Employment;
17. Post-enrollment documents regarding Assembly Bill 2509;
18. Press Release #L00:210 issued by the Office of the Governor on September 30, 2000 to announce that Assembly Bill 2509 had been signed;
19. Excerpt regarding Assembly Bill 2509 from the 2000 Digest of Legislation, prepared by the Office of Senate Floor Analyses, Vol. I, November 2000.

**EXHIBIT B - ASSEMBLY BILL 1652 OF 1999 (VETOED PREDECESSOR):**

1. All versions of Assembly Bill 1652 (Committee on Labor and Employment-1999);
2. Procedural history of Assembly Bill 1652 from the 1999-2000 Assembly Final History;
3. Analysis of Assembly Bill 1652 prepared for the Assembly Committee on Labor and Employment;
4. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Assembly Bill 1652;
5. Analysis of Assembly Bill 1652 prepared for the Assembly Committee on Appropriations;
6. Material from the legislative bill file of the Assembly Committee on Appropriations on Assembly Bill 1652;
7. Third Reading analysis of Assembly Bill 1652 prepared by the Assembly Committee on Labor and Employment;
8. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 1652;
9. Analysis of Assembly Bill 1652 prepared for the Senate Committee on Industrial Relations;



10. Material from the legislative bill file of the Senate Committee on Industrial Relations on Assembly Bill 1652;
11. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 1652;
12. Three Third Reading analyses of Assembly Bill 1652 prepared by the Office of Senate Floor Analyses;
13. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 1652;
14. Concurrence in Senate Amendments analysis of Assembly Bill 1652 prepared by the Assembly Committee on Labor and Employment;
15. Post-enrollment documents regarding Assembly Bill 1652;
16. Governor's Veto analysis of Assembly 1652 prepared by the Assembly Committee on Labor and Employment;
17. Press Release #L99:222 issued by the Office of the Governor on October 11, 1999 to announce that Assembly Bill 1652 had been vetoed;
18. Excerpt regarding Assembly Bill 1652 from the 1999 Digest of Legislation, prepared by the Office of Senate Floor Analyses, Vol. I, November 1999.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10<sup>th</sup> day of December, 2010 at Woodland, California.



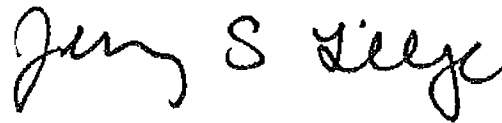
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MARIA A. SANDERS



8. Material from the legislative bill file of the Senate Committee on Industrial Relations on Assembly Bill 2857;
9. Four Third Reading analyses of Assembly Bill 2857 prepared by the Office of Senate Floor Analyses;
10. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 2857;
11. Concurrence in Senate Amendments analysis of Assembly Bill 2857 prepared by the Assembly Committee on Labor and Employment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of May, 2011 at Woodland, California.



---

JENNY S. LILLGE

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am employed in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 1629 Telegraph Avenue, Fourth Floor, Oakland, California 95612. I am employed by the Law Office of Ellyn Moscovitz, P.C.

On May 10, 2011, I served the within Appellants' Supplemental MJN iso Reply *Anthony Kirby et al. v. Immoos Fire Protection, Inc.*; California Supreme Court Case Number S185827 [Third Appellate District Court of Appeal Case Number C062306] upon the following:

Robert Rediger, Esq.  
Laura C. McHugh, Esq.  
Jimmie E. Johnson, Esq.  
Rediger, McHugh & Owensby, LLP  
555 Capitol Mall, Suite 1240

Honorable Loren E. McMaster  
Sacramento Superior Court  
720 Ninth Street  
Sacramento, CA 95814

Sacramento, CA 95814  
Appellate Coordinator  
Office of the Attorney General  
300 S. Spring Street  
Los Angeles, CA 90013

California Court of Appeal  
Third Appellate District Court of Appeal  
621 Capitol Mall, Tenth Floor  
Sacramento, CA 95814

XXXX: BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE. I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or diver authorized by the express carrier to receive documents.

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

XXXX: BY MESSENGER SERVICE. I served the documents by placing them in an envelope or package addressed to the persons at the addresses I listed above and providing them to a professional messenger service.

I certify under penalty of perjury that the above is true and correct. Executed at Oakland, California on May 10, 2011.

  
\_\_\_\_\_  
Andy Morales