

Case No. S222732

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT  
**FILED**

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DYNAMEX OPERATIONS WEST, INC.,  
Petitioner,

MAY 11 2015

Frank A. McGuire Clerk  

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Deputy

vs.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,  
Respondent,

CHARLES LEE et al.,  
Real Parties in Interest.

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**PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF OPENING BRIEF ON THE MERITS;  
MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATIONS OF ROBERT G. HULTENG AND PHILIP A.  
SIMPKINS; PROPOSED ORDER**

AFTER A DECISION BY THE COURT OF APPEAL  
SECOND APPELLATE DISTRICT, DIVISION SEVEN, CASE No. B249546

LOS ANGELES COUNTY SUPERIOR COURT, CASE No. BC 332016  
MICHAEL L. STERN, JUDGE

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Attorneys for Petitioner Dynamex Operations West, Inc.

Case No. S222732

**IN THE SUPREME COURT OF CALIFORNIA**

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**DYNAMEX OPERATIONS WEST, INC.,**  
Petitioner,

vs.

**THE SUPERIOR COURT OF LOS ANGELES COUNTY,**  
Respondent,

**CHARLES LEE et al.,**  
Real Parties in Interest.

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Attorneys for Petitioner Dynamex Operations West, Inc.

**PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT  
OF OPENING BRIEF ON THE MERITS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT THEREOF;  
DECLARATIONS OF ROBERT G. HULTENG AND PHILIP A.  
SIMPKINS IN SUPPORT THEREOF; PROPOSED ORDER**

**TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE, CHIEF  
JUSTICE; THE HONORABLE ASSOCIATE JUSTICES OF THE  
CALIFORNIA SUPREME COURT; REAL PARTIES IN INTEREST  
AND THEIR ATTORNEYS OF RECORD:**

Pursuant to California Evidence Code sections 450 et seq., and California Rules of Court, Rules 8.252 and 8.520, Petitioner Dynamex Operations West, Inc. (“Dynamex”) respectfully moves this Court to take judicial notice of the documents listed below. Said documents are relevant in determining the correct interpretations of Labor Code sections 1173 and 1194 and Article XIV, Section 1, of the California Constitution. The correct interpretations of these sections is critical to defining the scope of authority of the Industrial Welfare Commission, as reflected in those sections, to regulate the wages and working conditions of employees. In turn, that analysis is material to the issue under review in this case, namely: In a wage and hour class action involving claims that the plaintiffs are misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definitions as construed in *Martinez v. Combs*, (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations*, (1989) 48 Cal.3d 341, control? Also material to the issue under review is the extreme changes to California law that would result from adoption of the IWC’s definitions of “employer” and “employ” to differentiate between independent contractors and employees. As reflected in Petitioner’s

arguments regarding the case of *Cristler v Express Messenger Systems* (2009) 171 Cal. App. 4th 72, the *Borello* factors that have long been understood to differentiate between independent contractors and employees would be lost if the IWC's definitions were applied to determine who qualified as an employee in misclassification cases. The facts underlying the analysis in *Cristler* are reflected in the trial court's Statement of Decision that was issued following the trial of that matter.

Petitioner requests that judicial notice be taken of the following documents:

Exhibit A: Statutes 1913, Chapter 324 [enactment of uncodified predecessor to California Labor Code section 1173]

Exhibit B: Ballot Pamphlet, General Election (Nov. 3, 1914), pages regarding Proposition 44 to approve Assembly Constitutional Amendment No. 90 [to add former section 17½ of Article XX to the California Constitution]

Exhibit C: Assembly Constitutional Amendment No. 65, Statutes 1970 (1970 Regular Session) resolution chapter 189 [to amend former Article XX, Section 17½ to include the same language that is currently in Article XIV, Section 1 of the California Constitution; approved by voters (Prop. 15), General Election (Nov. 3, 1970)]

Exhibit D: Analysis of Assembly Constitutional Amendment No. 65 prepared by the Assembly Committee on Elections and Constitutional Amendments, as Amended June 17, 1970 [regarding amendment of former Article XX, Section 17½ to include the same language that is currently in Article XIV, Section 1 of the California Constitution]

- Exhibit E: Assembly Bill No. 256 (1972 Regular Session), as introduced on January 31, 1972 [regarding amendment of Labor Code Section 1173]
- Exhibit F: Analysis of Assembly Bill No. 256 prepared by the Assembly Committee on Labor Relations, dated March 15, 1972 [regarding amendment of Labor Code Section 1173]
- Exhibit G: Statutes 1972, Chapter 1122 [amended Labor Code Section 1173]
- Exhibit H: Statutes 1973, Chapter 1007 [amended Labor Code Section 1173]
- Exhibit I: Enrolled version of Assembly Bill No. 478 (1973-1974 Regular Session) [regarding amendment of Labor Code Section 1173]
- Exhibit J: Statement of Decision in *Cristler v. Express Messenger Systems, Inc.* (Super. Ct. San Diego County, Feb. 26, 2007, Consolidated Nos. GIC 803519 and GIC 855961)

Exhibits A and E through I are true and correct copies of documents obtained by Petitioner's counsel regarding the administrative and legislative history of Labor Code section 1173. (Lab. Code § 1173.) Specifically, these exhibits consist of documents from the histories of (a) Assembly Bill 1251, which resulted in the enactment of Chapter 324 of Statutes of 1913, the uncodified predecessor to California Labor Code Section 1173; (b) Assembly Bill No. 256 (1972 Regular Session), which resulted in the enactment of Chapter 1122 of Statutes of 1972, amending Section 1173; and (c) Assembly Bill No. 478 (1973-1974 Regular Session), which resulted in the enactment of Chapter 1007 of Statutes of 1973, amending Section 1173.

Exhibit B is a true and correct copy of a document obtained by Petitioner's counsel regarding the legislative history of Assembly Constitutional Amendment No. 90 (1913 Regular Session) adding former section 17½ of Article XX to the California Constitution. Specifically, it consists of pages from the Ballot Pamphlet for the California General Election, held on Nov. 3, 1914, regarding Proposition No. 44 to approve Assembly Constitutional Amendment No. 90.

Exhibits C and D are true and correct copies of documents obtained by Petitioner's counsel regarding the administrative and legislative history of Assembly Constitutional Amendment No. 65 (1970 Regular Session) revising former section 17½ of Article XX to the California Constitution. Exhibit F consists of pages from the Ballot Pamphlet for the California General Election, held on Nov. 3, 1970, regarding Proposition No. 15 to approve Assembly Constitutional Amendment No. 65.

Exhibit J is a true and correct copy of the Statement of Decision issued by The Honorable Frederic L. Link, Judge of the San Diego Superior Court, on February 26, 2007, following the trial in the consolidated cases of James W. Cristler, *et al.* v. Express Messenger Systems, Inc., *et al.* and Barry Newman v. Express Messenger Systems, Inc., *et al.*

The documents are described, and indicated, under penalty of perjury to be true and correct copies of the originals in the declarations of Petitioner's counsel, Robert G. Hulteng and Philip A. Simpkins, included herein. The documents were not presented to the trial court, nor do they relate to proceedings occurring after the order that is the subject of the appeal. This

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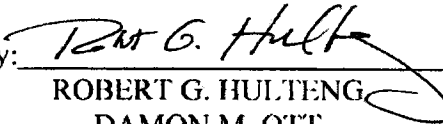
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request is based upon the instant motion; the memorandum of points and authorities; and declarations of Petitioner's counsel, Robert G. Hulteng and Philip A. Simpkins, included herein.

DATED: May 11, 2015


LITTLER MENDELSON, P.C.

By:   
ROBERT G. HULTENG  
DAMON M. OTT  
PHILIP A. SIMPKINS

Attorneys for Defendant and Petitioner  
DYNAMEX OPERATIONS WEST,  
INC.

DATED: May 11, 2015

SHEPPARD MULLIN RICHTER &  
HAMPTON LLP

By:   
ELLEN M. BRONCHETTI  
PAUL S. COWIE

Attorneys for Defendant and Petitioner  
DYNAMEX OPERATIONS WEST,  
INC.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

Evidence Code section 459 provides reviewing courts the power to take judicial notice of documents, just as a trial court may under Evidence Code sections 450 *et seq.* (Evid. Code, § 459.) California Rules of Court, Rules 8.252 and 8.520 provide that a reviewing court may take judicial notice of documents relevant to the issues under review. (Cal. Rules of Court, rules 8.252(a)(2)(A), 8.520(g).)

The Court has granted review of the following issue: In a wage and hour class action involving claims that the plaintiffs are misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definitions as construed in *Martinez v. Combs*, (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations*, (1989) 48 Cal.3d 341, control? As reflected in this question itself, resolution of this issue depends, in part, on an evaluation of the scope of authority of the IWC. The California legislature's delegation of authority to the IWC is embodied in Labor Code section 1173 and Section 1 of Article XIV of the California Constitution reflects limitations on that authority. Petitioner's arguments regarding the case of *Cristler v Express Messenger Systems* (2009) 171 Cal. App. 4th 72, demonstrate the negative consequences of adopting the IWC's definitions of "employer" and "employ" to differentiate between independent contractors and employees.

Legislative history is relevant to statutory interpretation. (*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 379 ["S.B. Beach"]; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*DiCampli-Mintz v. County*



*of Santa Clara* (2012) 55 Cal.4th 983, 992 [“DiCampli-Mintz”] [“statute must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers...”]; (*Hale v. Southern Cal. IPA Med. Grp. Inc.* (2001) 86 Cal.App.4th 919, 927 [“Hale”] [California Law Revision Commission reports, and Legislative Committee reports].) This Court may take judicial notice of official acts of the executive and legislative branches. (Evid. Code, § 452(c).) And, Evidence Code section 451 requires this Court take judicial notice of any relevant, public statutory laws or constitutional provisions of California and the United States. (Evid. Code, § 451(a).) Furthermore, this Court may properly take judicial notice of a Statement of Decision in a case affirmed by the appellate court. (Evid. Code, § 452(d).) Finally, this Court may properly take notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452(h).)

In conclusion, the legal authority for this Court to grant judicial notice of each of the above-listed documents is as follows:

Exhibit A: Statutes 1913, Chapter 324

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit A is a true and correct copy of a public statute enacting the original version of Section 1173 (at that time an uncodified provision), the Court should take judicial notice of the document in this matter.

Exhibit B: Ballot Pamphlet, General Election (Nov. 3, 1914), pages regarding Proposition 44 to approve Assembly Constitutional Amendment No. 90 to amend the California Constitution to include former Article XX, Section 17½

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) Ballot Pamphlets, containing arguments for and against various measures and/or impartial legislative analysis, may be judicially noticed pursuant to Evidence Code section 452, subdivision (c), as an official act of the executive branch of this state. Furthermore, the ballot pamphlet contains information that is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452(h); *see also People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504 fn.1 [“Romero”] [taking judicial notice of materials relevant to the history of Proposition 184]; *People v Whaley* (2008) 160 Cal.App.4th 779, 788 fn.9 [“Whaley”] [taking judicial notice of ballot pamphlet].) Whereas Exhibit B is a true and correct copy of portions of an official ballot pamphlet, the Court should take judicial notice of the document in this matter.

Exhibit C: Assembly Constitutional Amendment No. 65, Stats. 1970 (1970 Regular Session) res. ch. 189, pp. 3781-3782

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit C is a true and correct copy of a public statute resolving to propose to the people of the State of California a revision to the California Constitution, the Court should take judicial notice of the document in this matter.

Exhibit D: Analysis of Assembly Constitutional Amendment No. 65 prepared by the Assembly Committee on Elections and Constitutional Amendments, as Amended June 17, 1970.

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*DiCampli-Mintz, supra*, 55 Cal.4th at p.992 [California Law Revision Committee reports]; *Hale, supra*, 86 Cal.App.4th at p.927 [Law Revision Commission reports and Legislative Committee reports]; *Martin v. Szeto* (2004) 32 Cal.4th 445, 450 [“Martin”] [Legislative Committee reports].) Whereas Exhibit D is a true and correct copy of an analysis of a bill by the Assembly Committee on Elections and Constitutional Amendments, the Court should take judicial notice of the document in this matter.

Exhibit E: Assembly Bill No. 256 (1972 Regular Session), as introduced on January 31, 1972

Legislative history, including versions of the proposed and amended bills themselves, is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379. [legislative history in general]; *Cynthia D. v. Superior Court* (1993) 5Cal.4th 242, 250, fn. 7 [“*Cynthia D.*”] [proposed and amended versions of bills]; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit E is a true and correct copy of Assembly Bill No. 256, as introduced on January 31, 1972, the Court should take judicial notice of the document.

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Exhibit F: Analysis of Assembly Bill No. 256 prepared by the Assembly Committee on Labor Relations, dated March 15, 1972

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*DiCampli-Mintz, supra*, 55 Cal.4th at p.992 [California Law Revision Committee reports]; *Hale, supra*, 86 Cal.App.4th at p.927 [Law Revision Commission reports and Legislative Committee reports]; *Martin, supra*, 32 Cal.4th at p.450 [Legislative Committee reports].) Whereas Exhibit F is a true and correct copy of an analysis of a bill by the Assembly Committee on Labor Relations, the Court should take judicial notice of the document in this matter.

Exhibit G: Statutes 1972, Chapter 1122

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code § 9080.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit G is a true and correct copy of a public statute amending Section 1173, the Court should take judicial notice of the document in this matter.

Exhibit H: Statutes 1973, Chapter 1007

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code § 9080.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit H is a true and correct copy of a public statute amending

Section 1173, the Court should take judicial notice of the document in this matter.

Exhibit I: Enrolled version of Assembly Bill No. 478 (1973-1974 Regular Session), September 14, 1973

Legislative history, including versions of the proposed and amended bills themselves, is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379. [legislative history in general]; *Cynthia D. v. Superior Court* (1993) 5Cal.4th 242, 250, fn. 7 [“*Cynthia D.*”] [proposed and amended versions of bills]; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit I is a true and correct copy of the version of Assembly Bill No. 256 that was passed by both the Senate and Assembly on September 14, 1973, the Court should take judicial notice of the document.

Exhibit J: Statement of Decision in *Cristler v. Express Messenger Systems, Inc.* (Super. Ct. San Diego County, Feb. 26, 2007, Consolidated Nos. GIC 803519 and GIC 855961)

This Court may properly take judicial notice of the records of any court of this state. (Evid. Code, § 452(d); *Flores v. Arroyo* (1961) 56 Cal.2d 492, 496-97.) Whereas Exhibit J is a true and correct copy of a record from the Superior Court of the State of California for the County of San Diego, the Court should take judicial notice of the document in this matter.

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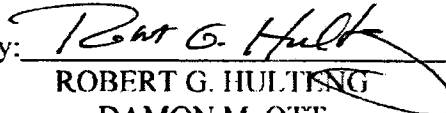
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**CONCLUSION**

For the above stated reasons, this Court should grant judicial notice of each of the exhibits listed above.

DATED: May 11, 2015


LITTLER MENDELSON, P.C.

By:   
ROBERT G. HULTING  
DAMON M. OTT  
PHILIP A. SIMPKINS

Attorneys for Defendant and Petitioner  
DYNAMEX OPERATIONS WEST,  
INC.

DATED: May 11, 2015

SHEPPARD MULLIN RICHTER &  
HAMPTON LLP

By:   
ELLEN M. BRONCHETTI  
PAUL S. COWIE

Attorneys for Defendant and Petitioner  
DYNAMEX OPERATIONS WEST,  
INC.

**DECLARATION OF ROBERT G. HULTENG IN SUPPORT OF  
PETITIONER'S MOTION FOR JUDICIAL NOTICE**

I, ROBERT G. HULTENG, declare:

1. I am an attorney admitted to practice in the State of California, and am one of the attorneys of record representing the Petitioner, Dynamex Operations West, Inc., in this matter.

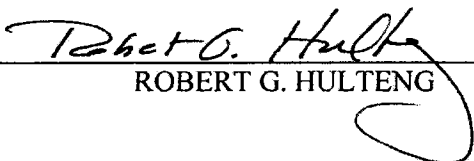
2. I have personal knowledge of the facts stated herein, and if called as a witness, I would testify competently thereto.

3. I make this declaration in support of Petitioner's Motion for Judicial Notice in Support of Opening Brief on the Merits.

4. I was the attorney of record for defendants Express Messenger Systems, Inc. and Subcontracting Concepts, Inc. in the consolidated cases of James W. Cristler, *et al.* v. Express Messenger Systems, Inc., *et al.* (Case No. GIC 803519) and Barry Newman v. Express Messenger Systems, Inc., *et al.* (Case No. GIC 855961), filed in the Superior Court of San Diego County.

5. Attached as Exhibit J is a true and correct copy of the Statement of Decision issued by The Honorable Frederic L. Link, Judge of the San Diego Superior Court, on February 26, 2007, following the trial in the consolidated cases of James W. Cristler, *et al.* v. Express Messenger Systems, Inc., *et al.* and Barry Newman v. Express Messenger Systems, Inc., *et al.* Following its issuance, this Statement of Decision was served on my office by the Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of May, 2015, at San Francisco, California.

  
\_\_\_\_\_  
ROBERT G. HULTENG

**DECLARATION OF PHILIP A. SIMPKINS IN SUPPORT OF  
PETITIONER'S MOTION FOR JUDICIAL NOTICE**

I, PHILIP A. SIMPKINS, declare:

1. I am an attorney admitted to practice in the State of California, and am one of the attorneys of record representing the Petitioner, Dynamex Operations West, Inc., in this matter.

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 Petitioner's Motion for Judicial Notice in Support of Opening Brief on the Merits.

4. Attached as Exhibit A is a true and correct copy of Statutes 1913, Chapter 324. I obtained this document from Arash Khosrowshahi of Legislative Intent Service, Inc. A true and correct copy of Arash Khosrowshahi's declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 1 (referenced in said declaration under "Assembly Bill 1251 of 1913," Ex. 1).

5. Attached as Exhibit B is a true and correct copy of pages regarding Proposition 44 to approve Assembly Constitutional Amendment No. 90, amending the California Constitution to include former Article XX, Section 17½, from the Ballot Pamphlet for the California General Election held on November 3, 1914. I obtained this document from Heather Thomas of Legislative Intent Service, Inc. A true and correct copy of Heather Thomas's declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as



Exhibit 2 (referenced in said declaration under “Exhibit A – Proposition 44...,” Ex. 1).

6. Attached as Exhibit C is a true and correct copy of Assembly Constitutional Amendment No. 65, Statutes 1970 (1970 Regular Session) resolution chapter 189. I obtained this document from Heather Thomas of Legislative Intent Service, Inc. A true and correct copy of Heather Thomas’s declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 3 (referenced in said declaration under “Exhibit A – Assembly Constitutional Amendment 65 of 1970,” Ex. 1).

7. Attached as Exhibit D is a true and correct copy of the Analysis of Assembly Constitutional Amendment No. 65 prepared by the Assembly Committee on Elections and Constitutional Amendments, as Amended June 17, 1970. I obtained this document from Heather Thomas of Legislative Intent Service, Inc. A true and correct copy of Heather Thomas’s declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 3 (referenced in said declaration under “Exhibit A – Assembly Constitutional Amendment 65 of 1970,” Ex. 3).

8. Attached as Exhibit E is a true and correct copy of Assembly Bill No. 256 (1972 Regular Session), as introduced on January 31, 1972. I obtained this document from Jenny S. Lillge of Legislative Intent Service, Inc. A true and correct copy of Jenny S. Lillge’s declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 4 (referenced in said declaration under “Assembly Bill 256 of 1972,” Ex. 1).

9. Attached as Exhibit F is a true and correct copy of the Analysis of Assembly Bill No. 256 prepared by the Assembly Committee on Labor Relations, dated March 15, 1972. I obtained this document from Jenny S. Lillge of Legislative Intent Service, Inc. A true and correct copy of Jenny S. Lillge's declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 4 (referenced in said declaration under "Assembly Bill 256 of 1972," Ex. 3).

10. Attached as Exhibit G is a true and correct copy of Statutes 1972, Chapter 1122. I obtained this document from Jenny S. Lillge of Legislative Intent Service, Inc. A true and correct copy of Jenny S. Lillge's declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 4 (referenced in said declaration under "Assembly Bill 256 of 1972," Ex. 1).

11. Attached as Exhibit H is a true and correct copy of Statutes 1973, Chapter 1007. I obtained this document from Jenny S. Lillge of Legislative Intent Service, Inc. A true and correct copy of Jenny S. Lillge's declaration regarding this document, authenticating the document by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 5 (referenced in said declaration under "Assembly Bill 478 of 1973," Ex. 1).

12. Attached as Exhibit I is a true and correct copy of the enrolled version of Assembly Bill No. 478 (1973-1974 Regular Session), as passed by the Assembly and Senate on September 14, 1973. I obtained this document from Jenny S. Lillge of Legislative Intent Service, Inc. A true and correct copy of Jenny S. Lillge's declaration regarding this document, authenticating the document by source and defining the scope of the

project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 5 (referenced in said declaration under "Assembly Bill 478 of 1973," Ex. 1).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of May, 2015, at Walnut Creek, California.

  
PHILIP A. SIMPKINS



2289. In order that the provisions of this chapter shall not be abused, it is hereby declared:

1. That no institution which has less than twenty inmates of either or all of the classes mentioned in section twenty-two hundred and eighty-three, must be deemed an institution for the support and maintenance of minor orphans, half orphans, or abandoned children, within the intent and meaning of this chapter.
2. That no child over the age of fourteen years shall be deemed a minor orphan, half orphan, or abandoned child, within the intent and meaning of this chapter.
3. That no child for whose specific support there is paid to any such institution the sum of ten dollars or more per month shall be deemed a minor orphan, half orphan, or abandoned child within the intent and meaning of this chapter.
4. That no child whose parent or parents have not resided in this state for at least three years prior to the application for aid, or whose parent or parents have not become citizens of this state shall be deemed a minor orphan, half orphan or abandoned child within the intent and meaning of this chapter.
5. That no child maintained in an institution for whom a bona fide offer of a proper home has been made shall be considered eligible for further state aid; it is further provided, however, that no institution shall be required to surrender a child to any person of religious faith different from that of the child or the parents of the child.

CHAPTER 324.

An act regulating the employment of women and minors and establishing an industrial welfare commission to investigate and deal with such employment, including a minimum wage; providing for an appropriation therefor and fixing a penalty for violations of this act.

[Approved May 20, 1913. In effect August 10, 1913.]

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

SECTION 1. There is hereby established a commission to be known as the industrial welfare commissioner, hereinafter called the commission. Said commission shall be composed of five persons, at least one of whom shall be a woman, and all of whom shall be appointed by the governor as follows: two for the term of one year, one for the term of two years, one for the term of three years, and one for the term of four years; provided, however, that at the expiration of their respective terms, their successors shall be appointed to serve a full term of four years. Any vacancies shall be similarly filled for the unexpired portion of the term in which the vacancy shall occur. Three members of the commission shall constitute a quorum.



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A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the powers and authority of the commission.

Compensation.

Sec. 2. The members of said commission shall draw no salaries but all of said members shall be allowed ten dollars per diem while engaged in the performance of their official duties. The commission may employ a secretary, and such expert, clerical and other assistants as may be necessary to carry out the purposes of this act, and shall fix the compensation of such employees, and may, also, to carry out such purposes, incur reasonable and necessary office and other expenses, including the necessary traveling expenses of the members of the commission, of its secretary, of its experts, and of its clerks and other assistants and employees. All employees of the commission shall hold office at the pleasure of the commission.

Duties.

Sec. 3. (a) It shall be the duty of the commission to ascertain the wages paid, the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed in the State of California, and to make investigations into the comfort, health, safety and welfare of such women and minors.

Information to be furnished to commission.

(b) It shall be the duty of every person, firm or corporation employing labor in this state:

1. To furnish to the commission, at its request, any and all reports or information which the commission may require to carry out the purposes of this act, such reports and information to be verified by the oath of the person, or a member of the firm, or the president, secretary, or manager of the corporation furnishing the same, if and when so requested by the commission or any member thereof.

2. To allow any member of the commission, or its secretary, or any of its duly authorized experts or employees, free access to the place of business or employment of such person, firm, or corporation, for the purpose of making any investigation authorized by this act, or to make inspection of, or excerpts from, all books, reports, contracts, pay rolls, documents, or papers, of such person, firm or corporation relating to the employment of labor and payment therefor by such person, firm or corporation.

3. To keep a register of the names, ages, and residence addresses of all women and minors employed.

Minor defined.

(c) For the purposes of this act, a minor is defined to be a person of either sex under the age of eighteen years.

Public hearings.

Sec. 4. The commission may specify times to hold public hearings, at which times, employers, employees, or other interested persons, may appear and give testimony as to the matter under consideration. The commission or any member thereof shall have power to subpoena witnesses and to administer oaths. All witnesses subpoenaed by the commission shall be paid the fees and mileage fixed by law in civil cases. In case of failure on the part of any person to comply with any order of the commission or any member thereof, or any subpoena, or upon the

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refusal of any witness to testify to any matter regarding which he may lawfully be interrogated before any wage board or the commission, it shall be the duty of the superior court or the judge thereof, on the application of a member of the commission, to compel obedience in the same manner, by contempt proceedings or otherwise, that such obedience would be compelled in a proceeding pending before said court. The commission shall have power to make and enforce reasonable and proper rules of practice and procedure and shall not be bound by the technical rules of evidence.

**Conference of wage board.**  
 Sec. 5. If, after investigation, the commission is of the opinion that, in any occupation, trade, or industry, the wages paid to women and minors are inadequate to supply the cost of proper living, or the hours or conditions of labor are prejudicial to the health, morals or welfare of the workers, the commission may call a conference, hereinafter called "wage board," composed of an equal number of representatives of employers and employees in the occupation, trade, or industry in question, and a representative of the commission to be designated by it, who shall act as the chairman of the wage board. The members of such wage board shall be allowed five dollars per diem and necessary traveling expenses while engaged in such conferences. The commission shall make rules and regulations governing the number and selection of the members and the mode of procedure of such wage board, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of such wage board. The proceedings and deliberations of such wage board shall be made a matter of record for the use of the commission, and shall be admissible as evidence in any proceedings before the commission. On request of the commission, it shall be the duty of such wage board to report to the commission its findings, including therein:

1. An estimate of the minimum wage adequate to supply to women and minors engaged in the occupation, trade or industry in question, the necessary cost of proper living and to maintain the health and welfare of such women and minors.
2. The number of hours of work per day in the occupation, trade or industry in question, consistent with the health and welfare of such women and minors.
3. The standard conditions of labor in the occupation, trade or industry in question, demanded by the health and welfare of such women and minors.

**Power to hold hearing.**  
 Sec. 6. (a) The commission shall have further power after a public hearing had upon its own motion or upon petition, to fix:

1. A minimum wage to be paid to women and minors engaged in any occupation, trade or industry in this state, which shall not be less than a wage adequate to supply to such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors.
2. The maximum hours of work consistent with the health

and welfare of women and minors engaged in any occupation, trade or industry in this state; *provided*, that the hours so fixed shall not be more than the maximum now or hereafter fixed by law.

3. The standard conditions of labor demanded by the health and welfare of the women and minors engaged in any occupation, trade or industry in this state.

(b) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and acting upon any matters referred to in subsection (a) hereof, the commission shall give public notice by advertisement in at least one newspaper published in each of the cities of Los Angeles and Sacramento and in the city and county of San Francisco, and by mailing a copy of said notice to the county recorder of each county in the state, of such hearing and purpose thereof, which notice shall state the time and place fixed for such hearing, which shall not be earlier than fourteen days from the date of publication and mailing of such notices.

(c) After such public hearing, the commission may, in its discretion, make a mandatory order to be effective in sixty days from the making of such order, specifying the minimum wage for women or minors in the occupation in question, the maximum hours; *provided*, that the hours specified shall not be more than the maximum for women or minors in California, and the standard conditions of labor for said women or minors; *provided, however*, that no such order shall become effective until after April 1, 1914. Such order shall be published in at least one newspaper in each of the cities of Los Angeles and Sacramento and in the city and county of San Francisco, and a copy thereof be mailed to the county recorder of each county in the state, and such copy shall be recorded without charge, and to the labor commissioner who shall send by mail, so far as practicable, to each employer in the occupation in question, a copy of the order, and each employer shall be required to post a copy of such order in the building in which women or minors affected by the order are employed. Failure to mail notice to the employer shall not relieve the employer from the duty to comply with such order. Finding by the commission that there has been such publication and mailing to county recorders shall be conclusive as to service.

**Order amended.**  
 Sec. 7. Whenever wages, or hours, or conditions of labor have been so made mandatory in any occupation, trade, or industry, the commission may at any time in its discretion, upon its own motion or upon petition of either employers or employees, after a public hearing held upon the notice prescribed for an original hearing, rescind, alter or amend any prior order. Any order rescinding a prior order shall have the same effect as herein provided for in an original order.

**License to physically defective.**  
 Sec. 8. For any occupation in which a minimum wage has been established, the commission may issue to a woman physically defective by age or otherwise, a special license authorizing the employment of such licensee, for a period of six months,

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for a wage less than such legal minimum wage; and the commission shall fix a special minimum wage for such person. Any such license may be renewed for like periods of six months.

**Statistics.**

SEC. 9. Upon the request of the commission, the labor commissioner shall cause such statistics and other data and information to be gathered, and investigations made, as the commission may require. The cost thereof shall be paid out of the appropriations made for the expenses of the commission.

**Discharging employees who employ women who are subject to special license, in a discriminatory manner.**

SEC. 10. Any employer who discharges, or threatens to discharge, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of this act, shall be deemed guilty of a misdemeanor.

**Payment of less than minimum wage prohibited.**

SEC. 11. The minimum wage for women and minors fixed by said commission as in this act provided, shall be the minimum wage to be paid to such employees, and the payment to such employees of a less wage than the minimum so fixed shall be unlawful, and every employer or other person who, either individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than such minimum, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment.

**Penalty.**

**Wages fixed presumed reasonable.**

SEC. 12. In every prosecution for the violation of any provision of this act, the minimum wage established by the commission as herein provided shall be prima facie presumed to be reasonable and lawful, and to be the living wage required herein to be paid to women and minors. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; and the determination made by the commission shall be subject to review only in a manner and upon the grounds following: within twenty days from the date of the determination, any party aggrieved thereby may commence in the superior court in and for the city and county of San Francisco, or in and for the counties of Los Angeles or Sacramento, an action against the commission for review of such determination. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission, or any member of the commission, shall be deemed a complete service. The commission shall serve its answer within twenty days after the service of the complaint. With its answer, the commission shall make a return to the court of all documents and papers on file in the matter, and of all testimony and evidence which may have been taken before it, and of its findings and the determination. The action may thereupon be brought on for hearing before the court upon such record by either party on ten

**Appeal.**

RUN 3



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(800) 666-6667 or otherwise.

Upon such hearing, the court may confirm or set aside such determination; but the same shall be set aside only upon the following grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the determination was procured by fraud.

Upon the setting aside of any determination the court may recommit the controversy and remand the record in the case to the commission for further proceedings. The commission, or any party aggrieved, by a decree entered upon the review of a determination, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the said superior court.

SEC. 13. Any employee receiving less than the legal minimum wage applicable to such employee shall be entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of suit, notwithstanding any agreement to work for such lesser wage.

SEC. 14. Any person may register with the commission a complaint that the wages paid to an employer for whom a living rate has been established, are less than that rate, and the commission shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the living wage.

SEC. 15. The commission shall biennially make a report to the governor and the state legislature of its investigations and proceedings.

SEC. 16. There is hereby appropriated annually out of the moneys of the state treasury, not otherwise appropriated, the sum of fifteen thousand dollars, to be used by the commission in carrying out the provisions of this act, and the controller is hereby directed from time to time to draw his warrants on the general fund in favor of the commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

SEC. 17. The commission shall not act as a board of arbitration during a strike or lock-out.

SEC. 18. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

(b) If any section, subsection, or subdivision of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subdivision, sentence, clause and phrase thereof; irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

SEC. 19. The provisions of this act shall apply to and include women and minors employed in any occupation, trade or industry, and whose compensation for labor is measured by

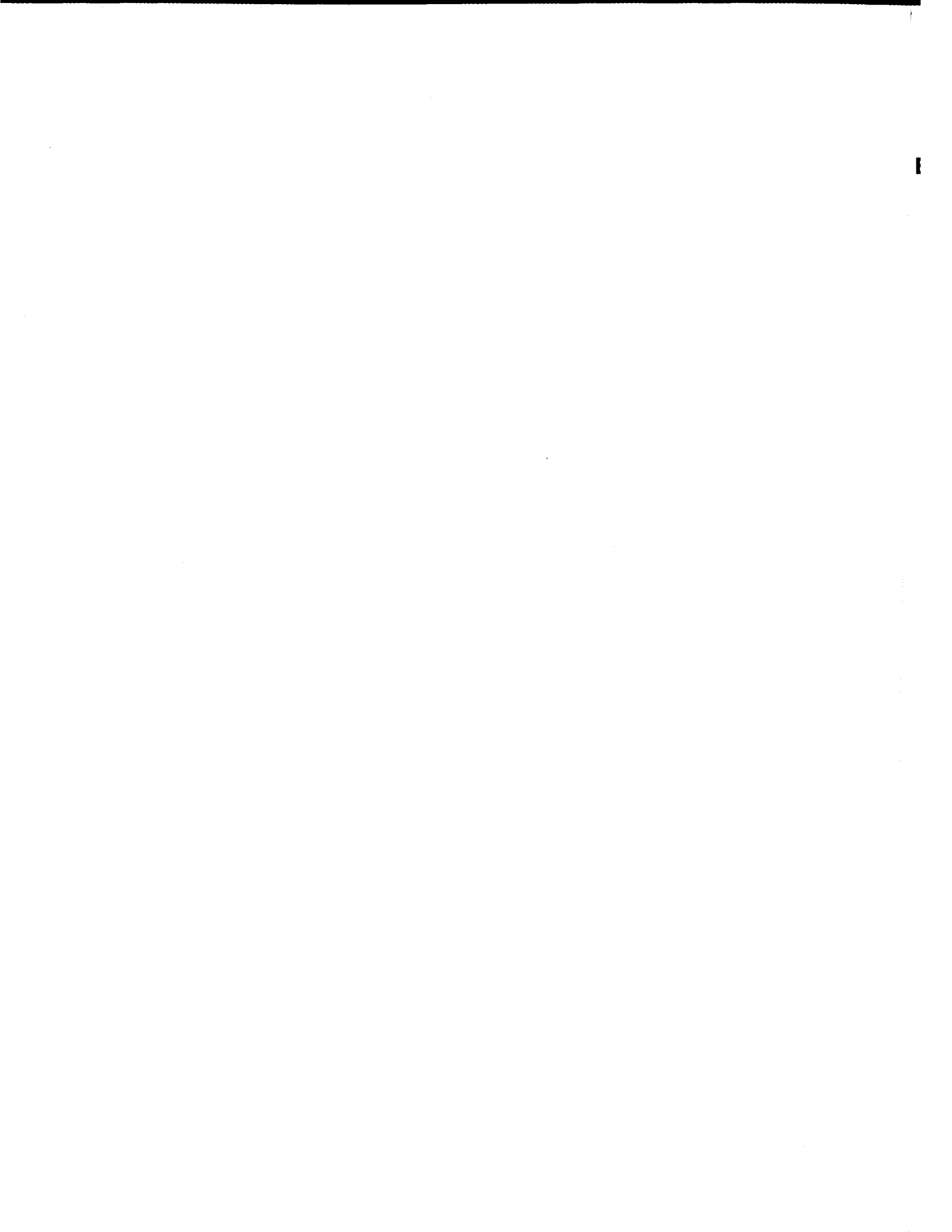
grounds for setting aside determination.

Employee may sue for unpaid balance.

Not board of arbitration.

Interpretation of act.

Act applies to all occupations.





CALIFORNIA STATE ARCHIVES  
SECRETARY OF STATE

# Amendments to Constitution

and

## Proposed Statutes

with

### Arguments Respecting the Same

To be Submitted to the Electors of the State of California at the  
General Election on

**TUESDAY, NOVEMBER 3, 1914**

Index, Certificate and Form of Ballot will be found in last pages  
Proposed changes in language are printed in black face  
Provisions to be repealed are printed in italica

CERTIFIED BY THE SECRETARY OF STATE  
AND PRINTED AT THE STATE  
PRINTING OFFICE  
1914

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## MINIMUM WAGE.

Assembly Constitutional Amendment 90 adding section 17½ to article XX of constitution. Authorizes legislature to provide for establishment of minimum wage for women and minors, and comfort, health, safety and general welfare of any and all employees; declares that no constitutional provision shall be construed as limiting authority of legislature to confer upon any commission now or hereafter created such power as legislature deems requisite to accomplish provisions of this section.

Assembly Constitutional Amendment No. 90, a resolution to propose to the people of the State of California an amendment to the Constitution of the State of California by adding to article XX, a new section to be numbered 17½ relating to the conditions of labor and welfare of employees.

The legislature of the State of California, at its regular session commencing on the sixth day of January, 1913, two thirds of the members elected to each of the two houses of the said legislature voting in favor thereof, hereby proposes an amendment to the Constitution of the State of California by adding to article XX thereof a new section to be numbered as 17½ to read as follows:

### PROPOSED LAW.

Section 17½. The legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety and general welfare of any and all employees. No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon any commission now or hereafter created, such power and authority as the legislature may deem requisite to carry out the provisions of this section.

### ARGUMENT IN FAVOR OF ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 90.

The legislature of 1913 passed an act creating an Industrial Welfare Commission, whose duties are to carefully investigate the wages paid, conditions of work, the hours, and general welfare of the working women and children of California. Following this investigation, the commission, after conferences with employers and employees, may determine and fix the minimum wage for women and minors in any industry or occupation in California. This minimum wage must be based upon the cost of proper living.

In 1911 bills were passed controlling the hours of women's and children's work, and it was obvious that the work was less than half done unless the other two minimum rules of industrial life were also made to protect this weakest and most helpless class; that is, that the safety and the sanitary conditions in which women worked should be controlled, and what was more important, that they should be certain of a living wage—a wage that insures for them the necessary shelter, wholesome food and sufficient clothing. We know that the absence of this is the cause of ill health, lack of strength for a good motherhood, and frequently degeneracy and prostitution for the weakest. It has been shown many times by careful investigators that in the older and more populous industrial centers the long periods of non-employment in seasonal industries which pay small wages are always accompanied by a large influx of girls to the ranks of the prostitute because of actual want.

Our conditions in California are comparatively good, yet from the statistics of the Bureau of Labor we find that forty per cent of the women girls employed in our great state to-day receive less than \$9.00 per week. This is much better than the older industrial states, but the fact remains that fully 15,000 women in this

state are receiving under that sum. Is \$4.00, \$5.00, \$6.00, \$7.00, or \$8.00 a week enough to provide a growing woman with proper living? The work of the Industrial Welfare Commission is to find out what proper living costs. What it really costs to house, feed and clothe a woman dependent upon herself in the different parts of California; to find out what are the actual conditions of her employment and to investigate into the health, safety and welfare of the workshops. When this investigation has been made, which must take place in this great state, the commission may determine the minimum wages, length of periods of apprenticeship, and hours of labor, not to exceed the limit prescribed by law, which is eight hours in some industries.

The most powerful reason for action at this time is to get the wage fixed before the opening of the Panama canal, when the great horde of cheap labor from southern Europe will come to lower the California standard of living and tend to bring the American and native born down to living conditions entirely foreign to us and to the California ideal of necessary comfort.

Many employers in California pay good wages and desire proper conditions for their employees, and many succeed in giving these conditions now, but less kindly employers undersell the better ones because they pay lower wages. These unfair employers will be compelled to come up to the standard set by the commission after its investigations, and thus be placed in a position where they will be on the same competitive basis as the employers who are to-day giving their employees proper living and working conditions.

With adequate food and comfortable housing, the workers will be more efficient and can give better value for the money received.

Interstate competition will not be a considerable factor, as Oregon and Washington have similar commissions, and are controlling their conditions of industry as in California.

The legislature also passed constitutional amendment to article XX, numbered section 17½, giving the legislature, or its delegated body, the commission, the right to fix minimum wages, and this is done to make sure that after the commission's work is done, its findings and rulings can not be assailed and made useless by the state courts declaring this act unconstitutional. To insure the women and minors of this state a living wage it is most necessary that the voters of California vote "Yes" on this amendment.

A similar law in Oregon has been sustained by the Oregon courts and is now before the United States supreme court. Louis D. Brandeis and Josephine Goldmark have presented the brief in support of this law. It is expected that the United States supreme court will hold as it has with the eight hour law—"legislation that is not in conflict with the federal constitution, but is an extension of the police power of the state." To be sure that nothing in our state constitution will prevent this great act of justice and mercy being done to protect the women of this state, vote "Yes" on Assembly Constitutional Amendment No. 90.

W. A. ROSSERS,  
Assemblyman Sixty-First District.  
Twenty-nine

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#### ARGUMENT AGAINST ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 90.

*First*—There should be no legislation fixing a minimum wage for either women or minors.

Women are fitted to perform, without previous experience and study, but very few avocations.

In many cases a woman without experience is helpless, while if given time and an opportunity she readily becomes useful and a valuable worker.

To fix a wage arbitrarily, and say unless paid this sum she shall not be employed at all, taken from her the opportunity many times to any employment whatever and the help, encouragement and assistance of those employers who otherwise would give her a chance.

*Second*—There is as much difference in the capacity and ability of different women as of different men—either may be in such condition, mentally or physically, as to need great care and attention before they can adapt themselves to any kind or character of employment. These

people need special care and well directed persevering effort to bring them to such condition that they are of any value as help. They therefore should be encouraged, not discouraged, their endeavors to be self-supporting, or at least partially so. A fixed minimum wage destroys all their opportunity.

*Third*—These same reasons apply to minors, with the additional reason that experience teaches us that children should be taught how to work, allowed to work, and encouraged to work, and permitted to work, regardless of the matter of any recompense whatever. Our cities are filled, our streets are lined with men who will not work, the great reason being because they were never taught how to work, nor encouraged in any work. To say that a child shall not work without a fixed pay deprives the child of opportunities which have always made the willing child of to-day the future leading man of our country. It is fundamentally wrong.

WILLIAM B. SHEARES,  
Assemblyman First District.

#### ELECTION OF UNITED STATES SENATORS.

Assembly Constitutional Amendment 92 amending section 20 of article V of constitution. Eliminates provisions of present section prohibiting governor from being elected United States senator during his term of office, and instead provides that such senators shall be elected by the people of the state in the manner provided by law.

Assembly Constitutional Amendment No. 92, a resolution to propose to the people of the State of California an amendment to the Constitution of the State of California, by amending section 20 of article V thereof, relating to the election of United States senators.

The legislature of the State of California at its regular session commencing on the sixth day of January, in the year one thousand nine hundred and thirteen, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the qualified electors of the State of California, the following amendment to the Constitution of the State of California so that section 20 of article V of said constitution shall read as follows:

##### PROPOSED LAW.

Section 20. United States senators shall be elected by the people of the state in the manner provided by law.

Section 20, article V, proposed to be amended, now reads as follows:

##### EXISTING LAW.

Section 20. The governor shall not, during his term of office, be elected a senator to the senate of the United States.

#### ARGUMENT IN FAVOR OF ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 92.

The object of the amendment is to make the Constitution of California conform to the Con-

stitution of the United States in its provision for the election of United States senator. The United States Constitution provides that the senate shall be the judge of the election, return and qualifications of its members. The present provision of the Constitution of California, providing that the governor shall not, during his term of office, be elected as senator to the senate of the United States, is, therefore, in conflict with the Constitution of the United States, and this conflict should be removed by the adoption of proposed amendment.

The reason for the provision in the state constitution, prohibiting the election of a governor of the state to the United States senate, no longer exists. When members of the United States senate were elected by the legislature, it might have been possible for the governor to use undue influence on the legislature to secure his own election to the United States senate, but now that members of the United States senate are elected by a direct vote of the people, there is no reason for any restrictions upon the right of the people to choose whom they see fit to fill the office.

L. D. BOENERT,  
Assemblyman Forty-fourth District.  
WILLIAM B. BUSE,  
Assemblyman Twenty-sixth District.

#### CALLING CONVENTION FOR REVISION OF CONSTITUTION.

##### Assembly Concurrent Resolution 17.

Recommends that electors vote for or against a convention for revising the constitution; provides that if majority vote in favor thereof, the legislature shall at next session provide for election of delegates to such convention and the holding thereof at state capitol within three months from date of election calling the same, and that it shall continue in session until it has completed the work of revision and provided for submission thereof to electors.

Assembly Concurrent Resolution No. 17, a resolution recommending the calling of a convention for the revision of the Constitution of the State of California, recommending that the electors of the state vote at the next general election for the calling of a convention to revise the constitution, and to provide the number and qualification, compensation, and manner of electing the delegates to such convention.

Resolved by the assembly, the senate concurring, That the legislature of the State of California, at its regular session, commencing on the

thirty

sixth day of January, one thousand nine hundred and thirteen, two thirds of all the members elected to each house concurring, hereby recommend that the electors of the state vote at the next general election upon the proposition to call a convention to revise the state constitution, such proposition to read as follows:

Section 1. Two thirds of the members elect to each branch of the legislature for the 1. fifth session of the legislature of the State of California, commencing on the sixth day of January, one thousand nine hundred and thirteen, do



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42	PLACE OF PAYMENT OF BONDS AND INTEREST. Senate Constitutional Amendment 13 amending section 13 1/2 of article XI of constitution. Authorizes any county, municipality, irrigation district or other public corporation, issuing bonds under the laws of the state, to make same and interest thereon payable at any place or places within or outside of United States, and in domestic or foreign money, designated therein.	YES	
		NO	
43	EXEMPTING EDUCATIONAL INSTITUTIONS FROM TAXATION. Senate Constitutional Amendment 15 adding section 1a to article XIII of constitution. Exempts from taxation buildings, grounds within which same are located not exceeding one hundred acres, equipment, securities and income used exclusively for educational purposes, of any educational institution of collegiate grade within this state not conducted for profit.	YES	
		NO	
44	MINIMUM WAGE. Assembly Constitutional Amendment 98 adding section 17 1/2 to article XX of constitution. Authorizes legislature to provide for establishment of minimum wage for women and minors, and for comfort, health, safety and general welfare of any and all employees; declares that no constitutional provision shall be construed as limiting authority of legislature to confer upon any commission now or hereafter created such power as legislature deems requisite to accomplish provisions of this section.	YES	
		NO	
45	ONE DAY OF REST IN SEVEN. Initiative act prohibiting, except in cases of urgent emergency, the working for wages, or requiring or employing any person to work, more than six days or forty-eight hours a week, the keeping open or operating certain places of business or selling property on Sunday; declares Sunday provisions of act inapplicable to works of necessity, or to member of religious society which observes another day as day of worship and who on such day keeps his place of business closed and does not work for gain; declares violation of act misdemeanor and prescribes penalties.	YES	
		NO	
46	DRUGLESS PRACTICE. Initiative act creating state board for drugless physicians, with office in Oakland, creating fund from fees for members and employees salaries and expenses, regulating examinations and issuance of certificates. Authorizes holders thereof to treat all physical or mental ailments of human beings without drugs or medicine, use "Doctor," "Dr.," or "D. P.," in connection with "Drugless Physician," and sign birth and death certificates. Exempts from examination any person practicing any drugless system for six months prior to effective date of act. Prescribes penalties for violations of act; and repeals all inconsistent provisions of medical act.	YES	
		NO	
47	PROHIBITION ELECTIONS. Initiative amendment adding section 1 1/2 to article IV of constitution. Prohibits for eight years after this election, state election on question of prohibiting or permitting transportation of intoxicating liquors and any election on question of prohibiting or permitting the manufacture or sale thereof; prohibits state election or election under local option law or charter upon latter question within eight years of like election thereon; declares majority vote in each municipality or district at this election upon prohibition amendment to article I of constitution, and at any statewide prohibition election hereafter, makes same license or non-license territory.	YES	
		NO	
48	FOR THE SAN FRANCISCO HARBOR IMPROVEMENT ACT OF 1913. This act provides for the improvement of San Francisco harbor and for the payment of all costs thereof out of San Francisco harbor improvement fund.		
	AGAINST THE SAN FRANCISCO HARBOR IMPROVEMENT ACT OF 1913. This act provides for the improvement of San Francisco harbor and for the payment of all costs thereof out of the San Francisco harbor improvement fund.		

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**CERTIFICATE OF SECRETARY OF STATE**

STATE OF CALIFORNIA, DEPARTMENT OF STATE  
SACRAMENTO, CALIFORNIA.

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that the foregoing forty-eight measures will be submitted to the electors of the State of California at the general election to be held throughout the State on the third day of November, 1914.

Witness my hand and the great seal of State, at office in Sacramento, California, the twenty-fifth day of September, A. D. 1914.



*Frank C. Jordan*  
Secretary of State

FRIEND WM. RICHARDSON,  
Supr. State Printing.





ring, may submit at a general election the question whether to call a convention to revise the Constitution. If the majority vote yes on that question, within 6 months the Legislature shall provide for the convention. Delegates to a constitutional convention shall be voters elected from districts as nearly equal in population as may be practicable.

SEC. 3. The electors may amend the Constitution by initiative.

SEC. 4. A proposed amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

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#### RESOLUTION CHAPTER 188

*Senate Concurrent Resolution No. 95—Relative to the constitutional recess of the Legislature.*

[Filed with Secretary of State August 17, 1970.]

*Resolved by the Senate of the State of California, the Assembly thereof concurring, That the 1970 Regular Session of the Legislature of the State of California shall recess for the 30-day period required by Section 3 of Article IV of the Constitution at 5 o'clock p.m. on August 21, 1970, and shall reassemble at 3 o'clock p.m. on September 21, 1970.*

---

#### RESOLUTION CHAPTER 189

*Assembly Constitutional Amendment No. 65—A resolution to propose to the people of the State of California a revision of portions of the Constitution of the state by amending Sections 1, 8, 17, 17½, 18, and 20 of Article XX, and by repealing Sections 2, 3.5, 4, 5, 7, 9, 12, 13, and 14 of Article XX, relating to miscellaneous subjects.*

[Filed with Secretary of State August 17, 1970.]

*Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1970 Regular Session commencing on the fifth day of January, 1970, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the state be amended as follows:*

First—That Section 1 of Article XX is amended to read:

SECTION 1. Sacramento is the Capital of California.

Second—That Section 2 of Article XX is repealed.

Third—That Section 3.5 of Article XX is repealed.

Fourth—That Section 4 of Article XX is repealed,

Fifth—That Section 5 of Article XX is repealed,

Sixth—That Section 7 of Article XX is repealed.

Seventh—That Section 8 of Article XX is amended to read:

SEC. 8. Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property.

Eighth—That Section 9 of Article XX is repealed.

Ninth—That Section 12 of Article XX is repealed.

Tenth—That Section 13 of Article XX is repealed.

Eleventh—That Section 14 of Article XX is repealed.

Twelfth—That Section 17 of Article XX is amended to read:

SEC. 17. Worktime of mechanics or workmen on public works may not exceed 8 hours a day except in wartime or extraordinary emergencies that endanger life or property. The Legislature shall provide for enforcement of this section.

Thirteenth—That Section 17½ of Article XX is amended to read:

SEC. 17½. The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers.

Fourteenth—That Section 18 of Article XX is amended to read:

SEC. 18. A person may not be disqualified because of sex, from entering or pursuing a lawful business, vocation, or profession.

Fifteenth—That Section 20 of Article XX be amended to read:

SEC. 20. Terms of elective offices provided for by this Constitution commence on the Monday after January 1 following election. The election shall be held in the last even-numbered year before the term expires.

*And be it further resolved*, That if Assembly Constitutional Amendment No. 2 of the 1970 Regular Session is adopted by the people, Section 20 of Article XX be amended to read:

SEC. 20. Terms of elective offices provided for by this Constitution, other than Members of the Legislature, commence on the Monday after January 1 following election. The election shall be held in the last even-numbered year before the term expires.

*And be it further resolved*, That it is the intent of the Legislature, if the amendments to Section 20 of Article XX of the State Constitution proposed by this resolution and by Assembly Constitutional Amendment No. 2 of the 1970 Regular Session are approved by the electors, that both shall be given effect and incorporated in Article XX. Therefore, in the event Assembly Constitutional Amendment No. 2, is approved by the electors, the provisions of the second resolved clause of this resolution shall become operative at the same time that Assembly Constitutional Amendment No. 2 becomes operative, and at that time Section 20 of Article XX as amended by the first resolved clause of this resolution is repealed.



ASSEMBLY COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS

PAUL FRIOLO, CHAIRMAN

ANALYSIS - ACA 65 (DEDDEH) AS AMENDED JUNE 17, 1970

SUBJECT: Constitution Revision - Article 20 (Miscellaneous)

EXPLANATION: The following general analysis summarizes and comments on the Constitution Revision Commission's (CRC) proposals and their effect on existing law. Since Article 20 deals with a variety of topics which could not be classified under a single subject heading, this analysis is broken down by section. Significant sections are indicated by asterisk(\*). Section numbers refer to the printed bill.

CRITERIA:

For purposes of constitutional revision, three criteria may be relevant:

1. Is the provision necessary -- either as a grant of legislative power, or a limitation of legislative power? (State constitutions are generally construed as limitations on inherent legislative power).
2. Is the provision proper -- as an expression of fundamental law?
3. Is change inefficient -- since the proposal may have been fully litigated and interpretation settled?

REVISED PROVISIONS

SECTION 1 - STATE CAPITAL

SUMMARY:

Retains and condenses existing section which allows capital to be changed by 2/3 vote of the Legislature with approval of majority of voters.

COMMENT:

Existing section specifies the vote requirements while proposal effectuates the same procedure by requiring use of a constitutional amendment.

## SECTION 6 - SUITS AGAINST STATE

### SUMMARY:

Retains verbatim provision which allows Legislature to provide for suing the State.

### COMMENT:

Since the Legislature has enacted comprehensive statutes pursuant to its inherent power and since this section has been construed in court as neutral in effect, why was the section included?

## SECTION 8 - SEPARATE PROPERTY OF HUSBAND & WIFE

### SUMMARY:

Retains and rewords section identifying the separate property rights of husband and wife (i.e. property acquired by either before marriage is their own, as is property acquired afterwards by gift, devise or bequest).

### COMMENT:

Legislature has inherent power over this subject but a large body of law has developed in the area thus justifying a retention of the status quo.

## SECTION 17 - EIGHT-HOUR DAY ON PUBLIC WORKS

### SUMMARY:

Retains section which requires eight hour day for laborers in public works except in time of war or emergency that endangers life or property.

Expands Legislature's discretion in enforcing rather than requiring a stipulation in the contract.

### COMMENT:

1. The Labor Code details regulation of the workday for other employees (e.g. a general eight hour day where not specified in contract; eight hour day maximum for persons under 18 years of age except in agricultural activities or in parental control situations).

2. Why is a constitutional provision singling out public works laborers necessary or proper?

## \*SECTION 17½ - MINIMUM WAGES FOR WOMEN & CHILDREN: LABOR LEGISLATION

### SUMMARY:

**RJN 14**

1. CRC retains and condenses existing section which permits the Legislature to establish minimum wage legislation for women and minors and to provide for the welfare of all employees.

2. Extends the minimum wage authority to include all employees, rather than just women and minors.

3. Retains section which allows Legislature to provide for an appropriate administrative agency with executive, legislative and judicial powers.

COMMENT:

1. Although the Legislature has these powers anyway, the CRC retained these sections having heard testimony from organized labor.

2. The provision authorizing an administrative agency is equally unnecessary -- there are at least 61 state agencies with legislative and judicial powers which are created by statute whereas only 7 originate in the Constitution (mostly for historical reasons).

SECTION 18 - SEX NOT DISQUALIFICATION FOR BUSINESS

SUMMARY:

Retains a section which broadly forbids disqualifying persons because of sex from entering or pursuing a particular business.

COMMENT:

1. Courts have applied this section to law-making bodies only, not private employers and also held that the state may reasonably regulate the subject (e.g. the section does not preclude a statute which prevents female employees from mixing drinks).

2. Since federal law already proscribes sexual discrimination in public and private employment, is this section necessary?

SECTION 20 - UNIFORM ELECTION  
DATE & COMMENCEMENT OF TERMS

SUMMARY:

Retains and condenses section which provides a uniform term commencement date (the first Monday after the January First after election) and a uniform election year (the last even-numbered year prior to the term's expiring) where not otherwise specified.

COMMENT:

This section supplements provisions of the Constitution which establish an office but fail to provide an election date or term commencement date.

\*SECTION 21 - WORKMEN'S COMPENSATION

SUMMARY:

Retained verbatim.

COMMENT:

In view of the complex body of law which has developed around this section, the CRC recommends maintaining the status quo

DELETED PROVISIONS

(Section numbers refer to present Constitution)

SECTION 2 - DUELING FORBIDDEN

SUMMARY:

Deletes provision which penalizes dueling with disenfranchisement and preclusion from holding office.

COMMENT:

The provision is unnecessary since a similar provision appears in the Penal Code. Reasons for inclusion of this section are historical and obsolete.

SECTION 3.5 - REINSTATEMENT  
OF VETERANS AS PUBLIC EMPLOYEES

Deletes as unnecessary a provision which allows Legislature to provide for reinstatement of veterans back into public employment -- Legislature has this power inherently.

SECTION 4 - ELECTION AND APPOINTMENT  
OF OFFICERS AND COMMISSIONERS

Deletes as unnecessary provision which allows Legislature to provide procedures for election and appointment of officers where Constitution does not otherwise specify -- Legislature has inherent power to do this.

SECTION 5 - FISCAL YEAR

Transfers to Government Code section which describes the fiscal year since this detail is both unnecessary and improper.

SECTION 7 - VALIDITY OF CIVIL MARRIAGE

Transfers to the Civil Code a section which forbids the invalidating of a legally contracted marriage for religious reasons. Provision is unnecessary due to the Legislature's inherent and exclusive power over the subject.

SECTION 9 - PERPETUITIES - CHARITABLE PURPOSE

Deleted as unnecessary since a similar, clearer provision is stated in the Civil Code.

SECTION 12 - ABSENCE AS AFFECTING RESIDENCE

Transfers to the Government Code as vague and unnecessary a section which states that legal residence is not affected by absence from the state on federal or state business.

SECTION 13 - ELECTION BY PLURALITY - MUNICIPAL REGULATIONS

SUMMARY:

Transfers to Elections Code statement that a plurality vote constitutes a choice in an election where not otherwise indicated by Constitution, charter or general law governing municipal formation.

COMMENT:

Since this rule is already provided by the Elections Code, at least for elections of candidates, why is another Code section needed?

SECTION 14 - BOARD OF HEALTH

SUMMARY:

Deletes section which states that Legislature may create a Board of Health.

COMMENT:

1. Deleted as unnecessary. Legislature has inherent power to create Health and Welfare agency or, for that matter, any administrative agency.
2. Early in California history there was some legal doubt as to this power but the courts have long since resolved the doubt in favor of the Legislature.

PROPOSED REVISIONS DELETED  
BY THE E & CA COMMITTEE AS  
TOO CONTROVERSIAL

\*SECTION 3 - OATH OF OFFICE

SUMMARY:

1. Retains and condenses existing language requiring oath of allegiance to and support of state and federal constitutions.
2. Deletes existing oath of non-advocacy of, and non-membership in, subversive organizations as unconstitutional.
3. Deletes a specification that University of California employees are among those "public employees" required to take the oath.



COMMENT:

1. The present anti-subversive oath was held unconstitutionally broad by the California Supreme Court in 1967 since it forbids not only knowing membership with an intent to further the organization's illegal aims but also inactive membership and knowing membership with no illegal intent.

2. Valid anti-subversive oaths are extremely difficult to draft since the Federal Constitution requires narrow specificity and since they may be objectionable on several constitutional theories (e.g. may create a "chilling effect" on freedom of expression; may constitute a "prior restraint" on free speech; or may be unconstitutionally vague).

3. Several alternatives are available to remedy this problem:

- a. Delete entirely.
- b. Attempt to redraft more narrowly and constitutionally.
- c. Merely authorize the drafting of a statutory oath.

4. Since the Constitution already proscribes subversive activity by requiring an oath of support and defence of the Constitution, is another anti-subversive oath necessary?

5. Why is public officer not defined to include employees of the University of California as in the present section?

10&  
SECTION 11- INELIGIBILITY FOR OFFICE & DIS-  
QUALIFICATION FROM OFFICE FOR BRIBERY & MISCONDUCT

SUMMARY:

Retains and rewords provision disqualifying from office-holding, persons convicted of certain crimes, but deletes listing of those crimes in favor of general description; deletes specification that disqualification is permanent and gives Legislature discretion to determine period of disqualification.

Transfers to Article 2 (Suffrage) the provision mandating legislation to preclude corrupt practices in elections.

Retains and rewords provision disqualifying from public office any person convicted of bribery to procure an office.

COMMENT:

The proposed section allows the Legislature to determine the types of disqualifying crimes and the penalty period.

SECTION 15 - MECHANICS' LIENS

SUMMARY:

1. Retains and condenses existing section which broadly guarantees the right to a mechanic's lien (i.e. a charge or right of detention against property as security for goods or services which a contractor or sub has provided for improving the property).
2. Adds a broad guarantee that Legislature shall protect against inequity.

COMMENT:

1. The guarantee of protection against inequity has no effect by itself -- it must be implemented by protective legislation, which already exists.
2. The CRC was attempting to counteract the problem of land purchasers who are faced with paying off multiple liens of sub-contractors when a prime contractor defaults. However, the proposed section leaves broad discretion in the Legislature.

SECTION 16 - TERMS OF OFFICE WHEN NOT FIXED BY CONSTITUTION

SUMMARY:

Transfers to the Government Code a section which states that the Legislature may establish terms of office of up to four years where the Constitution or charter does not otherwise govern, and that State College Trustees may hold for eight years.

COMMENT:

1. This section is unsuitable for constitutional treatment since it affects only statutory offices - the statute creating the office could logically provide the term.
2. The section has spawned amendments whenever the Legislature decided on a longer term for a statutory office.

\*SECTION 19 - SUBVERSIVE PERSONS & GROUPS

SUMMARY:

1. Retains and condenses existing section which forbids any persons or organizations from holding public employment or receiving tax exemption if they advocate the overthrow of the government by unlawful means or support an enemy government during hostilities.
2. Deletes a specification that working for the University of California is a public employment subject to this section.

COMMENT:

1. A companion statute to this section was held unconstitutional by the U.S. Supreme Court in 1958 but the Court did not overrule the California Supreme Court's decision that this section was valid.

2. Recent cases suggest that the section is of doubtful constitutionality since it is also subject to objections of vagueness, chilling effect, prior restraint and overbreadth (e.g. is opposition to the Vietnam war "support of a foreign government" within the prohibition of this section?)

3. Why is public employment not defined to include employees of the University of California?

\*SECTION 22- USURY

SUMMARY:

1. Present provision establishes ceilings on interest rates (7% where the rate is not specified in writing, 10% where it is specified) but exempts several classes of commercial lenders and allows the Legislature to regulate them; i.e. building and loan associations, credit unions, industrial loan companies, personal property and pawn brokers, non-profit co-op and certain agricultural organizations.

2. CRC proposal deletes the ceilings and allows Legislature to establish the usurious rate; deletes the existing description of the types of transactions covered and leaves "usury" undefined; provides for penalties of treble damages in addition to others prescribed by statute.

3. CRC proposal adds "insurers" to the existing list of exemptions and retains the Legislature's power to regulate them.

4. CRC deletes an existing initiative statute which sets a general ceiling of 12% but which was partially superseded by the present constitutional section.

COMMENT:

1. The CRC proposal may be meaningless in effect since it seems to allow the Legislature to define the transactions and persons covered by usury, set the rate, and exempt and regulate commercial lenders -- in effect give the Legislature complete power over usury legislation.

2. Giving the Legislature such power may be highly controversial since it would remove apparent constitutional protection from usury.

3. Would deletion of the initiative statute raise the same objection?

4. ACA 50 (Priplo -- passed out of this committee May 21, 1970), retains the existing law and simply adds an exemption for loans which exceed \$100,000 in principal.

SECTION  
~~ARTICLE~~ 22 - ALCOHOLIC BEVERAGES

SUMMARY:

1. Retains and condenses existing provisions which: a) create and organize the office of Director of Alcoholic Beverage Control (ABC), the Department of ABC, and the ABC Appeals Board; b) describe the licensing powers of the ABC Department and the apportionment of license fees; c) detail the procedures and functions of the ABC Appeals Board.
2. Deletes unnecessary provisions authorizing automatic repeal of inconsistent sections and automatic operation without implementing legislation.
3. Retains the minimum age restrictions on sale or furnishing of alcoholic beverages to minors but changes the minimum 21 years of age to "voting age" and adds authority for the Legislature to except persons under parental control or engaging in religious ceremonies.

COMMENT:

1. Although all of these provisions could be enacted into statute, they were included in the Constitution through initiative in 1954 and 1956 as a result of the Weinberger Committee's investigation of abuses when the system operated under the State Board of Equalization.

2. The California Supreme Court in October of 1969 held that the Legislature could limit the Department's power to suspend licenses by restricting the penalty for violation of fair trade price provisions to fine, rather than license suspension or revocation. This decision clearly implies that the Legislature can further limit the Department's licensing power although the literal language of section 22 and the intent of its proponents indicate that the Department probably should have autonomous power. Several alternatives are raised:

a. Preserve the existing relevant language, thus maintaining the Supreme Court's view of superior legislative power.

b. Adopt the CRC's original proposal which probably strengthens the Supreme Court's view of dominant legislative power.

c. Adopt the CRC's revised proposal which specifically limits legislative power and overrules the Supreme Court's view.

3. *Permit minors to enter bar if Legislature decides, & to participate in religious ceremony.*

Introduced by Assemblyman Warren

January 31, 1972

REFERRED TO COMMITTEE ON LABOR RELATIONS

LS-1a

An act to amend Sections 1171, 1173, 1174, 1178, 1182, 1183, 1185, 1191, 1193, 1193.5, 1193.6, 1194, 1194.5, 1195, 1195.5, 1197, and 1199 of, and to amend the heading of Part 4 (commencing with Section 1171) of Division 2 of, the Labor Code, relating to employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 256, as introduced, Warren (Labor Rel.). Minimum wage.

Extends minimum wage to men as well as women and minors, with specified exception.

Vote—Majority: Appropriation—No; Fiscal Committee—Yes.

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

1 SECTION 1. The heading of Part 4 (commencing with  
2 Section 1171) of Division 2 of the Labor Code is amended  
3 to read:

4  
5 PART 4. EMPLOYEES

6  
7 SEC. 2. Section 1171 of the Labor Code is amended to  
8 read:

9 1171. The provisions of this chapter shall apply to and  
10 include men, women and minors employed in any

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1 occupation, trade, or industry, whether compensation is  
 2 measured by time, piece, or otherwise, *but shall not*  
 3 *include any individual employed as an outside*  
 4 *salesman.*

5 SEC. 3. Section 1173 of the Labor Code is amended to  
 6 read:

7 1173. It shall be the continuing duty of the Industrial  
 8 Welfare Commission, hereinafter referred to in this  
 9 chapter as the commission, to ascertain the wages paid to  
 10 *all employees in this state, and to ascertain* the hours and  
 11 conditions of labor and employment in the various  
 12 occupations, trades, and industries in which women and  
 13 minors are employed in this state, and to investigate the  
 14 comfort, health, safety, and welfare of such women and  
 15 minors.

16 SEC. 4. Section 1174 of the Labor Code is amended to  
 17 read:

18 1174. Every person ; employing labor in this state  
 19 shall:

20 (a) Furnish to the commission, at its request, reports  
 21 or information which the commission requires to carry  
 22 out this chapter. Such reports and information shall be  
 23 verified if required by the commission or any member  
 24 thereof.

25 (b) Allow any member of the commission or the  
 26 employees of the Division of Industrial Welfare ; free  
 27 access to the place of business or employment of such  
 28 person to secure any information or make any  
 29 investigation which they are authorized by this chapter  
 30 to ascertain or make. The commission may inspect or  
 31 make excerpts, relating to the employment of ~~women~~  
 32 ~~and miners employees~~, from the books, reports,  
 33 contracts, payrolls, documents, or papers of such person.  
 34 (c) Keep a record showing the names and addresses of  
 35 all ~~women and miners~~ employees employed and the ages  
 36 of all minors.

37 (d) Keep at the plants or establishments at which  
 38 ~~women and miners employees~~ are employed, payroll  
 39 records showing the hours worked daily by, and the  
 40 wages paid to, ~~women and miners employees~~ employed

RJR 23

1 at the respective plants or establishments, and which  
 2 shall be kept in accordance with rules established for this  
 3 purpose by the commission. All such records shall be kept  
 4 on file for at least one year.

5 SEC. 5. Section 1178 of the Labor Code is amended to  
 6 read:

7 1178. If after investigation the commission finds that  
 8 in any occupation, trade, or industry, the wages paid to  
 9 ~~women and miners employees~~ are inadequate to supply  
 10 the cost of proper living, or that the hours or conditions  
 11 of labor are prejudicial to the health, morals, or welfare  
 12 of the ~~employee women and minor employees~~, the  
 13 commission shall select a wage board to consider any of  
 14 such matters. Such wage board shall be composed of an  
 15 equal number of representatives of employers and  
 16 employees in the occupation, trade, or industry in  
 17 question; and a representative of the commission to be  
 18 designated by it, who shall act as chairman of the wage  
 19 board on request of the commission. The wage board  
 20 shall report and make recommendations to the  
 21 commission, including therein:

22 (a) An estimate of the minimum wage adequate to  
 23 supply the necessary cost of proper living to, and  
 24 maintain the health and welfare of ~~women and miners~~  
 25 ~~employees~~ engaged in the occupation, trade, or industry  
 26 in question.

27 (b) The number of hours of work per day in the  
 28 occupation, trade, or industry in question, consistent with  
 29 the health and welfare of ~~such women and miners minor~~  
 30 ~~employees~~.

31 (c) The standard conditions of labor in the occupation,  
 32 trade, or industry in question, demanded by the health  
 33 and welfare of ~~such women and miners minor~~  
 34 ~~employees~~.

35 Before promulgating an order relating to wages, hours,  
 36 or conditions of labor for the occupation, trade, or  
 37 industry in question, and after receipt of the report from  
 38 the wage board, the commission shall prepare proposed  
 39 regulations for the occupation, trade, or industry in  
 40 question and then shall hold a public hearing. The



1 proceedings shall be recorded and transcribed and shall  
 2 thereafter be a matter of public record. Whenever the  
 3 occupation, trade, or industry in question is statewide in  
 4 scope, a public hearing shall be held in each of two cities  
 5 in this state; when it is not statewide, a public hearing  
 6 shall be held in the locality where the occupation, trade,  
 7 or industry prevails.

8 SEC. 6. Section 1182 of the Labor Code is amended to  
 9 read:

10 1182. After the wage board conference and public  
 11 hearing, as provided in this chapter, the commission may,  
 12 upon its own motion or upon petition, fix:

13 (a) A minimum wage to be paid to ~~women and miners~~  
 14 *employees* engaged in any occupation, trade, or industry  
 15 in this state, which shall not be less than a wage adequate  
 16 to supply the necessary costs of proper living to, and  
 17 maintain the health and welfare of such ~~women and~~  
 18 *miners employees*.

19 (b) The maximum hours of work consistent with the  
 20 health and welfare of women and minors engaged in any  
 21 occupation, trade, or industry in this state. The hours so  
 22 fixed shall not be more than the maximum now or  
 23 hereafter fixed by law.

24 (c) The standard conditions of labor demanded by the  
 25 health and welfare of the women and minors engaged in  
 26 any occupation, trade, or industry in this state.

27 The commission may thereupon make a mandatory  
 28 order during the first three calendar months of the year,  
 29 to be effective on a date fixed by the commission, which  
 30 date shall not be less than 60 nor more than 90 days from  
 31 the publication thereof, specifying the minimum wage;  
 32 *to be paid all employees, and* the maximum hours; and  
 33 the standard conditions of labor for women or minors in  
 34 the occupation, trade, or industry in question. The hours  
 35 specified shall not be more than the maximum for women  
 36 or minors in California. Such order shall be published in  
 37 at least one newspaper in each of the Cities of Los  
 38 Angeles, Sacramento, Oakland, San Jose, Fresno, San  
 39 Diego, and San Francisco.

40 SEC. 7. Section 1183 of the Labor Code is amended to

1 read:

2 1183. The commission shall send by mail, so far as  
 3 practicable, to each employer in the occupation or  
 4 industry in question a copy of the order authorized by  
 5 Section 1182, and such employer shall post a copy thereof  
 6 in the building in which ~~women and miners employees~~  
 7 affected by the order are employed. The commission  
 8 shall also send a copy of such order to each employer  
 9 registering his name with the commission for such  
 10 purpose, but failure to mail such order or notice thereof  
 11 to any employer affected thereby shall not relieve the  
 12 employer from the duty of complying with the order. A  
 13 finding by the commission that there has been the  
 14 publication as herein provided is conclusive.

15 SEC. 8. Section 1185 of the Labor Code is amended to  
 16 read:

17 1185. The orders of the commission fixing minimum  
 18 wages; *for all employees, and* maximum hours; and  
 19 standard conditions of labor for women and minors, when  
 20 promulgated in accordance with the provisions of this  
 21 chapter, shall be valid and operative and such orders are  
 22 hereby expressly exempted from the provisions of Article  
 23 4 (commencing with Section 11420) of Chapter 4.5 of  
 24 Part 1 of Division 3 of Title 2 of the Government Code.

25 SEC. 9. Section 1191 of the Labor Code is amended to

26 read:

27 1191. For any occupation in which a minimum wage  
 28 has been established, the commission may issue to a  
 29 ~~woman an employee~~ who is mentally or physically  
 30 handicapped, or both, ~~or to a minor so handicapped,~~ a  
 31 special license authorizing the employment of the  
 32 licensee for a period not to exceed one year from date of  
 33 issue, at a wage less than the legal minimum wage. The  
 34 commission shall fix a special minimum wage for the  
 35 licensee. Such license may be renewed on a yearly basis.

36 SEC. 10. Section 1193 of the Labor Code is amended

37 to read:

38 1193. The commission may fix the maximum number  
 39 of ~~women and minors under eighteen years of age~~  
 40 *employees* to be employed under the licenses provided

1 for in Sections 1191 and 1192 in any occupation, trade,  
2 industry, or establishment in which a minimum wage has  
3 been established.

4 SEC. 11. Section 1193.5 of the Labor Code is amended  
5 to read:

6 1193.5. The provisions of this chapter shall be  
7 administered and enforced by the division. Any  
8 authorized representative of the division shall have  
9 authority to:

10 (a) Investigate and ascertain the wages; *of all*  
11 *employees, and the hours and working conditions of*  
12 *women and minors employed in any occupation in the*  
13 *state;*

14 (b) Supervise the payment of unpaid minimum wages  
15 *owing to any employee or unpaid overtime compensation*  
16 *owing to any woman or minor under the provisions of this*  
17 *chapter or the orders of the commission. Acceptance of*  
18 *payment of sums found to be due on demand of the*  
19 *division shall constitute a waiver on the part of the*  
20 *employee of his or her cause of action under Section 1194.*

21 Unpaid minimum wages or unpaid overtime wages  
22 recovered by the division under the provisions of this  
23 section which for any reason cannot be delivered within  
24 six months from date of collection to the ~~woman or minor~~  
25 *employee* for whom such wages were collected shall be  
26 deposited into the Special Deposit Fund in the State  
27 Treasury.

28 SEC. 12. Section 1193.6 of the Labor Code is amended  
29 to read:

30 1193.6. The department or division may, with the  
31 consent of the employee or employees affected,  
32 commence and prosecute a civil action to recover unpaid  
33 minimum wages *owing to any employee or unpaid*  
34 *overtime compensation owing to any woman or minor*  
35 *employee under the provisions of this chapter or the*  
36 *orders of the commission, and, in addition to such wages*  
37 *and compensation, shall be entitled to recover costs of*  
38 *suit. The consent of any ~~woman or minor~~ employee to the*  
39 *bringing of any such action shall constitute a waiver on*  
40 *the part of the employee of his or her cause of action*

1 under Section 1194 unless such action is dismissed  
2 without prejudice by the department or the division.

3 SEC. 13. Section 1194 of the Labor Code is amended  
4 to read:

5 1194. Any ~~woman or minor~~ employee receiving less  
6 than the legal minimum wage or *any woman or minor*  
7 *receiving less than the legal overtime compensation*  
8 *applicable to such woman or minor is entitled to recover*  
9 *in a civil action the unpaid balance of the full amount of*  
10 *such minimum wage or overtime compensation, together*  
11 *with costs of suit, notwithstanding any agreement to*  
12 *work for a lesser wage.*

13 SEC. 14. Section 1194.5 of the Labor Code is amended  
14 to read:

15 1194.5. In any case in which a person employing a  
16 ~~woman or minor~~ *employee* has willfully violated any  
17 of the laws, regulations, or orders governing the wages,  
18 hours of work, or working conditions of ~~women or minors~~  
19 *such employee*, the division may seek, in a court of  
20 competent jurisdiction, and the court may grant, an  
21 injunction against any further violations of any such laws,  
22 regulations, or orders by such person.

23 SEC. 15. Section 1195 of the Labor Code is amended  
24 to read:

25 1195. Any person may register with the Division of  
26 Industrial Welfare a complaint that the wage paid to a  
27 ~~woman or minor~~ *employee* for whom a minimum  
28 wage has been fixed by the commission is less than that  
29 rate. The division shall investigate the matter and take all  
30 proceedings necessary to enforce the payment of a wage  
31 not less than the minimum wage.

32 SEC. 16. Section 1195.5 of the Labor Code is amended  
33 to read:

34 1195.5. The Division of Industrial Welfare shall  
35 determine, upon request, whether the wages of ~~women~~  
36 ~~and minors~~ *employees*, which exceed the minimum  
37 wages fixed by the commission, have been correctly  
38 computed and paid. For this purpose, the division may  
39 examine the books, reports, contracts, payrolls and other  
40 documents of the employer relative to the employment





1 of ~~women and minors~~ *employees*. The division shall  
2 enforce the payment of any sums found, upon  
3 examination, to be due and unpaid to the ~~women and~~  
4 ~~minors employees~~.

5 SEC. 17. Section 1197 of the Labor Code is amended  
6 to read:

7 1197. The minimum wage for ~~women and minors~~  
8 ~~employees~~ fixed by the commission is the minimum wage  
9 to be paid to ~~women and minors employees~~, and the  
10 payment of a less wage than the minimum so fixed is  
11 unlawful.

12 SEC. 18. Section 1199 of the Labor Code is amended  
13 to read:

14 1199. Every employer or other person acting either  
15 individually or as an officer, agent, or employee of  
16 another person is guilty of a misdemeanor and is  
17 punishable by a fine of not less than fifty dollars (\$50) or  
18 by imprisonment for not less than 30 days, or by both,  
19 who does any of the following:

20 (a) Requires or causes any woman or minor to work  
21 for longer hours than those fixed, or under conditions of  
22 labor prohibited by an order of the commission.

23 (b) Pays or causes to be paid to any ~~woman or minor~~  
24 ~~employee~~ a wage less than the minimum fixed by an order  
25 of the commission.

26 (c) Violates or refuses or neglects to comply with any  
27 provision of this chapter or any order or ruling of the  
28 commission.

29 (d) Pays or causes to be paid any employee a wage less  
30 than the rate paid to an employee of the opposite sex as  
31 required by Section 1197.5 of this code.

32 (e) Reduces the wages of any employee in order to  
33 comply with Section 1197.5.

O



F

March 15, 1972

ANALYSIS OF AB 256 (Warren)

AB 256 would extend the minimum wage to men as well as women and minors. This bill responds to the current public interest in providing equality for men and women in employment. The bill retains the procedure whereby the State Division of Industrial Welfare establishes wage orders for categories of employment through wage board hearings. This procedure is viewed by some as unnecessarily complicated and time consuming.

Various provisions of AB 256 retain protections for women and minor employees but do not extend similar protections to men; e.g., Section 5 of the bill re. Section 1178 of the Labor Code. In this section only "women and minor employees" are referred to in two instances. Section 11 of AB 256 retains a reference to "the hours and working conditions of women and minors." In Section 12 unpaid overtime compensation is provided for in reference only to women or minors. There are similar limitations in Section 13 and 18.

Should all provisions of AB 256 include men, women and minors?

Recent court decisions and Congressional action on the equal rights amendment have put into question all legislation that distinguishes between men and women. Proponents of the state minimum wage argue that its extension by AB 256 to men will safeguard the minimum wage from being struck down on the grounds that in California it discriminatorily favors women and minors.

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Code, to read:

654.06. No person shall sell or offer for sale at retail any internal combustion engine for use on any motorboat which, when operated, exceeds the following noise levels:

(a) For engines manufactured on or after January 1, 1974, and before January 1, 1976, a noise level of 86 dbA measured at a distance of 50 feet from the motorboat.

(b) For engines manufactured on or after January 1, 1976, and before January 1, 1978, a noise level of 84 dbA measured at a distance of 50 feet from the motorboat.

(c) For engines manufactured on or after January 1, 1978, a noise level of 82 dbA measured at a distance of 50 feet from the motorboat.

SEC. 4. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates any provisions of Section 652, 654, 654.05, 654.06, or 659 and any manufacturer or importer who violates Section 653 of this code or any regulations adopted by the department pursuant thereto is guilty of a misdemeanor and shall be subject to a fine of not to exceed fifty dollars (\$50) or imprisonment in the county jail for not to exceed five days, or both, for each violation.

(b) Any person who violates any provisions of subdivision (a) or (b) of Section 658 of this code is guilty of a misdemeanor and shall be subject to a fine of not to exceed one hundred dollars (\$100) for each violation.

(c) Any person who violates any provision of Sections 652.5, 655, 656, or subdivision (d) or (e) of Section 658 of this code or any special rules and regulations adopted by the department pursuant to the provisions of subdivisions (b) or (c) of Section 660 of this code is guilty of a misdemeanor and shall be subject to a fine of not to exceed five hundred dollars (\$500) or imprisonment in the county jail for not to exceed six months, or both, for each violation.

SEC. 5. The provisions of this act shall become operative on July 1, 1973.

#### CHAPTER 1122

*An act to amend Sections 1171, 1173, 1174, 1178, 1182, 1183, 1185, 1191, 1193, 1193.5, 1193.6, 1194, 1194.5, 1195, 1195.5, 1197, and 1199 of, and to amend the heading of Part 4 (commencing with Section 1171) of Division 2 of, the Labor Code, relating to employees.*

[Approved by Governor August 25, 1972. Filed with Secretary of State August 25, 1972.]

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



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SECTION 1. The heading of Part 4 (commencing with Section 1171) of Division 2 of the Labor Code is amended to read:

#### PART 4. EMPLOYEES

SEC. 2. Section 1171 of the Labor Code is amended to read:

1171. The provisions of this chapter shall apply to and include men, women and minors employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, but shall not include any individual employed as an outside salesman.

SEC. 3. Section 1173 of the Labor Code is amended to read:

1173. It shall be the continuing duty of the Industrial Welfare Commission, hereinafter referred to in this chapter as the commission, to ascertain the wages paid to all employees in this state, and to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed in this state, and to investigate the comfort, health, safety, and welfare of such women and minors.

SEC. 4. 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 which the commission requires to carry out this chapter. Such 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 Industrial Welfare free access to the place of business or employment of such person to secure any information or make any investigation which 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 such person.

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

(d) Keep at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to, employees employed at the respective plants or establishments, and which shall be kept in accordance with rules established for this purpose by the commission. All such records shall be kept on file for at least one year.

SEC. 5. Section 1178 of the Labor Code is amended to read:

1178. If after investigation the commission finds that in any occupation, trade, or industry, the wages paid to employees are inadequate to supply the cost of proper living, or that the hours or conditions of labor are prejudicial to the health, morals, or welfare of women and minor employees, the commission shall select a wage board to consider any of such matters. Such wage board shall be composed of an equal number of representatives of employers and employees in the occupation, trade, or industry in question; and a

representative of the commission to be designated by it, who shall act as chairman of the wage board on request of the commission. The wage board shall report and make recommendations to the commission, including therein:

- (a) An estimate of the minimum wage adequate to supply the necessary cost of proper living to, and maintain the health and welfare of employees engaged in the occupation, trade, or industry in question.
- (b) The number of hours of work per day in the occupation, trade, or industry in question, consistent with the health and welfare of women and minor employees.
- (c) The standard conditions of labor in the occupation, trade, or industry in question, demanded by the health and welfare of women and minor employees.

Before promulgating an order relating to wages, hours, or conditions of labor for the occupation, trade, or industry in question, and after receipt of the report from the wage board, the commission shall prepare proposed regulations for the occupation, trade, or industry in question and then shall hold a public hearing. The proceedings shall be recorded and transcribed and shall thereafter be a matter of public record. Whenever the occupation, trade, or industry in question is statewide in scope, a public hearing shall be held in each of two cities in this state; when it is not statewide, a public hearing shall be held in the locality where the occupation, trade, or industry prevails.

SEC. 6. Section 1182 of the Labor Code is amended to read:

1182. After the wage board conference and public hearing, as provided in this chapter, the commission may, upon its own motion or upon petition, fix:

- (a) A minimum wage to be paid to employees engaged in any occupation, trade, or industry in this state, which shall not be less than a wage adequate to supply the necessary costs of proper living to, and maintain the health and welfare of such employees.
- (b) The maximum hours of work consistent with the health and welfare of women and minors engaged in any occupation, trade, or industry in this state. The hours so fixed shall not be more than the maximum now or hereafter fixed by law.
- (c) The standard conditions of labor demanded by the health and welfare of the women and minors engaged in any occupation, trade, or industry in this state.

The commission may thereupon make a mandatory order during the first three calendar months of the year, to be effective on a date fixed by the commission, which date shall not be less than 60 nor more than 90 days from the publication thereof, specifying the minimum wage to be paid all employees, and the maximum hours and the standard conditions of labor for women or minors in the occupation, trade, or industry in question. The hours specified shall not be more than the maximum for women or minors in California. Such order shall be published in at least one newspaper in each of

the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco.

SEC. 7. Section 1183 of the Labor Code is amended to read:

1183. The commission shall send by mail, so far as practicable, to each employer in the occupation or industry in question a copy of the order authorized by Section 1182, and such employer shall post a copy thereof in the building in which employees affected by the order are employed. The commission shall also send a copy of such order to each employer registering his name with the commission for such purpose, but failure to mail such order or notice thereof to any employer affected thereby shall not relieve the employer from the duty of complying with the order. A finding by the commission that there has been the publication as herein provided is conclusive.

SEC. 8. Section 1185 of the Labor Code is amended to read:

1185. The orders of the commission fixing minimum wages for all employees, and maximum hours and standard conditions of labor for women and minors, when promulgated in accordance with the provisions of this chapter, shall be valid and operative and such orders are hereby expressly exempted from the provisions of Article 4 (commencing with Section 11420) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 9. Section 1191 of the Labor Code is amended to read:

1191. For any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically handicapped, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. Such license may be renewed on a yearly basis.

SEC. 10. Section 1193 of the Labor Code is amended to read:

1193. The commission may fix the maximum number of employees to be employed under the licenses provided for in Sections 1191 and 1192 in any occupation, trade, industry, or establishment in which a minimum wage has been established.

SEC. 11. Section 1193.5 of the Labor Code is amended to read: 1193.5. The provisions of this chapter shall be administered and enforced by the division. Any authorized representative of the division shall have authority to:

- (a) Investigate and ascertain the wages of all employees, and the hours and working conditions of women and minors employed in any occupation in the state;
  - (b) Supervise the payment of unpaid minimum wages owing to any employee or unpaid overtime compensation owing to any woman or minor under the provisions of this chapter or the orders of the commission. Acceptance of payment of sums found to be due on demand of the division shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194.
- Unpaid minimum wages or unpaid overtime wages recovered by the division under the provisions of this section which for any reason



cannot be delivered within six months from date of collection to the employee for whom such wages were collected shall be deposited into the Special Deposit Fund in the State Treasury.

SEC. 12. Section 1193.6 of the Labor Code is amended to read: 1193.6. The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages owing to any employee or unpaid overtime compensation owing to any woman or minor employee under the provisions of this chapter or the orders of the commission, and, in addition to such wages and compensation, shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless such action is dismissed without prejudice by the department or the division.

SEC. 13. Section 1194 of the Labor Code is amended to read:

1194. Any employee receiving less than the legal minimum wage or any woman or minor receiving less than the legal overtime compensation applicable to such woman or minor is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage or overtime compensation, together with costs of suit, notwithstanding any agreement to work for a lesser wage.

SEC. 14. Section 1194.5 of the Labor Code is amended to read: 1194.5. In any case in which a person employing an employee has willfully violated any of the laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person.

SEC. 15. Section 1195 of the Labor Code is amended to read:

1195. Any person may register with the Division of Industrial Welfare a complaint that the wage paid to an employee for whom a minimum wage has been fixed by the commission is less than that rate. The division shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the minimum wage.

SEC. 16. Section 1195.5 of the Labor Code is amended to read: 1195.5. The Division of Industrial Welfare shall determine, upon request, whether the wages of employees, which exceed the minimum wages fixed by the commission, have been correctly computed and paid. For this purpose, the division may examine the books, reports, contracts, payrolls and other documents of the employer relative to the employment of employees. The division shall enforce the payment of any sums found, upon examination, to be due and unpaid to the employees.

SEC. 17. Section 1197 of the Labor Code is amended to read:

1197. The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.



SEC. 18. Section 1199 of the Labor Code is amended to read: 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any woman or minor to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.
- (d) Pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex as required by Section 1197.5 of this code.
- (e) Reduces the wages of any employee in order to comply with Section 1197.5.

#### CHAPTER 1123

*An act to amend Sections 17301 and 17303.5 of, and to add Article 12 (commencing with Section 18151) to Chapter 3 of Division 14 of the Education Code, and to repeal Chapter 1619 of the Statutes of 1971, relating to handicapped students at community colleges.*

[Approved by Governor August 25, 1972. Filed with Secretary of State August 25, 1972.]

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

SECTION 1. Section 17301 of the Education Code is amended to read:

17301. (a) The State Controller shall during each fiscal year transfer from the General Fund of the state to the State School Fund such sums, in addition to the sums accruing to the State School Fund from other sources, as shall provide in the State School Fund for apportionment during the fiscal year a total amount per pupil in average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, junior college and adult schools in the state and to the county school tuition funds, as certified by the Superintendent of Public Instruction, one hundred eighty dollars (\$180).

(b) The Controller shall also transfer, as needed during each fiscal year, such additional amounts from the General Fund to the State School Fund as are certified from time to time by the Superintendent of Public Instruction to be necessary to meet actual computed apportionments from the State School Fund for the purposes set





(Approved by Governor October 1, 1973. Filed with Secretary of State October 1, 1973.)

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

SECTION 1. Section 2713.1 is added to the Penal Code, to read: 2713.1. In addition to any other payment to which he is entitled by law, each prisoner upon his release shall be paid the sum of two hundred dollars (\$200), from such appropriations that may be made available for the purposes of this section.

The department may prescribe rules and regulations (a) to limit or eliminate any payments provided for in this section to prisoners who have not served for at least six consecutive months prior to their release in instances where the department determines that such a payment is not necessary for rehabilitation of the prisoner, and (b) to establish procedures for the payment of the sum of two hundred dollars (\$200) within the first 60 days of a prisoner's release.

The provisions of this section shall not be applicable if a prisoner is released to the custody of another state or to the custody of the federal government.

SEC. 2. Section 3155 is added to the Welfare and Institutions Code, to read:

3155. In addition to any other payment to which he is entitled by law, each person who has been committed to the custody of the Director of Corrections pursuant to this chapter shall, upon his release, be paid the sum of two hundred dollars (\$200), from such appropriations that may be made available for the purposes of this section.

The director may prescribe rules and regulations (a) to limit or eliminate any payments provided for in this section to persons who have not been confined at least six consecutive months prior to their release in instances where the director determines that such a payment is not necessary for the rehabilitation of the prisoner, and (b) to establish procedures for the payment of the sum of the two hundred dollars (\$200) within the first 60 days of a prisoner's release.

The provisions of this section shall not be applicable if the person is released to the custody of another state or to the custody of the federal government.

CHAPTER 1007

An act to amend Sections 1173, 1178, 1182, 1185, 1191.5, 1193.5, 1193.6, 1194, 1198, and 1199 of, and to repeal Section 1172 of, the Labor Code, relating to employees.

(Approved by Governor October 1, 1973. Filed with Secretary of State October 1, 1973.)

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

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ment shall be undertaken by the Legislative Analyst, assisted by the Department of Finance, the Auditor General, the Department of Education, and the Health and Welfare Agency.

The first component of this examination, a fiscal program, and management audit, shall begin immediately. This audit shall review the current costs, management practices, and expenditures related to the preschool program and make recommendations regarding changes which may allow the program to be delivered in a less costly manner. The Department of Finance shall present the above audit findings and budget guidelines for 1974-75 fiscal year's funding in a written report to be delivered to the Joint Legislative Budget Committee no later than February 1, 1974.

The second component of this examination shall consist of an evaluation of the preschool program. The development of the study design shall begin immediately. The proposed plan for the study, along with an evaluation of the design by an outside consultant, shall be presented in written form to the Joint Legislative Budget Committee no later than December 1, 1973. This study shall begin not later than February 1974 with a written report to be delivered to the Joint Legislative Budget Committee no later than November 1, 1974.

SEC. 7.5. If any section, subdivision, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have enacted this act and each section, subdivision, sentence, clause, or phrase thereof, irrespective of the fact that any one or more of the sections, subdivisions, sentences, clauses, or phrases be declared unconstitutional.

SEC. 8. It is the intent of the Legislature that this bill shall not take effect unless Assembly Bill No. 1244 of the 1973-74 Regular Session and this bill are both chaptered and become effective on or before January 1, 1974.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the loss of federal funds does not curtail essential social service and educational programs and that local public and private agencies have sufficient time to formulate plans for continuing such essential programs, it is necessary that this act take immediate effect.

CHAPTER 1006

An act to add Section 2713.1 to the Penal Code, and to add Section 3155 to the Welfare and Institutions Code, relating to payments to prisoners and others upon release from prison or detention facilities.



LEGISLATIVE INTENT SERVICE

SECTION 1. Section 1172 of the Labor Code is repealed.

SEC. 1.5. Section 1173 of the Labor Code is amended to read:

1173. It shall be the continuing duty of the Industrial Welfare Commission, hereinafter referred to in this chapter as the commission, to ascertain the wages paid to all employees in this state, and to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the comfort, health, safety, and welfare of such employees. No rules, regulations, or policies of the Industrial Welfare Commission existing on the effective date of the amendments to this section enacted at the 1973-74 Regular Session shall be extended or changed without review and hearings, upon proper notice, on the proposed changes. The commission shall forthwith undertake a full review, with hearings upon proper notice, of all such existing rules, regulations, and policies made under its jurisdiction. Such review shall be directed toward the end of accomplishing the objectives of this chapter, and updating such rules, regulations, and policies to the extent found by the commission to be necessary to provide adequate and reasonable wages, hours, and working conditions appropriate for all employees in the modern society. The commission shall amend, repeal, or otherwise modify its rules, regulations, and policies in such manner as the commission, on the basis of such review, deems necessary to comply with the objectives of this chapter. The commission shall conduct such a full review at least once every two calendar years, or at such more frequent times as the commission, based upon then current conditions, deems appropriate.

Before adopting any new rules, regulations, or policies, the commission shall consult with the Industrial Safety Board to determine those areas and subject matters where the respective jurisdiction of the commission and the Industrial Safety Board overlap. In the case of such overlapping jurisdiction, the Industrial Safety Board shall have exclusive jurisdiction, and rules, regulations, or policies of the commission on the same subject have no force or effect.

SEC. 2. Section 1178 of the Labor Code is amended to read:

1178. If after investigation the commission finds that in any occupation, trade, or industry, the wages paid to employees are inadequate to supply the cost of proper living, or that the hours or conditions of labor are prejudicial to the health, morals, or welfare of employees, the commission shall select a wage board to consider any of such matters. Such wage board shall be composed of an equal number of representatives of employer and employees in the occupation, trade, or industry in question; and a representative of the commission to be designated by it, who shall act as chairman of the wage board on request of the commission. The wage board shall report and make recommendations to the commission, including therein:

- (a) An estimate of the minimum wage adequate to supply the

LEGISLATIVE INTENT SERVICE

necessary cost of proper living to, and maintain the health and welfare of employees engaged in the occupation, trade, or industry in question.

(b) The number of hours of work per day in the occupation, trade, or industry in question, consistent with the health and welfare of employees.

(c) The standard conditions of labor in the occupation, trade, or industry in question, demanded by the health and welfare of employees.

Before promulgating an order relating to wages, hours, or conditions of labor for the occupation, trade, or industry in question, and after receipt of the report from the wage board, the commission shall prepare proposed regulations for the occupation, trade, or industry in question and then shall hold a public hearing. The proceedings shall be recorded and transcribed and shall thereafter be a matter of public record. Whenever the occupation, trade, or industry in question is statewide in scope, a public hearing shall be held in each of two cities in this state; when it is not statewide, a public hearing shall be held in the locality where the occupation, trade, or industry prevails.

SEC. 3. Section 1182 of the Labor Code is amended to read:

1182. After the wage board conference and public hearing, as provided in this chapter, the commission may, upon its own motion or upon petition, fix:

(a) A minimum wage to be paid to employees engaged in any occupation, trade, or industry in this state, which shall not be less than a wage adequate to supply the necessary costs of proper living to, and maintain the health and welfare of such employees.

(b) The maximum hours of work consistent with the health and welfare of employees engaged in any occupation, trade, or industry in this state.

(c) The standard conditions of labor demanded by the health and welfare of the employees engaged in any occupation, trade, or industry in this state.

The commission may thereupon make a mandatory order during the first three calendar months of the year, to be effective on a date fixed by the commission, which date shall not be less than 60 nor more than 90 days from the publication thereof, specifying the minimum wage to be paid all employees, and the maximum hours and the standard conditions of labor for the employees in the occupation, trade, or industry in question. The hours specified shall not be more than the maximum for employees in California. Such order shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco.

SEC. 4. Section 1185 of the Labor Code is amended to read:

1185. The orders of the commission fixing minimum wages, and maximum hours, and standard conditions of labor for all employees, when promulgated in accordance with the provisions of this chapter,

(800) 666-1917

shall be valid and operative and such orders are hereby expressly exempted from the provisions of Article 4 (commencing with Section 11420) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 1191.5 of the Labor Code is amended to read: 1191.5. Notwithstanding the provisions of Section 1191, the commission may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

SEC. 6. Section 1193.5 of the Labor Code is amended to read: 1193.5. The provisions of this chapter shall be administered and enforced by the division. Any authorized representative of the division shall have authority to:

- (a) Investigate and ascertain the wages of all employees, and the hours and working conditions of all employees employed in any occupation in the state;
- (b) Supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission. Acceptance of payment of sums found to be due on demand of the division shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194.

Unpaid minimum wages or unpaid overtime wages recovered by the division under the provisions of this section which for any reason cannot be delivered within six months from date of collection to the employee for whom such wages were collected shall be deposited into the Special Deposit Fund in the State Treasury.

SEC. 7. Section 1193.6 of the Labor Code is amended to read: 1193.6. The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission, and, in addition to such wages and compensation, shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless such action is dismissed without prejudice by the department or the division.

SEC. 8. Section 1194 of the Labor Code is amended to read: 1194. Any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage or overtime compensation, together with costs of suit, notwithstanding any agreement LEGISLATIVE INTENT SERVICE

wage.

SEC. 9. Section 1198 of the Labor Code is amended to read: 1198. The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

SEC. 10. Section 1199 of the Labor Code is amended to read: 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.
- (d) Pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex as required by Section 1197.5 of this code.
- (e) Reduces the wages of any employee in order to comply with Section 1197.5.

SEC. 11. It is the intent of the Legislature in enacting this act that the Industrial Welfare Commission interpret these provisions in a manner which does not cause undue hardship and loss of employment opportunities in any segment of industry in California.

#### CHAPTER 1008

*An act making an appropriation to the University of California for retirement benefits of university police officers.*

(Approved by Governor October 1, 1973. Filed with Secretary of State October 1, 1973.)

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

SECTION 1. There is hereby appropriated from the General Fund in the State Treasury the sum of two hundred seventy-seven thousand dollars (\$277,000) to the University of California for an increased retirement benefit program for university police officers within the university retirement system in augmentation of the university appropriations for support and other purposes for the 1973-1974 fiscal year.

(800) 866-1917



Assembly Bill No. 478

\_\_\_\_\_ Passed the Assembly September 14, 1973

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

\_\_\_\_\_ Passed the Senate September 14, 1973

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

This bill was received by the Governor this \_\_\_\_\_  
day of \_\_\_\_\_, 1973, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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



LEGISLATIVE INTENT SERVICE (800) 666-1917

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

An act to amend Sections 1173, 1178, 1182, 1185, 1191.5, 1193.5, 1193.6, 1194, 1198, and 1199 of, and to repeal Section 1172 of, the Labor Code, relating to employees.

## LEGISLATIVE COUNSEL'S DIGEST

AB 478, Brown. Labor: employees.

Extends to men specified regulations regarding hours and working conditions now applicable to women and minors.

Requires Industrial Welfare Commission to conduct specified hearings and review, and to consult with Industrial Safety Board concerning overlapping jurisdiction. Specifies Industrial Safety Board shall have exclusive jurisdiction in case of conflict in overlapping jurisdiction. Makes related changes.

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

SECTION 1. Section 1172 of the Labor Code is repealed.

SEC. 1.5. Section 1173 of the Labor Code is amended to read:

1173. It shall be the continuing duty of the Industrial Welfare Commission, hereinafter referred to in this chapter as the commission, to ascertain the wages paid to all employees in this state, and to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the comfort, health, safety, and welfare of such employees. No rules, regulations, or policies of the Industrial Welfare Commission existing on the effective date of the amendments to this section enacted at the 1973-74 Regular Session shall be extended or changed without review and hearings, upon proper notice, on the proposed changes. The commission shall forthwith undertake a full review, with hearings upon proper notice, of all such existing rules, regulations, and policies

under its jurisdiction. Such review shall be directed and the end of accomplishing the objectives of this chapter, and updating such rules, regulations, and policies to the extent found by the commission to be necessary to provide adequate and reasonable wages, hours, and working conditions appropriate for all employees in the modern society. The commission shall amend, repeal, or otherwise modify its rules, regulations, and policies in such manner as the commission, on the basis of such review, deems necessary to comply with the objectives of this chapter. The commission shall conduct a full review at least once every two calendar years, and at such more frequent times as the commission, based upon then current conditions, deems appropriate.

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(a) An estimate of the minimum wage adequate to supply the necessary cost of proper living to, and



maintain the health and welfare of employees engaged in the occupation, trade, or industry in question.

(b) The number of hours of work per day in the occupation, trade, or industry in question, consistent with the health and welfare of employees.

(c) The standard conditions of labor in the occupation, trade, or industry in question, demanded by the health and welfare of employees.

Before promulgating an order relating to wages, hours, or conditions of labor for the occupation, trade, or industry in question, and after receipt of the report from the wage board, the commission shall prepare proposed regulations for the occupation, trade, or industry in question and then shall hold a public hearing. The proceedings shall be recorded and transcribed and shall thereafter be a matter of public record. Whenever the occupation, trade, or industry in question is statewide in scope, a public hearing shall be held in each of two cities in this state; when it is not statewide, a public hearing shall be held in the locality where the occupation, trade, or industry prevails.

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the publication thereof, specifying the minimum wage to be paid all employees, and the maximum hours and the standard conditions of labor for the employees in the occupation, trade, or industry in question. The hours specified shall not be more than the maximum for employees in California. Such order shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco.

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SEC. 5. Section 1191.5 of the Labor Code is amended to read:

1191.5. Notwithstanding the provisions of Section 1191, the commission may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

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Unpaid minimum wages or unpaid overtime wages recovered by the division under the provisions of this section which for any reason cannot be delivered within six months from date of collection to the employee for whom such wages were collected shall be deposited into the Special Deposit Fund in the State Treasury.

SEC. 7. Section 1193.6 of the Labor Code is amended to read:

1193.6. The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission, and, in addition to such wages and compensation, shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless such action is dismissed without prejudice by the department or the division.

SEC. 8. Section 1194 of the Labor Code is amended to read:

1194. Any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage or overtime compensation, together with costs of suit, notwithstanding any agreement to work for a lesser wage.

SEC. 9. Section 1198 of the Labor Code is amended to read:

1198. The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of

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1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

(d) Pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex as required by Section 1197.5 of this code.

(e) Reduces the wages of any employee in order to comply with Section 1197.5.

SEC. 11. It is the intent of the Legislature in enacting this act that the Industrial Welfare Commission interpret these provisions in a manner which does not cause undue hardship and loss of employment opportunities in any segment of industry in California.







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Clerk of the Superior Court

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10 Attorneys for Defendants EXPRESS MESSENGER SYSTEMS, INC. and  
SUBCONTRACTING CONCEPTS, INC.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN DIEGO

14 JAMES W. CRISTLER, JOHN PURVES, and  
JAMES G. HARROD, individually, and on  
15 behalf of all other similarly situated current  
and former employees of Defendants in the  
16 State of California,

Case No. GIC 803519 Consolidated With  
Case No. GIC 855961

17 Plaintiffs,

Assigned For Trial To:  
The Hon. Frederic L. Link  
Dept.: SD-26

18 v.

**DEFENDANT'S PROPOSED  
STATEMENT OF DECISION**

19 EXPRESS MESSENGER SYSTEMS, INC.,  
CALIFORNIA OVERNIGHT, EMS  
CORPORATION, and DOES 1 through 100,  
20 inclusive,

Hearing Date: N/A  
Hearing Time: N/A

21 Defendant.

Complaint Filed: January 13, 2003  
Trial Date: January 8, 2007

22 BARRY NEWMANN,  
23 Plaintiff,

Complaint Filed: October 26, 2005  
Trial Date: January 8, 2007

24 v.

25 EXPRESS MESSENGER SYSTEMS, INC.,  
dba CALIFORNIA OVERNIGHT,  
SUBCONTRACTING CONCEPTS, INC., and  
26 DOES 1 through 100, inclusive,

27 Defendants.  
28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SAN DIEGO

3 JAMES W. CRISTLER, JOHN PURVES, and  
4 JAMES G. HARROD, individually, and on  
5 behalf of all other similarly situated current  
6 and former employees of Defendants in the  
7 State of California,

8 Plaintiffs,

9 v.

10 EXPRESS MESSENGER SYSTEMS, INC.,  
11 CALIFORNIA OVERNIGHT, EMS  
12 CORPORATION, and DOES 1 through 100,  
13 inclusive,

14 Defendant.

15 BARRY NEWMANN,

16 Plaintiff,

17 v.

18 EXPRESS MESSENGER SYSTEMS, INC.,  
19 dba CALIFORNIA OVERNIGHT,  
20 SUBCONTRACTING CONCEPTS, INC., and  
21 DOES 1 through 100, inclusive,

22 Defendants.

Case No. GIC 803519 Consolidated With  
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Assigned For Trial To:  
The Hon. Frederic L. Link  
Dept.: SD-26

**STATEMENT OF DECISION**

Complaint Filed: January 13, 2003  
Trial Date: January 8, 2007

Complaint Filed: October 26, 2005  
Trial Date: January 8, 2007

16  
17 Plaintiffs JAMES CRISTLER, SYDNEY MOROFF, and MARK LAMBERT  
18 (collectively "Plaintiffs") brought this lawsuit against Defendant EXPRESS MESSENGER  
19 SYSTEMS, INC. dba CALIFORNIA OVERNIGHT ("Defendant") on behalf of themselves and  
20 all other similarly situated current independent contractor drivers and former employee drivers of  
21 Defendant in the state of California. Plaintiffs assert causes of action for (1) unfair business  
22 practices in violation of Business and Professions Code section 17200, (2) unlawful business  
23 practices in violation of Business and Professions Code section 17200, (3) failure to pay overtime  
24 compensation, (4) failure to provide properly itemized wage statements, (5) failure to fully  
25 compensate for business expenses, and (6) wrongful termination in violation of public policy.  
26 Plaintiffs contend that the independent contractor drivers utilized by California Overnight are  
27 improperly classified and are actually employees under California law. Plaintiffs also allege that  
28 California Overnight's conversion in 2002 to an independent contractor business model resulted

1 in the wrongful termination in violation of public policy of the Company's employee drivers who  
2 chose not to become 'independent contractor' drivers. As a result of the allegations outlined  
3 above, two subclasses were certified – the "independent contractor driver subclass" and the  
4 "terminated employee driver subclass."

5 The action came on regularly for trial on January 8, 2007, in Department 26, the  
6 Honorable Frederic L. Link presiding. A jury was duly impaneled and sworn. During trial, the  
7 Court granted Defendant's motion for nonsuit as to the 'terminated employee driver subclass' for  
8 the reasons set forth below. In granting this motion, the Court dismissed the cause of action for  
9 wrongful termination in violation of public policy.

10 With regard to the independent contractor driver subclass and the causes of action  
11 for failure to pay overtime compensation, failure to provide properly itemized wage statements,  
12 and failure to fully compensate for business expenses, the jury deliberated and thereafter returned  
13 a verdict finding the drivers in the "independent contractor driver subclass" to be independent  
14 contractors, not employees of California Overnight.

15 The remaining two causes of action for unfair and unlawful business practices in  
16 violation of Business and Professions Code section 17200, *et seq.*, also referred to as California's  
17 unfair competition law ("UCL"), are adjudicated by the Court. The Court, having considered all  
18 of the evidence proffered at trial, renders the following separate findings of fact and conclusions  
19 of law specific to the two remaining UCL claims and the wrongful termination claim:  
20

21 **STATEMENT OF DECISION**

22 **I. FACTUAL BACKGROUND**

23 California Overnight is a regional overnight package-delivery company with  
24 operations in California. The Company functions much like other next-day package delivery  
25 companies, except that it relies primarily upon ground transportation instead of air. California  
26 Overnight's delivery system in California consists of a number of large hubs and local facilities  
27 that collect, sort and route packages for next day delivery.  
28

1           Beginning in December, 2002, California Overnight discontinued using employee  
2 drivers to perform local pickup and delivery work in California and switched to using  
3 independent contractor drivers (the "conversion"). Among other reasons, California Overnight  
4 began using independent contractor drivers to decrease its costs and become more profitable. To  
5 assist in the conversion process and the Company's subsequent use of independent contractor  
6 drivers, California Overnight retained the services of Subcontracting Concepts, Inc. ("SCI"), a  
7 third party independent contractor administrator. Before converting its operation, California  
8 Overnight and SCI conducted meetings with California Overnight's employee drivers to inform  
9 them of the upcoming change and to provide them with information about becoming an  
10 independent contractor driver.

11           At the time of the conversion, employee drivers who decided to become  
12 independent contractor drivers entered into written independent contractor agreements with SCI  
13 to perform delivery services for California Overnight. The independent contractor drivers then  
14 bid on available routes and negotiated a route management fee with California Overnight.  
15 California Overnight did not limit the number of routes on which an independent contractor  
16 driver could bid. The evidence established that some independent contractor drivers did bid for  
17 and obtain multiple routes.

18           Although certain aspects of the independent contractor drivers' work did not differ  
19 from the time that they were employees, many aspects did change. As employees, the drivers  
20 were prohibited from performing delivery services for other companies, however, as independent  
21 contractors, the drivers had the right to perform work for other companies, including competitors.  
22 As employees, the drivers were required to arrive at the Company's facility by a certain time and  
23 were subject to discipline and eventual termination for failure to do so. As independent  
24 contractors, the drivers did not have to arrive at a certain time and could deliver packages at any  
25 time and in any order the drivers chose, so long as packages were delivered by the time specified  
26 by the customer. While employees, the drivers were required to wear California Overnight  
27 uniforms, but as independent contractors they were not required to do so (although some wore  
28 uniforms in exchange for a marketing fee).

1 **II. DISCUSSION**

2 **A. No Termination In Violation Of Public Policy**

3 To establish a prima facie claim for termination in violation of public policy, a  
4 plaintiff must present evidence to demonstrate (1) the existence of an employer-employee  
5 relationship; (2) termination of the employment relationship (or other adverse employment  
6 action); (3) a nexus between the termination and the employee's protected activity; (4) the  
7 termination was a legal cause of plaintiff's damages; and (5) the nature and extent of plaintiff's  
8 damages. *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 178 (1980); *Holmes v. General*  
9 *Dynamics Corp.*, 17 Cal. App. 4th 1418 (1993).

10 The only evidence Plaintiffs offer in support of their claim that certain employee  
11 drivers were terminated in violation of public policy is the testimony of James Cristler and the  
12 general testimony of three California Overnight managers. Mr. Cristler worked as an employee  
13 driver for California Overnight and, at the time of the conversion, decided not to become an  
14 independent contractor driver. As discussed further below, California Overnight's conversion to  
15 the use of independent contractor drivers did not violate public policy. Therefore, even if Mr.  
16 Mr. Cristler and other members of the 'terminated employee driver subclass' were terminated as a  
17 direct consequence of the conversion, the termination was the result of lawful action and not  
18 violative of public policy. The fact that Mr. Cristler did not want to become an independent  
19 contractor driver is irrelevant.

20 The Plaintiffs also present no evidence that any member of the terminated  
21 employee driver subclass engaged in protected activity. Consequently, Plaintiffs cannot establish  
22 the necessary nexus to prove their termination was retaliatory.

23 Plaintiffs fail to establish a prima facie case of termination in violation of public  
24 policy and, therefore, Defendant's motion for nonsuit on the cause of action is granted and the  
25 terminated employee driver subclass is dismissed from the suit.  
26  
27  
28

1                   **B. Defendant's Treatment Of Drivers Is Not An Unfair Or Unlawful**  
2                   **Business Practice**

3                   The California Labor Code recognizes that the use of independent contractors is a  
4 legitimate business practice. See Labor Code § 3357. Treatment of a worker as an independent  
5 contractor does, however, violate the Labor Code when the worker is in fact an employee. Such  
6 misclassification can also constitute an unfair or unlawful business practice under the UCL,  
7 because it gives an improper advantage over those companies that comply with the requirements  
8 of the Labor Code. *Hudgins v. Nieman Marcus Group, Inc.*, 34 Cal. App. 4th 1109 (1995).  
9 Whether California Overnight's treatment of drivers as independent contractors constitutes an  
10 unfair or unlawful business practice, therefore, turns on whether the drivers are actually  
11 employees or bona fide independent contractors under the law.

12                   To determine a worker's status as an employee or independent contractor, a trier  
13 of fact must evaluate several factors, most importantly whether the putative employer has the  
14 right to control not only the result, but also the details of the work performed. *S.G. Borello &*  
15 *Sons, Inc., v. Dept. of Industrial Relations*, 48 Cal. 3d 341, 350-351 (1989). The other factors  
16 relevant to the determination here include (a) the right to discharge at will without cause; (b)  
17 whether the drivers are engaged in a distinct occupation or business; (c) the skill required in this  
18 occupation; (d) whether the driver or California Overnight pays for vehicles, equipment, and  
19 business expenses; (e) the length of time for which the services are to be performed; (f) the  
20 method of payment to drivers, whether by the hour or by the job; (g) whether or not the work  
21 done by the drivers is part of the regular business of California Overnight; (h) whether or not the  
22 parties believe they are creating an employer-employee relationship; (i) the driver's opportunity  
23 for entrepreneurial profit or loss depending upon his/her managerial skill; (j) the drivers' use of  
24 helpers/replacements; and (k) the degree of permanence of the working relationship. These  
25 factors cannot be applied mechanically as separate tests; they are intertwined and their weight  
26 depends upon the particular combinations proven by the evidence. *Id.* at 351.

27                   Applying the *Borello* factors to the evidence presented at trial, the Court finds that  
28 the drivers in the 'independent contractor drivers subclass' are independent contractors, not

1 California Overnight's employees.

2 **1. Right To Control Details Of Work**

3  
4 The evidence presented at trial showed that California Overnight does not have the  
5 right to control, nor does it control, most of the details of the drivers' work. The drivers  
6 determine what time they will arrive at California Overnight's facility, how they will load their  
7 vehicles and in what order they will deliver the packages. Although the drivers are required to  
8 deliver packages by certain times, the requirement is imposed by the customer and is therefore  
9 not an indication of control by California Overnight. By deciding which route or routes on which  
10 to bid, drivers can regulate the approximate number of hours they work (subject to customer  
11 demand).

12 The drivers are free to hire replacement drivers and assistants to cover their route  
13 when they are unavailable. The drivers are not required to obtain California Overnight's approval  
14 of a replacement driver, however, most drivers notify California Overnight of the replacement  
15 driver's name in advance. The drivers are free to choose when and how often to utilize  
16 replacement drivers. The drivers have the right to perform delivery services for other package  
17 delivery companies, or their own delivery businesses, at the same time that they perform work for  
18 California Overnight.

19 In sum, so long as the packages are delivered by the time specified by the  
20 customer, it is the drivers, and not California Overnight, who control the details of the deliveries.

21 **2. The Right To Discharge At-Will**

22 The evidence reflects various notice requirements and reciprocal contractual  
23 obligations relating to the termination of the relationship between California Overnight and a  
24 driver. Accordingly, the relationship was not at-will.

25 **3. Engagement In A Distinct Occupation Or Business**

26  
27 The evidence weighs in favor of the conclusion that many of the drivers operate  
28 distinct businesses. All have their own equipment and insurance. All have motor carrier permits



1 issued by the State. Some drivers have their own customers, fictitious business names, business  
2 cards and promotional materials.

3 **4. Skill Required In Occupation**

4  
5 The evidence reveals that the level of skill varies between the drivers. The  
6 occupation requires geographic knowledge, organizational ability and driving skill. The Court  
7 cannot conclude that the occupation is unskilled.

8 **5. Payment For Business Expenses**

9 It is undisputed that all of the drivers pay for all of their business expenses,  
10 including the cost of their delivery vehicles, fuel, maintenance, insurance, licenses, scanners, cell  
11 phones and in some cases office equipment and office/warehouse space.

12 **6. Length Of Service And Permanence Of The Relationship**

13 While many drivers have on-going relationships with California Overnight, the  
14 evidence establishes that the length and permanence of those relationships depends upon  
15 satisfaction of contractual obligations.

16 **7. Method Of Payment**

17  
18 The evidence demonstrates that the drivers negotiate different payment  
19 arrangements, however, generally, drivers are paid a daily route management fee, as well as an  
20 additional amount per stop and fees paid for packages weighing over a certain amount and for  
21 packages requiring special handling. The route management fee is a flat rate daily fee negotiated  
22 between each driver and California Overnight during the bidding process. As a flat rate fee, the  
23 route management fee does not fluctuate based on the number of hours worked in a day.

24 **8. Part Of The Regular Business Of California Overnight**

25 California Overnight's regular business is the delivery of packages from one  
26 location to another within its service area. The drivers perform local package delivery and  
27 pickup, which is one component of California Overnight's delivery and pickup process.  
28 Accordingly, the work performed by the drivers is part of the regular business of California

**STATEMENT OF DECISION**

1 Overnight. Nonetheless, a delivery driver's services will always be part of the regular business of  
2 a delivery company, regardless of whether the driver is an independent contractor or an  
3 employee. Therefore, this factor provides little assistance in distinguishing between employees  
4 and independent contractors in a delivery context.

5 **9. Belief Of The Parties**

6  
7 The weight of the evidence demonstrates that the drivers and California Overnight  
8 believed they were creating an independent contractor-principal relationship. California  
9 Overnight conducted multiple meetings with the then-employee drivers to inform them of the  
10 upcoming conversion to independent contractor status. During the meetings, California  
11 Overnight and SCI explained what it meant to be an independent contractor and how to become  
12 one. The drivers who became independent contractors entered into written agreements entitled  
13 "Independent Contractor Owner/Operator Agreement", which explicitly stated that the  
14 relationship between the parties was that of independent contractor and principal, not employee  
15 and employer. A small number of drivers testified that they believed they were employees, but  
16 the majority of drivers who testified viewed themselves as independent contractors.  
17 Consequently, the evidence supports a finding that the parties understood they were creating the  
18 relationship of independent contractor and principal.

19 **10. Opportunity For Entrepreneurial Profit Or Loss**

20 The evidence demonstrates that the drivers have the opportunity for profit or loss.  
21 As independent contractors, the drivers have the right to bid for routes and to negotiate route  
22 management fees. Some drivers negotiated more lucrative route management fees, while at least  
23 one driver actually lost money by negotiating a route management fee that fell below the cost of  
24 servicing the route. The drivers negotiate the delivery fees for special deliveries ("specials") that  
25 arise from time to time. The opportunity for profit is demonstrated by the evidence that most of  
26 the independent contractors earn more than they earned as employee drivers. Finally, as  
27 independent contractors, the drivers have the entrepreneurial opportunity to increase their revenue  
28 by simultaneously performing services for companies other than California Overnight, or by

1 operating their own delivery businesses on the side.

2  
3 **11. Use Of Helpers**

4 The undisputed evidence demonstrates that the drivers have the right to, and do,  
5 retain the services of replacement drivers and other subcontractor drivers to service their route or  
6 routes.

7 **Summary**

8 Given the drivers' freedom from control over the details of their work, and their  
9 right to perform services how and when they please, the evidence establishes that it is more likely  
10 than not that the drivers are independent contractors, not employees. California Overnight's  
11 treatment of the drivers as independent contractors, therefore, does not constitute an unfair or  
12 unlawful business practice under the UCL. *Steinhebel v. Los Angeles Times Communications*,  
13 126 Cal. App. 4th 696 (2005) ("where...an employer's policy is lawful and permissible, there is  
14 no basis for relief under the unfair competition law.").

15 **C. Defendant's Termination Of Drivers Was Not An Unfair Or Unlawful**  
16 **Business Practice**

17 California Overnight's conversion to the use of independent contractors was  
18 lawful and, therefore, to the extent that the conversion resulted in the termination of any  
19 employee drivers, the termination did not constitute an unfair or unlawful business practice in  
20 violation of the UCL. There is no evidence to suggest California Overnight converted to using  
21 independent contractors to evade the requirements of the Labor Code. Rather, the evidence  
22 reveals that the Company consulted attorneys and enlisted the assistance of SCI in an effort to  
23 establish lawful independent contractor relationships. Although the evidence demonstrates that  
24 California Overnight may have decided to use independent contractor drivers, in part, to decrease  
25 its costs and increase profitability, there is nothing unlawful about this motivation if the intent is  
26 to achieve such savings through legitimate business practices. Because California Overnight's  
27 conversion to the use of independent contractor drivers was lawful, any termination resulting  
28 from the conversion was does not constitute an unfair or unlawful business practice under the

1 UCL.

2 **III. DISPOSITION**

3  
4 Plaintiffs adduced no substantial evidence to support their cause of action for  
5 wrongful termination in violation of public policy. That cause of action is dismissed.

6 Plaintiffs' two causes of action for unfair and unlawful business practices in  
7 violation of the UCL were not supported by the weight of the evidence introduced at trial.  
8 Accordingly, the Court finds against Plaintiffs and in favor of Defendant on these two causes of  
9 action.

10  
11 DATED: February 26, 2007

12  
13 By: FREDERIC L. LINK  
14 HON. FREDERIC L. LINK  
15 JUDGE OF THE SAN DIEGO SUPERIOR COURT  
16  
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28

**COPY**

**F I L E D**

Clerk of the Superior Court

FEB 23 2007

By: D. HARDER, Deputy

1 Robert G. Hulteng, State Bar No. 071293  
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16 Attorneys for Defendants EXPRESS MESSENGER SYSTEMS, INC. and  
17 SUBCONTRACTING CONCEPTS, INC.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 FOR THE COUNTY OF SAN DIEGO  
20 CENTRAL JUDICIAL DISTRICT (HALL OF JUSTICE)

21 JAMES W. CRISTLER, JOHN PURVES, and  
22 JAMES G. HARROD, individually, and on  
23 behalf of all other similarly situated current  
24 and former employees of Defendants in the  
25 State of California,

26 Plaintiffs,

27 v.

28 EXPRESS MESSENGER SYSTEMS, INC.,  
CALIFORNIA OVERNIGHT, EMS  
CORPORATION, and DOES 1 through 100,  
inclusive,

Defendant.

Case No. GIC 803519 Consolidated With  
Case No. GIC 855961

Assigned For All Purposes To:  
The Hon. Frederic L. Link  
Dept.: 26

**DECLARATION OF PROOF OF  
SERVICE**

Complaint Filed: January 13, 2003  
Trial Date: November 3, 2006

DECLARATION OF PROOF OF SERVICE

2  
3 **PROOF OF SERVICE BY MAIL**

4 I am employed in San Diego County, California. I am over the age of eighteen years  
5 and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900,  
6 San Diego, CA 92101. I am readily familiar with this firm's practice for collection and processing  
7 of correspondence for mailing with the United States Postal Service. On February 23, 2007, I placed  
8 with this firm at the above address for deposit with the United States Postal Service a true and  
9 correct copy of the within documents:

10 **LETTER TO HON. FREDERIC L. LINK**

11 **DEFENDANT'S PROPOSED STATEMENT OF DECISION**

12 in a sealed envelope, postage fully paid, addressed as follows:

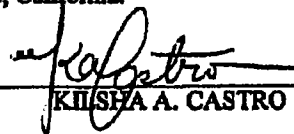
13 A. Mark Pope, Esq.  
14 Pope, Berger & Williams  
15 550 West "C" Street, Suite 1400  
San Diego, CA 92101

Attorneys for Plaintiffs  
JAMES W. CRISTLER, JOHN  
PURVES, and JAMES G. HARROD  
619.595.1366  
[FAX] 619.236.9677

16 Following ordinary business practices, the envelope was sealed and placed for  
17 collection and mailing on this date, and would, in the ordinary course of business, be deposited with  
18 the United States Postal Service on this date.

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

21 Executed on February 23, 2007, at San Diego, California.

22  
23   
24 KISHA A. CASTRO









LEGISLATIVE  
INTENT SERVICE, INC.

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**DECLARATION OF ARASH KHOSROWSHAHI**

I, Arash Khosrowshahi, declare:

I am an attorney licensed to practice in California, State Bar No. 293246, 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 1251 of 1913. Assembly Bill 1251 was approved by the Legislature and was enacted as Chapter 324 of the Statutes of 1913.

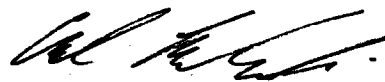
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 1251 of 1913. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. 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.

**ASSEMBLY BILL 1251 OF 1913:**

1. All versions of Assembly Bill 1251 (Roberts-1913);
2. Procedural history of Assembly Bill 1251 from the 1913 *Assembly Final History*;
3. Excerpt of the Governor's Message on the Bureau of Labor Statistics from the *Journal of the Senate*, 1913;
4. Excerpt regarding Assembly Bill 1251 from the *Journal of the Assembly*, 1913;
5. Excerpt regarding Assembly Bill 1251 from the *Journal of the Senate*, 1913;
6. Preliminary excerpt from the *First Biennial Report of the Industrial Welfare Commission of the State of California*, 1913-1914;
7. Excerpt regarding Assembly member W. A. Roberts from

- the 1913 "Legislative Handbook";
8. All versions of Senate Bill 1134 (Brown-1913);
  9. Procedural history of Senate Bill 1134 from the 1913 *Senate Final History*;
  10. Excerpts regarding Assembly Bill 1251 and Senate Bill 1134 from the *Journal of the Senate*, 1913;
  11. Excerpt regarding Senator William E. Brown from the 1913 "Legislative Handbook";
  12. Preliminary excerpt from the *Fifteenth Biennial Report of the Bureau of Labor Statistics of the State of California*, prepared by the State Bureau of Labor Statistics, 1911-1912;
  13. Excerpt of recommendation for new labor legislation from the *Twenty-third Biennial Report of the Bureau of Labor Statistics*, 1927-28;
  14. News article entitled "Industrial Welfare Commission Meets, Prepares to Make Wage Investigation," from *The San Francisco Examiner*, January 16, 1914;
  15. News article entitled "Murasky Heads Welfare Board - New State Commission Organized and Will Meet Again for Business on Jan. 15," from *The San Francisco Examiner*, pg. 65, January 4, 1914;
  16. News article entitled "Proposed Legislation - Bills New Under Consideration Impartially Analyzed by The Call for the Layman's Benefit," from the Editorial Page of *The San Francisco Call*, February 12, 1913;
  17. Excerpt regarding Assembly Bill 1251 entitled, "The Beban Resolution" and "The Minimum Wage Bill" from *Story of the Session of the California Legislature of 1913*, by Franklin Hichborn;
  18. Excerpt regarding "Labor and the Legislature" and "Woman's Eight-Hour Bill," from *Story of the Session of the California Legislature of 1911*, by Franklin Hichborn;
  19. Seven excerpts regarding minimum wage from the *Labor Clarion*, published weekly by the San Francisco Labor Council, dated January 3, January 24, February 21, April 4, 1913, and October 9, October 30 and November 6, 1914.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of April, 2015 at Woodland, California.




---

ARASH KHOSROWSHAHI





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**DECLARATION OF HEATHER THOMAS**

I, Heather Thomas, declare:

I am an attorney licensed to practice in California, State Bar No. 280817, 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 Constitutional Amendment 90 of 1913. Assembly Constitutional Amendment 90 was approved by the Secretary of State and was enacted as Resolution Chapter 98 of the Statutes of 1913.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Constitutional Amendment 90 of 1913. 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 – PROPOSITION 44, GENERAL ELECTION, NOVEMBER 3, 1914:**

1. Excerpt regarding Proposition 44, General Election, November 3, 1914;
2. Excerpt regarding Proposition 44 from the *Statement of Vote*, 1914 – 2014;
3. “The Progressive Era and the Eight Hour Day for Women,” from *May Day and the Struggle for the Eight Hour Day in California*.

**EXHIBIT B - ASSEMBLY CONSTITUTIONAL AMENDMENT 90 OF 1913:**

1. All versions of Assembly Constitutional Amendment 90 (Roberts-1913);
2. Procedural history of Assembly Constitutional Amendment 90 from the 1913 *Assembly Final History*;
3. Excerpt of the Governor's Message from the *Journal of the Senate*, 1913;
4. Excerpt regarding Assembly Constitutional Amendment 90 from the *Journal of the Assembly*, 1913;
5. Excerpt regarding Assembly Constitutional Amendment 90 from the *Journal of the Senate*, 1913;
6. Excerpt regarding Assembly member W. A. Roberts from the 1913 "Legislative Handbook";
7. Excerpts from the *Labor Clarion* as follows:
  - a. "A Minimum Wage Law," May 3, 1912;
  - b. "A Minimum Wage for Women," December 27, 1912;
  - c. "Wages and Morality," October 17, 1913;
  - d. "Minimum Wage Laws," January 15, 1915;
  - e. "Dr. Eliot Again," January 22, 1915.

**EXHIBIT C - SENATE CONSTITUTIONAL AMENDMENT 72, FAILED COMPETITOR BILL TO ASSEMBLY CONSTITUTIONAL AMENDMENT 90 OF 1913:**

1. All versions of Senate Constitutional Amendment 72 (Brown-1913);
2. Procedural history of Senate Constitutional Amendment 72 from the 1913 *Senate Final History*;
3. Excerpt of the Governor's Message from the *Journal of the Senate*, 1913;
4. Excerpt regarding Senate Constitutional Amendment 72 from the *Journal of the Senate*, 1913;
5. Excerpt regarding Senator William E. Brown from the 1913 "Legislative Handbook."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of April, 2015 at Woodland, California.



HEATHER THOMAS





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---

**DECLARATION OF HEATHER THOMAS**

I, Heather Thomas, declare:

I am an attorney licensed to practice in California, State Bar No. 280817, 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 Constitutional Amendment 65 of 1970. Assembly Constitutional Amendment No. 65 was enacted as Resolution Chapter 189, Statutes of 1970.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Constitutional Amendment 65 of 1970. 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 CONSTITUTIONAL AMENDMENT 65 OF 1970:**

1. All versions of Assembly Constitutional Amendment 65 (Deddeh-1970);
2. Procedural history of Assembly Constitutional Amendment 65 from the 1970 *Assembly Final History*;
3. Three analyses of Assembly Constitutional Amendment 65 prepared for the Assembly Committee on Elections and Constitutional Amendments;
4. Material from the legislative bill file of the Assembly Committee on Elections and Constitutional Amendments on Assembly Constitutional Amendment 65;

5. Excerpt regarding Assembly Constitutional Amendment 65 from the *Journal of the Assembly*, 1970;
6. Analysis of Assembly Constitutional Amendment 65 prepared for the Senate Committee on Judiciary;
7. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Constitutional Amendment 65;
8. Excerpt regarding Assembly Constitutional Amendment 65 from the *Journal of the Senate*, 1970;
9. Statement of Paul Priolo, Chairman of the Assembly Committee on Elections and Constitutional Amendments, regarding proposed constitutional amendments;
10. Material from the legislative bill file of the California Constitution Revision Commission regarding Assembly Constitutional Amendment 65;
11. Excerpt regarding Assembly Constitutional Amendment 65 from the 1970 *Summary Digest of Statutes Enacted* prepared by Legislative Counsel.

**EXHIBIT B – PROPOSITION 15, GENERAL ELECTION NOVEMBER 3, 1970:**

1. Proposition No. 15, General Election, November 3, 1970;
2. Excerpt regarding Proposition 15 from *Statement of Vote*, State of California, General Election, November 3, 1970;
3. Excerpt regarding Proposition 15 from *The California Voter*, prepared by the League of Women Voters of California, October 1970, Vol. 16, No. 2;
4. Excerpt regarding Proposition 15 from the *California Journal*, September 1970;
5. Excerpt regarding Proposition 15 from *The Commonwealth*, October 12, 1970.

**EXHIBIT C – CALIFORNIA CONSTITUTION REVISION COMMISSION MATERIAL:**

1. Excerpt regarding former Article XX, section 17½, from *Background Study 3* prepared by the California Constitution Revision Commission, October, 1968;
2. Excerpt regarding former Article XX, section 17½, from the *Article XX A Committee, Reports 1 and 2, Proposed Revision of Article XX* prepared by the California Constitution Revision Commission, 1969;
3. Excerpt regarding former Article XX, section 17½, from the *Minutes of the Article XX Committee A* prepared by the California Constitution Revision Commission, October, 1968, January, February, March and May 1969;



4. Excerpts regarding former Article XX, section 17½, from the *Proposed Revision of the California Constitution* prepared by the California Constitution Revision Commission, Parts 1 and 3, 1970;
5. Special Report to the Assembly Committee on Elections and Constitutional Amendments Article XX prepared by the California Constitution Revision Commission, May 21, 1970.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of April, 2015 at Woodland, California.



---

HEATHER THOMAS





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---

**DECLARATION OF JENNY S. LILLGE**

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, 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 documents relevant to the enactment of Assembly Bill 256 of 1972. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 256 was approved by the Legislature and was enacted as Chapter 1122 of the Statutes of 1972.

The following list identifies all documents purchased on April 26, 2015, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 256 of 1972. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

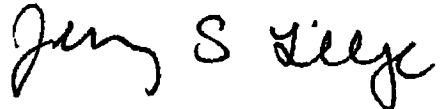
**ASSEMBLY BILL 256 OF 1972:**

1. All versions of Assembly Bill 256 (Warren-1972);
2. Procedural history of Assembly Bill 256 from the 1972 *Assembly Final History*;
3. Analysis of Assembly Bill 256 prepared for the Assembly Committee on Labor Relations;
4. Material from the legislative bill file of the Assembly Committee on Labor Relations on Assembly Bill 256;
5. Three analyses of Assembly Bill 256 prepared for the Senate Committee on Industrial Relations;

6. Material from the legislative bill file of the Senate Committee on Industrial Relations on Assembly Bill 256 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 7. Analysis of Assembly Bill 256 prepared by the Legislative Analyst;
8. Material from the legislative bill file of Assembly member Charles Warren on Assembly Bill 256;
9. Post-enrollment documents regarding Assembly Bill 256;
10. Excerpt regarding Assembly Bill 256 from the State of California Department of Industrial Relations *Biennial Report, 1971-1972*;
11. Excerpt regarding Assembly Bill 256 from the *1972 Report on the California Legislature*, by the California AFL-CIO;
12. Excerpt regarding Assembly Bill 256 from the *1972 Summary Digest of Statutes Enacted and Resolutions Adopted* prepared by Legislative Counsel.

+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of April, 2015 at Woodland, California.



JENNY S. LILLGE



LEGISLATIVE  
INTENT SERVICE, INC.

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(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

---

**DECLARATION OF JENNY S. LILLGE**

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, 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 documents relevant to the enactment of Assembly Bill 478 of 1973. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 478 was approved by the Legislature and was enacted as Chapter 1007 of the Statutes of 1973.

The following list identifies all documents purchased on April 26, 2015, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 478 of 1973. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

**ASSEMBLY BILL 478 OF 1973:**

1. All versions of Assembly Bill 478 (Brown-1973);
2. Procedural history of Assembly Bill 478 from the 1973-74 *Assembly Final History*;
3. Analysis of Assembly Bill 478 prepared for the Assembly Committee on Labor Relations;
4. Material from the legislative bill file of the Assembly Committee on Labor Relations on Assembly Bill 478;
5. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 478;

6. Two analyses of Assembly Bill 478 prepared for the Senate Committee on Industrial Relations;
7. Material from the legislative bill file of the Senate Committee on Industrial Relations on Assembly Bill 478;
8. Analysis of Assembly Bill 478 prepared by the Legislative Analyst;
9. Post-enrollment documents regarding Assembly Bill 478;
10. Excerpt regarding Assembly Bill 478 from the 1973 *Summary Digest of Statutes Enacted and Resolutions Adopted*, prepared by Legislative Counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of April, 2015 at Woodland, California.



---

JENNY S. LILLGE

Case No. S222732

**IN THE SUPREME COURT OF CALIFORNIA**

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DYNAMEX OPERATIONS WEST, INC.,  
Petitioner,

vs.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,  
Respondent,

CHARLES LEE et al.,  
Real Parties in Interest.

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**[PROPOSED] ORDER ON PETITIONER'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
OPENING BRIEF ON THE MERITS**

AFTER A DECISION BY THE COURT OF APPEAL  
SECOND APPELLATE DISTRICT, DIVISION SEVEN, CASE No. B249546

LOS ANGELES COUNTY SUPERIOR COURT, CASE No. BC 332016  
MICHAEL L. STERN, JUDGE

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Attorneys for Petitioner Dynamex Operations West, Inc.

**[PROPOSED ORDER] IN SUPPORT OF PETITIONER'S MOTION**  
**FOR JUDICIAL NOTICE**

Good cause appearing, therefore,

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

- Exhibit A: Statutes 1913, Chapter 324 [enactment of uncodified predecessor to California Labor Code section 1173]
- Exhibit B: Ballot Pamphlet, General Election (Nov. 3, 1914), pages regarding Proposition 44 to approve Assembly Constitutional Amendment No. 90 [to add former section 17½ of Article XX to the California Constitution]
- Exhibit C: Assembly Constitutional Amendment No. 65, Statutes 1970 (1970 Regular Session) resolution chapter 189 [to amend former Article XX, Section 17½ to include the same language that is currently in Article XIV, Section 1 of the California Constitution; approved by voters (Prop. 15), General Election (Nov. 3, 1970)]
- Exhibit D: Analysis of Assembly Constitutional Amendment No. 65 prepared by the Assembly Committee on Elections and Constitutional Amendments, as Amended June 17, 1970 [regarding amendment of former Article XX, Section 17½ to include the same language that is currently in Article XIV, Section 1 of the California Constitution]
- Exhibit E: Assembly Bill No. 256 (1972 Regular Session), as introduced on January 31, 1972 [regarding amendment of Labor Code Section 1173]



Exhibit F: Analysis of Assembly Bill No. 256 prepared by the Assembly Committee on Labor Relations, dated March 15, 1972 [regarding amendment of Labor Code Section 1173]

Exhibit G: Statutes 1972, Chapter 1122 [amended Labor Code Section 1173]

Exhibit H: Statutes 1973, Chapter 1007 [amended Labor Code Section 1173]

Exhibit I: Enrolled version of Assembly Bill No. 478 (1973-1974 Regular Session) [regarding amendment of Labor Code Section 1173]

Exhibit J: Statement of Decision in *Cristler v. Express Messenger Systems, Inc.* (Super. Ct. San Diego County, Feb. 26, 2007, Consolidated Nos. GIC 803519 and GIC 855961)

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

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

## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, Fl. 20, San Francisco, CA 94108, I served the within document(s):

- **PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPENING BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF ROBERT G. HULTENG AND PHILIP A. SIMPKINS; PROPOSED ORDER**
  - by facsimile transmission at or about \_\_\_\_\_ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 925.946.9809. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
  - by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Walnut Creek, California addressed as set forth below.
  - by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
  - by personal service I caused such envelope to be delivered to First Legal Support Services for delivery to the person(s) at the address(es) set forth below.

- Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is \_\_\_\_\_@littler.com.

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Second Appellate District  
Division Seven  
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Court of Appeal Case No.  
B249546

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 11, 2015, at San Francisco, California.

  
\_\_\_\_\_  
Xuan Nguyen