

S246911

In the
Supreme Court
of the
State of California

SUPREME COURT
FILED

JUN 26 2018

Jorge Navarrete Clerk

Deputy

JUSTIN KIM,

Plaintiff and Appellant,

v.

REINS INTERNATIONAL CALIFORNIA,

Defendant and Respondent.

APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT CASE NO. B278642
SUPERIOR COURT OF LOS ANGELES COUNTY, NO. BC539194,
HON. KENNETH FREEMAN

MOTION FOR JUDICIAL NOTICE

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MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452, 453, and 459, and California Rules of Court 8.520(g) and 8.252(a), petitioner Justin Kim requests that the Court take judicial notice of the following exhibits. Each exhibit is a true and correct copy of a document obtained by Kim's counsel from Legislative Intent Service, Inc. ("LIS"), a company specializing in researching the history and intent of legislation.

The exhibits each relate to the legislative history of Senate Bill 796 of 2003, later codified as the Labor Code Private Attorneys General Act of 2004 or "PAGA." The Court's interpretation of this statute is central to the issue on appeal of whether Kim's dismissal of his individual Labor Code claims disqualifies him as an "aggrieved employee" under PAGA's section 2699(c).

The accompanying declaration of attorney Anna Maria Bereckzy-Anderson authenticates each of the documents of which Kim requests judicial notice. For the court's convenience, Kim has not included all 1,325 pages of documents attached to Ms. Bereckzy-Anderson's declaration, but requests notice only of the documents from her declaration that counsel believes will assist the Court in deciding this matter, as follows:

Exhibit A: All versions of Senate Bill 796 (Dunn-2003). Marked as Exhibit 1 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 1a.

Exhibit B: Senate Committee on Labor and Industrial Relations, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.), Apr. 9, 2003. Marked as Exhibit 3 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 3.

Exhibit C: Senate Judiciary Committee, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.) as amended, Apr. 29, 2003. Marked as Exhibit 5 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 5.

Exhibit D: Senate Third Reading Analysis of Sen. Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 8 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 8.

Exhibit E: Assembly Committee on Labor and Employment, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 12 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 12.

Exhibit F: Assembly Committee on Judiciary, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 14 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 14.

June 25, 2018

KINGSLEY & KINGSLEY, APC

By: 

ARI J. STELLER, ESQ.

Attorneys for Plaintiffs-Appellants

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner Justin Kim requests that the Court take judicial notice of documents relevant to the legislative history of Senate Bill 796 (2003), which was enacted and codified as the Labor Code Private Attorneys General Act of 2004 (“PAGA”) at Labor Code section 2698, *et seq.*

Kim’s appeal requires the Court to review PAGA’s “aggrieved employee” standing provision. (Lab. Code § 2699(c).) Kim argues that his dismissal of individual claims has no impact on whether he qualifies as an “aggrieved employee” under this provision, and that PAGA’s legislative history supports this argument. (Stiller Decl. ¶ 3.) In making arguments about PAGA’s legislative history, Kim refers to the materials of which he requests judicial notice. (See Cal. Rules of Court, rule 8.252(a)(2)(A), (D).)

It is well-established that, “[i]n an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927) Neither party requested notice of the attached materials in the trial court, but they are subject to judicial notice by this Court under Evidence Code sections 451(a) as “public statutory law of this state,” 452(a) as “statutory law of any state of the United States,” 452(b) as “legislative enactments issued by or under the authority of . . . any public entity in the United States,” and 452(c) as “[o]fficial acts of the legislative . . . departments of . . . any state of the United States.” (See Cal. Rules of Court, rule 8.252(a)(2)(B), (C).)

For these reasons, Kim hereby requests judicial notice of Exhibits “A” through “F.”

June 25, 2018

KINGSLEY & KINGSLEY, APC

By: _____



ARI J. STILLER, ESQ.

ERIC B. KINGSLEY, ESQ.

Attorneys for Plaintiffs-Appellants

DECLARATION OF ARI J. STILLER

I, Ari J. Stiller, hereby declare as follows:

1. I am an attorney admitted before all courts of the State of California. I am an associate in the law firm of Kingsley & Kingsley and counsel of record for Petitioner Justin Kim in this action. I make this declaration from my own personal knowledge, and, if called upon, I could and would testify competently to the following.

2. I submit this declaration in support of Kim's Motion for Judicial Notice.

3. Kim's opening brief argues that his dismissal of individual claims has no impact on whether he qualifies as an "aggrieved employee" under PAGA's standing provision (Labor Code § 2699(c)), and that PAGA's legislative history supports this argument.

4. I obtained the documents regarding PAGA's legislative history attached hereto as Exhibits "A" through "F" from Legislative Intent Service, Inc. ("LIS"). Each document was provided as an attachment to the Declaration of Anna Maria Bereczky-Anderson accompanying this motion.

5. The file that I obtained from LIS contains 1,325 pages of legislative history materials. However, for the court's convenience, Kim requests judicial notice only of the following documents that I believe will assist the Court in deciding this matter. Each of these documents was included in the file that I obtained from LIS. True and correct copies of the following documents from the LIS file are attached hereto:

Exhibit A: All versions of Senate Bill 796 (Dunn-2003). Marked as Exhibit 1 to Declaration of Anna Maria Bereczky-Anderson, beginning at page LIS - 1a.

Exhibit B: Senate Committee on Labor and Industrial Relations, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.), Apr. 9, 2003. Marked as Exhibit 3 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 3.

Exhibit C: Senate Judiciary Committee, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.) as amended, Apr. 29, 2003. Marked as Exhibit 5 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 5.

Exhibit D: Senate Third Reading Analysis of Sen. Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 8 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 8.

Exhibit E: Assembly Committee on Labor and Employment, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 12 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS – 12.

Exhibit F: Assembly Committee on Judiciary, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 14 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 14.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 21, 2018, in Encino, California.



ARI J. STILLER

EXHIBIT A

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as introduced, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:



1 (a) Adequate financing of essential labor law enforcement
2 functions is necessary to achieve maximum compliance with state
3 labor laws in the underground economy and to ensure an effective
4 disincentive for employers to engage in unlawful and
5 anti-competitive business practices.

6 (b) Although innovative labor law education programs and
7 self-policing efforts by industry watchdog groups may have some
8 success in educating some employers about their obligations under
9 state labor laws, in other cases the only meaningful deterrent to
10 unlawful conduct is the vigorous assessment and collection of civil
11 penalties as provided in the Labor Code.

12 (c) Staffing levels for state labor law enforcement agencies
13 have, in general, declined over the last decade and are likely to fail
14 to keep up with the growth of the labor market in the future.

15 (d) It is therefore in the public interest to provide that civil
16 penalties for violations of the Labor Code may also be assessed and
17 collected by aggrieved employees acting as private attorneys
18 general, while also ensuring that state labor law enforcement
19 agencies' enforcement actions have primacy over any private
20 enforcement efforts undertaken pursuant to this act.

21 SEC. 2. Part 13 (commencing with Section 2698) is added to
22 Division 2 of the Labor Code, to read:

23
24 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
25 GENERAL ACT OF 2004
26

27 2698. This part shall be known and may be cited as the Labor
28 Code Private Attorneys General Act of 2004.

29 2699. (a) Notwithstanding any other provision of law, any
30 provision of this code that provides for a civil penalty to be
31 assessed and collected by the Labor and Workforce Development
32 Agency or any of its departments, divisions, commissions, boards,
33 agencies, or employees, for a violation of this code, may, as an
34 alternative, be recovered through a civil action.

35 (b) For all provisions of this code except those for which a civil
36 penalty has already been established, there is established a civil
37 penalty for a violation of these provisions, as follows:

38 (1) If no criminal penalty amount has been established for a
39 violation of the provision, the civil penalty is one hundred dollars
40 (\$100) per employee per pay period for the initial violation and



1 two hundred dollars (\$200) per employee per pay period for each
2 subsequent violation. If the person does not employ one or more
3 employees, the civil penalty is five hundred dollars (\$500).

4 (2) If a criminal penalty has been established for a violation of
5 the provision, the civil penalty is the amount of the criminal
6 penalty, or one hundred dollars (\$100) per employee per pay
7 period for the initial violation and two hundred dollars (\$200) per
8 employee per pay period for each subsequent violation, whichever
9 is greater. If the person does not employ one or more employees,
10 the civil penalty shall be the amount of the criminal penalty or five
11 hundred dollars (\$500), whichever is greater.

12 (c) An aggrieved employee may recover the civil penalty
13 described in subdivision (b) in a civil action filed on behalf of
14 himself or herself or others. Any employee who prevails, in whole
15 or in part, in any action shall be entitled to an award of reasonable
16 attorney's fees and costs. Nothing in this section shall operate to
17 limit an employee's right to pursue other remedies available under
18 state or federal law, either separately or concurrently with an
19 action taken under this section.

20 (d) No action may be maintained under this section by an
21 aggrieved employee if the agency or any of its departments,
22 divisions, commissions, boards, agencies, or employees, on the
23 same facts and theories, cites a person for a violation of the code
24 and initiates proceedings to collect applicable penalties.

25 (e) Civil penalties recovered by aggrieved employees shall be
26 distributed as follows: 50 percent to the General Fund, 25 percent
27 to the Labor and Workforce Development Agency for education
28 of employers and employees about their rights and responsibilities
29 under this code, available for expenditure upon appropriation by
30 the Legislature, and 25 percent to the aggrieved employees.

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AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Adequate financing of essential labor law enforcement
4 functions is necessary to achieve maximum compliance with state
5 labor laws in the underground economy and to ensure an effective
6 disincentive for employers to engage in unlawful and
7 anticompetitive business practices.

8 (b) Although innovative labor law education programs and
9 self-policing efforts by industry watchdog groups may have some
10 success in educating some employers about their obligations under
11 state labor laws, in other cases the only meaningful deterrent to
12 unlawful conduct is the vigorous assessment and collection of civil
13 penalties as provided in the Labor Code.

14 (c) Staffing levels for state labor law enforcement agencies
15 have, in general, declined over the last decade and are likely to fail
16 to keep up with the growth of the labor market in the future.

17 (d) It is therefore in the public interest to provide that civil
18 penalties for violations of the Labor Code may also be assessed and
19 collected by aggrieved employees acting as private attorneys
20 general, while also ensuring that state labor law enforcement
21 agencies' enforcement actions have primacy over any private
22 enforcement efforts undertaken pursuant to this act.

23 SEC. 2. Part 13 (commencing with Section 2698) is added to
24 Division 2 of the Labor Code, to read:

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development
34 Agency or any of its departments, divisions, commissions, boards,
35 agencies, or employees, for a violation of this code, may, as an
36 alternative, be recovered through a civil action.



1 (b) For all provisions of this code except those for which a civil
2 penalty has already been established, there is established a civil
3 penalty for a violation of these provisions, as follows:

4 ~~(1) If no criminal penalty amount has been established for a~~
5 ~~violation of the provision, the civil penalty is one hundred dollars~~
6 ~~(\$100) per employee per pay period for the initial violation and~~
7 ~~two hundred dollars (\$200) per employee per pay period for each~~
8 ~~subsequent violation. If the person does not employ one or more~~

9 ~~(1) If the person does not employ one or more employees, the~~
10 ~~civil penalty is five hundred dollars (\$500).~~

11 ~~(2) If a criminal penalty has been established for a violation of~~
12 ~~the provision, the civil penalty is the amount of the criminal~~
13 ~~penalty, or~~

14 ~~(2) If the person employs one or more employees, the civil~~
15 ~~penalty is one hundred dollars (\$100) per employee per pay period~~
16 ~~for the initial violation and two hundred dollars (\$200) per~~
17 ~~employee per pay period for each subsequent violation, whichever~~
18 ~~is greater. If the person does not employ one or more employees,~~
19 ~~the civil penalty shall be the amount of the criminal penalty or five~~
20 ~~hundred dollars (\$500), whichever is greater.~~

21 (c) An aggrieved employee may recover the civil penalty
22 described in subdivision (b) in a civil action filed on behalf of
23 himself or herself or others. Any employee who prevails, in whole
24 or in part, in any action shall be entitled to an award of reasonable
25 attorney's fees and costs. Nothing in this section shall operate to
26 limit an employee's right to pursue other remedies available under
27 state or federal law, either separately or concurrently with an
28 action taken under this section.

29 (d) No action may be maintained under this section by an
30 aggrieved employee if the agency or any of its departments,
31 divisions, commissions, boards, agencies, or employees, on the
32 same facts and theories, cites a person for a violation of the code
33 and initiates proceedings to collect applicable penalties.

34 (e) Civil penalties recovered by aggrieved employees shall be
35 distributed as follows: 50 percent to the General Fund, 25 percent
36 to the Labor and Workforce Development Agency for education
37 of employers and employees about their rights and responsibilities



- 1 under this code, available for expenditure upon appropriation by
- 2 the Legislature, and 25 percent to the aggrieved employees.

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LEGISLATIVE INTENT SERVICE (800) 666-1917

AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, *except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency.* In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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

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LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



LIS - 1c

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Adequate financing of essential labor law enforcement
4 functions is necessary to achieve maximum compliance with state
5 labor laws in the underground economy and to ensure an effective
6 disincentive for employers to engage in unlawful and
7 anticompetitive business practices.

8 (b) Although innovative labor law education programs and
9 self-policing efforts by industry watchdog groups may have some
10 success in educating some employers about their obligations under
11 state labor laws, in other cases the only meaningful deterrent to
12 unlawful conduct is the vigorous assessment and collection of civil
13 penalties as provided in the Labor Code.

14 (c) Staffing levels for state labor law enforcement agencies
15 have, in general, declined over the last decade and are likely to fail
16 to keep up with the growth of the labor market in the future.

17 (d) It is therefore in the public interest to provide that civil
18 penalties for violations of the Labor Code may also be assessed and
19 collected by aggrieved employees acting as private attorneys
20 general, while also ensuring that state labor law enforcement
21 agencies' enforcement actions have primacy over any private
22 enforcement efforts undertaken pursuant to this act.

23 SEC. 2. Part 13 (commencing with Section 2698) is added to
24 Division 2 of the Labor Code, to read:

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development
34 Agency or any of its departments, divisions, commissions, boards,
35 agencies, or employees, for a violation of this code, may, as an
36 alternative, be recovered through a civil action.

37 (b) *For purposes of this part, "person" has the same meaning*
38 *as defined in Section 18.*



1 (c) For all provisions of this code except those for which a civil
2 penalty has already been established, there is established a civil
3 penalty for a violation of these provisions, as follows:

4 (1) If the person does not employ one or more employees, the
5 civil penalty is five hundred dollars (\$500).

6 (2) If the person employs one or more employees, the civil
7 penalty is one hundred dollars (\$100) per employee per pay period
8 for the initial violation and two hundred dollars (\$200) per
9 employee per pay period for each subsequent violation .

10 ~~(e)~~

11 (d) An aggrieved employee may recover the civil penalty
12 described in subdivision (b) in a civil action filed on behalf of
13 himself or herself or others. Any employee who prevails, in whole
14 or in part, in any action shall be entitled to an award of reasonable
15 attorney's fees and costs. Nothing in this section shall operate to
16 limit an employee's right to pursue other remedies available under
17 state or federal law, either separately or concurrently with an
18 action taken under this section.

19 ~~(d)~~

20 (e) No action may be maintained under this section by an
21 aggrieved employee if the agency or any of its departments,
22 divisions, commissions, boards, agencies, or employees, on the
23 same facts and theories, cites a person for a violation of the ~~code~~
24 *same section or sections of the Labor Code under which the*
25 *aggrieved employee is attempting to recover a civil penalty on*
26 *behalf of himself or herself or others* and initiates proceedings to
27 collect applicable penalties.

28 ~~(e) Civil~~

29 (f) *Except as provided in subdivision (g), civil penalties*
30 *recovered by aggrieved employees shall be distributed as follows:*
31 *50 percent to the General Fund, 25 percent to the Labor and*
32 *Workforce Development Agency for education of employers and*
33 *employees about their rights and responsibilities under this code,*
34 *available for expenditure upon appropriation by the Legislature,*
35 *and 25 percent to the aggrieved employees.*

36 (g) *Civil penalties recovered under paragraph (1) of*
37 *subdivision (b) shall be distributed as follows: 50 percent to the*
38 *General Fund and 50 percent to the Labor and Workforce*



SB 796

— 4 —

- 1 *Development Agency available for expenditure upon*
- 2 *appropriation by the Legislature.*

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LEGISLATIVE INTENT SERVICE (800) 666-1917

AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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LIS - 1d

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Adequate financing of essential labor law enforcement
4 functions is necessary to achieve maximum compliance with state
5 labor laws in the underground economy and to ensure an effective
6 disincentive for employers to engage in unlawful and
7 anticompetitive business practices.

8 (b) Although innovative labor law education programs and
9 self-policing efforts by industry watchdog groups may have some
10 success in educating some employers about their obligations under
11 state labor laws, in other cases the only meaningful deterrent to
12 unlawful conduct is the vigorous assessment and collection of civil
13 penalties as provided in the Labor Code.

14 (c) Staffing levels for state labor law enforcement agencies
15 have, in general, declined over the last decade and are likely to fail
16 to keep up with the growth of the labor market in the future.

17 (d) It is therefore in the public interest to provide that civil
18 penalties for violations of the Labor Code may also be assessed and
19 collected by aggrieved employees acting as private attorneys
20 general, while also ensuring that state labor law enforcement
21 agencies' enforcement actions have primacy over any private
22 enforcement efforts undertaken pursuant to this act.

23 SEC. 2. Part 13 (commencing with Section 2698) is added to
24 Division 2 of the Labor Code, to read:

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development
34 Agency or any of its departments, divisions, commissions, boards,
35 agencies, or employees, for a violation of this code, may, as an



1 alternative, be recovered through a civil action brought by an
2 aggrieved employee on behalf of himself or herself or other current
3 or former employees.

4 (b) For purposes of this part, "person" has the same meaning
5 as defined in Section 18.

6 (c) For purposes of this part, "aggrieved employee" means any
7 person who was employed by the alleged violator within the period
8 of time covered by the applicable statute of limitations and against
9 whom one or more of the alleged violations was committed.

10 (c) For all provisions of this code except those for which a civil
11 penalty has already been established, there is established a civil
12 penalty for a violation of these provisions, as follows:

13 (1) If the person does not employ one or more employees, the
14 civil penalty is five hundred dollars (\$500).

15 (2) If the person employs one or more employees, the civil
16 penalty is one hundred dollars (\$100) per for each aggrieved
17 employee per pay period for the initial violation and two hundred
18 dollars (\$200) per for each aggrieved employee per pay period for
19 each subsequent violation.

20 (d) An aggrieved employee may recover the civil penalty
21 described in subdivision (b) in a civil action filed on behalf of
22 himself or herself or others and other current or former employees
23 for whom evidence of a violation was developed during the trial or
24 during settlement of the action. Any employee who prevails, in
25 whole or in part, in any action shall be entitled to an award of
26 reasonable attorney's fees and costs. Nothing in this section shall
27 operate to limit an employee's right to pursue other remedies
28 available under state or federal law, either separately or
29 concurrently with an action taken under this section.

30 (e) No action may be maintained under this section by an
31 aggrieved employee if the agency or any of its departments,
32 divisions, commissions, boards, agencies, or employees, on the
33 same facts and theories, cites a person for a violation of the same
34 section or sections of the Labor Code under which the aggrieved
35 employee is attempting to recover a civil penalty on behalf of
36 himself or herself or others and initiates proceedings to collect
37 applicable penalties.

38 (f) Except as provided in subdivision (g), civil penalties
39 recovered by aggrieved employees shall be distributed as follows:
40 50 percent to the General Fund, 25 percent to the Labor and

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1 Workforce Development Agency for education of employers and
2 employees about their rights and responsibilities under this code,
3 available for expenditure upon appropriation by the Legislature,
4 and 25 percent to the aggrieved employees.

5 (g) Civil penalties recovered under paragraph (1) of
6 subdivision (b) shall be distributed as follows: 50 percent to the
7 General Fund and 50 percent to the Labor and Workforce
8 Development Agency available for expenditure upon
9 appropriation by the Legislature.

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AMENDED IN SENATE MAY 12, 2003
AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of

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the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Adequate financing of essential labor law enforcement
4 functions is necessary to achieve maximum compliance with state
5 labor laws in the underground economy and to ensure an effective
6 disincentive for employers to engage in unlawful and
7 anticompetitive business practices.

8 (b) Although innovative labor law education programs and
9 self-policing efforts by industry watchdog groups may have some
10 success in educating some employers about their obligations under
11 state labor laws, in other cases the only meaningful deterrent to
12 unlawful conduct is the vigorous assessment and collection of civil
13 penalties as provided in the Labor Code.

14 (c) Staffing levels for state labor law enforcement agencies
15 have, in general, declined over the last decade and are likely to fail
16 to keep up with the growth of the labor market in the future.

17 (d) It is therefore in the public interest to provide that civil
18 penalties for violations of the Labor Code may also be assessed and
19 collected by aggrieved employees acting as private attorneys
20 general, while also ensuring that state labor law enforcement
21 agencies' enforcement actions have primacy over any private
22 enforcement efforts undertaken pursuant to this act.

23 SEC. 2. Part 13 (commencing with Section 2698) is added to
24 Division 2 of the Labor Code, to read:
25

26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development



1 Agency or any of its departments, divisions, commissions, boards,
2 agencies, or employees, for a violation of this code, may, as an
3 alternative, be recovered through a civil action brought by an
4 aggrieved employee on behalf of himself or herself or other
5 current or former employees.

6 (b) For purposes of this part, "person" has the same meaning
7 as defined in Section 18.

8 (c) For purposes of this part, "aggrieved employee" means any
9 person who was employed by the alleged violator within the period
10 of time covered by the applicable statute of limitations and against
11 whom one or more of the alleged violations was committed.

12 ~~(e)~~

13 (d) For all provisions of this code except those for which a civil
14 penalty has already been established, there is established a civil
15 penalty for a violation of these provisions, as follows:

16 (1) If the person does not employ one or more employees, the
17 civil penalty is five hundred dollars (\$500).

18 (2) If the person employs one or more employees, the civil
19 penalty is one hundred dollars (\$100) for each aggrieved employee
20 per pay period for the initial violation and two hundred dollars
21 (\$200) for each aggrieved employee per pay period for each
22 subsequent violation.

23 ~~(d)~~

24 (e) An aggrieved employee may recover the civil penalty
25 described in subdivision (b) in a civil action filed on behalf of
26 himself or herself and other current or former employees for whom
27 evidence of a violation was developed during the trial or during
28 settlement of the action. Any employee who prevails in any action
29 shall be entitled to an award of reasonable attorney's fees and
30 costs. Nothing in this section shall operate to limit an employee's
31 right to pursue other remedies available under state or federal law,
32 either separately or concurrently with an action taken under this
33 section.

34 ~~(e)~~

35 (f) No action may be maintained under this section by an
36 aggrieved employee if the agency or any of its departments,
37 divisions, commissions, boards, agencies, or employees, on the
38 same facts and theories, cites a person for a violation of the same
39 section or sections of the Labor Code under which the aggrieved
40 employee is attempting to recover a civil penalty on behalf of



1 himself or herself or others and initiates proceedings to collect
2 applicable penalties.

3 ~~(f)~~

4 (g) Except as provided in subdivision (g), civil penalties
5 recovered by aggrieved employees shall be distributed as follows:
6 50 percent to the General Fund, 25 percent to the Labor and
7 Workforce Development Agency for education of employers and
8 employees about their rights and responsibilities under this code,
9 available for expenditure upon appropriation by the Legislature,
10 and 25 percent to the aggrieved employees.

11 ~~(g)~~

12 (h) Civil penalties recovered under paragraph (1) of
13 subdivision ~~(b)~~ (d) shall be distributed as follows: 50 percent to the
14 General Fund and 50 percent to the Labor and Workforce
15 Development Agency available for expenditure upon
16 appropriation by the Legislature.

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AMENDED IN ASSEMBLY JULY 2, 2003
AMENDED IN SENATE MAY 12, 2003
AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would

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be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Adequate financing of essential labor law enforcement
4 functions is necessary to achieve maximum compliance with state
5 labor laws in the underground economy and to ensure an effective
6 disincentive for employers to engage in unlawful and
7 anticompetitive business practices.

8 (b) Although innovative labor law education programs and
9 self-policing efforts by industry watchdog groups may have some
10 success in educating some employers about their obligations under
11 state labor laws, in other cases the only meaningful deterrent to
12 unlawful conduct is the vigorous assessment and collection of civil
13 penalties as provided in the Labor Code.

14 (c) Staffing levels for state labor law enforcement agencies
15 have, in general, declined over the last decade and are likely to fail
16 to keep up with the growth of the labor market in the future.

17 (d) It is therefore in the public interest to provide that civil
18 penalties for violations of the Labor Code may also be assessed and
19 collected by aggrieved employees acting as private attorneys
20 general, while also ensuring that state labor law enforcement
21 agencies' enforcement actions have primacy over any private
22 enforcement efforts undertaken pursuant to this act.

23 SEC. 2. Part 13 (commencing with Section 2698) is added to
24 Division 2 of the Labor Code, to read:

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be



1 assessed and collected by the Labor and Workforce Development
2 Agency or any of its departments, divisions, commissions, boards,
3 agencies, or employees, for a violation of this code, may, as an
4 alternative, be recovered through a civil action brought by an
5 aggrieved employee on behalf of himself or herself ~~or~~ and other
6 current or former employees.

7 (b) For purposes of this part, "person" has the same meaning
8 as defined in Section 18.

9 (c) For purposes of this part, "aggrieved employee" means any
10 person who was employed by the alleged violator ~~within the period~~
11 ~~of time covered by the applicable statute of limitations~~ and against
12 whom one or more of the alleged violations was committed.

13 (d) For all provisions of this code except those for which a civil
14 penalty ~~has already been established~~ *is specifically provided*, there
15 is established a civil penalty for a violation of these provisions, as
16 follows:

17 (1) If, *at the time of the alleged violation*, the person does not
18 employ one or more employees, the civil penalty is five hundred
19 dollars (\$500).

20 (2) If, *at the time of the alleged violation*, the person employs
21 one or more employees, the civil penalty is one hundred dollars
22 (\$100) for each aggrieved employee per pay period for the initial
23 violation and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation.

25 (e) An aggrieved employee may recover the civil penalty
26 described in subdivision ~~(b)~~ (d) in a civil action filed on behalf of
27 himself or herself and other current or former employees ~~for whom~~
28 ~~evidence of a violation was developed during the trial or during~~
29 ~~settlement of the action against whom one or more of the alleged~~
30 ~~violations was committed~~. Any employee who prevails in any
31 action shall be entitled to an award of reasonable attorney's fees
32 and costs. Nothing in this section shall operate to limit an
33 employee's right to pursue other remedies available under state or
34 federal law, either separately or concurrently with an action taken
35 under this section.

36 (f) No action may be maintained under this section by an
37 aggrieved employee if the agency or any of its departments,
38 divisions, commissions, boards, agencies, or employees, on the
39 same facts and theories, cites a person for a violation of the same
40 section or sections of the Labor Code under which the aggrieved



1 employee is attempting to recover a civil penalty on behalf of
2 himself or herself or others ~~and initiates proceedings to collect~~
3 ~~applicable penalties or initiates a proceeding pursuant to Section~~
4 ~~98.3.~~

5 (g) Except as provided in subdivision ~~(g)~~ (h), civil penalties
6 recovered by aggrieved employees shall be distributed as follows:
7 50 percent to the General Fund, 25 percent to the Labor and
8 Workforce Development Agency for education of employers and
9 employees about their rights and responsibilities under this code,
10 available for expenditure upon appropriation by the Legislature,
11 and 25 percent to the aggrieved employees.

12 (h) Civil penalties recovered under paragraph (1) of
13 subdivision (d) shall be distributed as follows: 50 percent to the
14 General Fund and 50 percent to the Labor and Workforce
15 Development Agency available for expenditure upon
16 appropriation by the Legislature.

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AMENDED IN ASSEMBLY JULY 16, 2003
AMENDED IN ASSEMBLY JULY 2, 2003
AMENDED IN SENATE MAY 12, 2003
AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General

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Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

Existing law provides an exclusive remedy under workers' compensation for an employer's liability for compensation for an employee's injury or death arising in the course of employment.

This bill would not affect that exclusive remedy.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Adequate financing of essential labor law enforcement
- 4 functions is necessary to achieve maximum compliance with state
- 5 labor laws in the underground economy and to ensure an effective
- 6 disincentive for employers to engage in unlawful and
- 7 anticompetitive business practices.
- 8 (b) Although innovative labor law education programs and
- 9 self-policing efforts by industry watchdog groups may have some
- 10 success in educating some employers about their obligations under
- 11 state labor laws, in other cases the only meaningful deterrent to
- 12 unlawful conduct is the vigorous assessment and collection of civil
- 13 penalties as provided in the Labor Code.
- 14 (c) Staffing levels for state labor law enforcement agencies
- 15 have, in general, declined over the last decade and are likely to fail
- 16 to keep up with the growth of the labor market in the future.
- 17 (d) It is therefore in the public interest to provide that civil
- 18 penalties for violations of the Labor Code may also be assessed and
- 19 collected by aggrieved employees acting as private attorneys
- 20 general, while also ensuring that state labor law enforcement
- 21 agencies' enforcement actions have primacy over any private
- 22 enforcement efforts undertaken pursuant to this act.
- 23 SEC. 2. Part 13 (commencing with Section 2698) is added to
- 24 Division 2 of the Labor Code, to read:
- 25

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1 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
2 GENERAL ACT OF 2004
3

4 2698. This part shall be known and may be cited as the Labor
5 Code Private Attorneys General Act of 2004.

6 2699. (a) Notwithstanding any other provision of law, any
7 provision of this code that provides for a civil penalty to be
8 assessed and collected by the Labor and Workforce Development
9 Agency or any of its departments, divisions, commissions, boards,
10 agencies, or employees, for a violation of this code, may, as an
11 alternative, be recovered through a civil action brought by an
12 aggrieved employee on behalf of himself or herself and other
13 current or former employees.

14 (b) For purposes of this part, "person" has the same meaning
15 as defined in Section 18.

16 (c) For purposes of this part, "aggrieved employee" means any
17 person who was employed by the alleged violator and against
18 whom one or more of the alleged violations was committed.

19 (d) For all provisions of this code except those for which a civil
20 penalty is specifically provided, there is established a civil penalty
21 for a violation of these provisions, as follows:

22 (1) If, at the time of the alleged violation, the person does not
23 employ one or more employees, the civil penalty is five hundred
24 dollars (\$500).

25 (2) If, at the time of the alleged violation, the person employs
26 one or more employees, the civil penalty is one hundred dollars
27 (\$100) for each aggrieved employee per pay period for the initial
28 violation and two hundred dollars (\$200) for each aggrieved
29 employee per pay period for each subsequent violation.

30 (e) An aggrieved employee may recover the civil penalty
31 described in subdivision (d) in a civil action filed on behalf of
32 himself or herself and other current or former employees against
33 whom one or more of the alleged violations was committed. Any
34 employee who prevails in any action shall be entitled to an award
35 of reasonable attorney's fees and costs. Nothing in this section
36 shall operate to limit an employee's right to pursue other remedies
37 available under state or federal law, either separately or
38 concurrently with an action taken under this section.

39 (f) No action may be maintained under this section by an
40 aggrieved employee if the agency or any of its departments,

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1 divisions, commissions, boards, agencies, or employees, on the
2 same facts and theories, cites a person for a violation of the same
3 section or sections of the Labor Code under which the aggrieved
4 employee is attempting to recover a civil penalty on behalf of
5 himself or herself or others or initiates a proceeding pursuant to
6 Section 98.3.

7 (g) Except as provided in subdivision (h), civil penalties
8 recovered by aggrieved employees shall be distributed as follows:
9 50 percent to the General Fund, 25 percent to the Labor and
10 Workforce Development Agency for education of employers and
11 employees about their rights and responsibilities under this code,
12 available for expenditure upon appropriation by the Legislature,
13 and 25 percent to the aggrieved employees.

14 (h) Civil penalties recovered under paragraph (1) of
15 subdivision (d) shall be distributed as follows: 50 percent to the
16 General Fund and 50 percent to the Labor and Workforce
17 Development Agency available for expenditure upon
18 appropriation by the Legislature.

19 (i) *Nothing contained in this part is intended to alter or*
20 *otherwise affect the exclusive remedy provided by the workers'*
21 *compensation provisions of this code for liability against an*
22 *employer for the compensation for any injury to or death of an*
23 *employee arising out of and in the course of employment.*

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AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JULY 2, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 1, 2003

AMENDED IN SENATE APRIL 22, 2003

AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the

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aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs *and, in some cases, penalties*. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty, *but no penalty is established for any failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees.*

Existing law provides an exclusive remedy under workers' compensation for an employer's liability for compensation for an employee's injury or death arising in the course of employment.

This bill would not affect that exclusive remedy.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Adequate financing of essential labor law enforcement
- 4 functions is necessary to achieve maximum compliance with state
- 5 labor laws in the underground economy and to ensure an effective
- 6 disincentive for employers to engage in unlawful and
- 7 anticompetitive business practices.
- 8 (b) Although innovative labor law education programs and
- 9 self-policing efforts by industry watchdog groups may have some
- 10 success in educating some employers about their obligations under
- 11 state labor laws, in other cases the only meaningful deterrent to
- 12 unlawful conduct is the vigorous assessment and collection of civil
- 13 penalties as provided in the Labor Code.
- 14 (c) Staffing levels for state labor law enforcement agencies
- 15 have, in general, declined over the last decade and are likely to fail
- 16 to keep up with the growth of the labor market in the future.
- 17 (d) It is therefore in the public interest to provide that civil
- 18 penalties for violations of the Labor Code may also be assessed and
- 19 collected by aggrieved employees acting as private attorneys
- 20 general, while also ensuring that state labor law enforcement
- 21 agencies' enforcement actions have primacy over any private
- 22 enforcement efforts undertaken pursuant to this act.

1 SEC. 2. Part 13 (commencing with Section 2698) is added to
2 Division 2 of the Labor Code, to read:

3
4 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
5 GENERAL ACT OF 2004
6

7 2698. This part shall be known and may be cited as the Labor
8 Code Private Attorneys General Act of 2004.

9 2699. (a) Notwithstanding any other provision of law, any
10 provision of this code that provides for a civil penalty to be
11 assessed and collected by the Labor and Workforce Development
12 Agency or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of this code, may, as an
14 alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself and other
16 current or former employees.

17 (b) For purposes of this part, "person" has the same meaning
18 as defined in Section 18.

19 (c) For purposes of this part, "aggrieved employee" means any
20 person who was employed by the alleged violator and against
21 whom one or more of the alleged violations was committed.

22 (d) *For purposes of this part, whenever the Labor and*
23 *Workforce Development Agency, or any of its departments,*
24 *divisions, commissions, boards, agencies, or employees has*
25 *discretion to assess a civil penalty, a court is authorized to exercise*
26 *the same discretion, subject to the same limitations and conditions,*
27 *to assess a civil penalty.*

28 (e) For all provisions of this code except those for which a civil
29 penalty is specifically provided, there is established a civil penalty
30 for a violation of these provisions, as follows:

31 (1) If, at the time of the alleged violation, the person does not
32 employ one or more employees, the civil penalty is five hundred
33 dollars (\$500).

34 (2) If, at the time of the alleged violation, the person employs
35 one or more employees, the civil penalty is one hundred dollars
36 (\$100) for each aggrieved employee per pay period for the initial
37 violation and two hundred dollars (\$200) for each aggrieved
38 employee per pay period for each subsequent violation.

39 (3) *If the alleged violation is a failure to act by the Labor and*
40 *Workplace Development Agency, or any of its departments,*



1 *divisions, commissions, boards, agencies, or employees, there*
 2 *shall be no civil penalty.*

3 ~~(e)~~

4 *(f)* An aggrieved employee may recover the civil penalty
 5 described in subdivision ~~(d)~~ *(e)* in a civil action filed on behalf of
 6 himself or herself and other current or former employees against
 7 whom one or more of the alleged violations was committed. Any
 8 employee who prevails in any action shall be entitled to an award
 9 of reasonable attorney's fees and costs. Nothing in this section
 10 shall operate to limit an employee's right to pursue other remedies
 11 available under state or federal law, either separately or
 12 concurrently with an action taken under this section.

13 ~~(f)~~

14 *(g)* No action may be maintained under this section by an
 15 aggrieved employee if the agency or any of its departments,
 16 divisions, commissions, boards, agencies, or employees, on the
 17 same facts and theories, cites a person for a violation of the same
 18 section or sections of the Labor Code under which the aggrieved
 19 employee is attempting to recover a civil penalty on behalf of
 20 himself or herself or others or initiates a proceeding pursuant to
 21 Section 98.3.

22 ~~(g)~~

23 *(h)* Except as provided in subdivision ~~(h)~~ *(i)*, civil penalties
 24 recovered by aggrieved employees shall be distributed as follows:
 25 50 percent to the General Fund, 25 percent to the Labor and
 26 Workforce Development Agency for education of employers and
 27 employees about their rights and responsibilities under this code,
 28 available for expenditure upon appropriation by the Legislature,
 29 and 25 percent to the aggrieved employees.

30 ~~(h)~~

31 *(i)* Civil penalties recovered under paragraph (1) of subdivision
 32 ~~(d)~~ *(e)* shall be distributed as follows: 50 percent to the General
 33 Fund and 50 percent to the Labor and Workforce Development
 34 Agency available for expenditure upon appropriation by the
 35 Legislature.

36 ~~(i)~~

37 *(j)* Nothing contained in this part is intended to alter or
 38 otherwise affect the exclusive remedy provided by the workers'
 39 compensation provisions of this code for liability against an



- 1 employer for the compensation for any injury to or death of an
- 2 employee arising out of and in the course of employment.

Senate Bill No. 796

CHAPTER 906

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 796, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs and, in some cases, penalties. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty, but no penalty is established for any failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees.

Existing law provides an exclusive remedy under workers' compensation for an employer's liability for compensation for an employee's injury or death arising in the course of employment.

This bill would not affect that exclusive remedy.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices.



(b) Although innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code.

(c) Staffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future.

(d) It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act.

SEC. 2. Part 13 (commencing with Section 2698) is added to Division 2 of the Labor Code, to read:

PART 13. THE LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004

2698. This part shall be known and may be cited as the Labor Code Private Attorneys General Act of 2004.

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(e) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:



(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(f) An aggrieved employee may recover the civil penalty described in subdivision (e) in a civil action filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

(g) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(h) Except as provided in subdivision (i), civil penalties recovered by aggrieved employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the Labor and Workforce Development Agency for education of employers and employees about their rights and responsibilities under this code, available for expenditure upon appropriation by the Legislature, and 25 percent to the aggrieved employees.

(i) Civil penalties recovered under paragraph (1) of subdivision (e) shall be distributed as follows: 50 percent to the General Fund and 50 percent to the Labor and Workforce Development Agency available for expenditure upon appropriation by the Legislature.

(j) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the



compensation for any injury to or death of an employee arising out of and in the course of employment.

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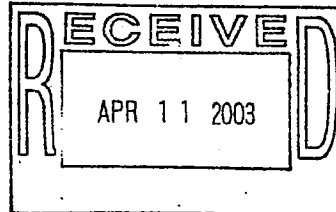
EXHIBIT B

Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

Date of Hearing: April 9, 2003
Consultant: Liberty Reiter Sanchez

2003-2004 Regular Session
Fiscal: Yes
Urgency: No

Bill No: SB 796
Author: Dunn
Amended: March 26, 2003



Subject: Employment

Purpose:

To establish civil penalties for violations of the Labor Code and to enable aggrieved employees to maintain a civil action when the Labor and Workforce Development Agency (including its departments, divisions, commissions, boards, agencies or employees) (Agency) does not pursue such an action.

Analysis:

- (1) Existing law, authorizes the Labor and Workforce Development Agency (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

The Attorney General is authorized to seek appropriate injunctive relief and file charges against employers for criminal violations of the Labor Code, where specified.

While many Labor Code sections provide for criminal penalties, many sections do not provide for corresponding civil penalties.

Business and Professions Code Section 17200, also known as the "Unfair Competition Act" (UCA) authorizes aggrieved individuals to act on their own behalf in the capacity of "private attorney general" (PAG) when maintaining a claim against a business for violating the law or competing unfairly.

Individuals aggrieved by violations of the Labor Code are not expressly permitted to act in the capacity of PAG in the filing of civil actions against their employers.

- (2) This Bill, entitled the "Labor Code Private Attorneys General Act of 2004", has four components:
 - (a) Authorizes recovery through civil action of civil penalties provided for under the Labor Code by authorizing aggrieved employees to act as PAG on behalf of

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themselves or others where the Agency does not pursue such an action.

- (b) Establishes civil penalties where the Labor Code is silent in the amount of \$100 per employee per pay period for the initial violation and \$200 per employee per pay period for subsequent violations when the "person" employs one or more employees and \$500 per violation where the "person" does not employ one or more employees.
- (c) Provides for a distribution formula as follows for penalties collected by an aggrieved individual: 50% to the General Fund, 25% to the Agency and 25% to the aggrieved employee.
- (d) Provides for the award of attorneys' fees and costs to aggrieved employees who prevail, in whole or in part in these civil actions.

Comments:

(3) "Private Attorney General" (PAG):

When individuals have a right to act in the capacity of PAG such individuals are authorized to maintain a claim on their own behalf or on behalf of others. To this end, the individuals may represent themselves or may retain counsel for such representation.

(4) Business and Professions Code Section 17200 "Unfair Competition Act" (UCA):

Existing law provides for the right to act in the capacity of PAG for "unfair competition" cases. The law has been interpreted by the courts to provide broad and expansive protections to California's consumers. The law was first enacted in the 1930's to stop businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

An action under this code section may not be brought by an individual in order to vindicate his own interests, instead, such action must be brought on behalf of the general public. To that end, even if the individual bringing the action was actually harmed by the unfair business practice, the individual may not recover damages, but instead remedy is limited to injunction and restitution.

Amongst other things, this law has successfully been used on behalf of employees in cases where a company was found to be ignoring California's overtime laws and where an employer's policy of calculating employees' wages included deduction of losses for unidentified returns.

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Consultant: Liberty Reiter Sanchez

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Senate Committee on Labor and Industrial Relations

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(5) Distinction Between Right to Act as Private Attorney General Under SB 796 and The UCA:

This PAG rights afforded individuals under this bill are separate and distinct from those afforded individuals under the UCA. While PAG rights have been interpreted to have broad applicability under the UCA, the right to act as a PAG under this bill is available to further the purposes of protecting the rights of workers under the Labor Code. Additionally, unlike the UCA, this bill entitles an individual to act in the capacity of PAG to seek remedy of a labor law violation solely because they have been aggrieved by that violation. Finally, this bill provides for a percentage share of penalties to go directly to the aggrieved worker, unlike the UCA, which does not entitle an individual claimant to obtain damages.

(6) Labor Law Enforcement in an Era of Limited Staff and Resources:

At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so due to budgetary and staff constraints. Conventional wisdom asserts that more resources should be put in place and more staff hired if existing staff and resource allotments are insufficient to effectuate the mandated duties of the government. Additional resource dedication as a remedy is, an impossibility where a budgetary deficit exists.

The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that "[s]taffing levels for state labor law enforcement agencies, have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future" and that, accordingly, "[i]t is therefore in the public interest to provide that civil penalties for violation of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general."

Arguably, in a perfect world, there would be no need for the right to act as PAG, yet the fact remains that due to continuing budgetary and staffing constraints, full, appropriate and adequate Labor Code enforcement is unrealizable if done solely by the Agency.

(7) Staff Comments:

- (a) The term "person" is defined for the general purposes of the Labor Code to mean any "person, association, organization, partnership, business trust, limited liability company or corporation." The term "person" has a different definition for application in the "Garment Manufacturing" Part of the Labor Code. That Part of the Labor Code is in the same Division of the Labor Code, entitled "Employment Regulation and Supervision," in which this bill, if enacted, would be located. The term "person" is used throughout the Labor Code, often interchangeably with the term "employer," but when the term "person" is used, it is interpreted to provide

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Consultant: Liberty Reiter Sanchez

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a more expansive and comprehensive applicability than the term "employer." Additionally, often when the term "person" is used it is used in conjunction with the phrase "or officer or agent thereof," to provide even broader applicability. As the author is creating a new titled Part to the Labor Code, the author may wish to add a definition of "person" specifically applicable to that Part of the Labor Code.

- (b) The bill specifies a formula for distribution of civil awards where an aggrieved employee has prevailed against a "person employing one or more employees," yet the bill provides no formula for instances where the Agency has prevailed against a person who does not employ one or more employees. The author may wish to specify whether such collected penalties should go to the General Fund, the Agency or elsewhere.
- (c) The bill specifies that an action, may not be maintained by an aggrieved employee, if the Agency cites a person and initiates proceedings for a violation of the code on the same facts and theories. The author may wish to amend the bill to clarify that this prohibition would only be applicable if the Agency proceeded under the "same labor code section or sections under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others." Ostensibly, without this clarification an aggrieved employee might be inadvertently precluded from maintaining an action under a different Labor Code section violation which the Agency has declined to pursue, but where the basis of such action relies on the same facts and theories as the action which the Agency is pursuing.

(8) Dual Referral:

If passed by this committee, this measure will be re-referred to the Senate Committee on Judiciary.

1. Proponents, the California Labor Federation asserts that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these

Hearing Date: April 9, 2003.
Consultant: Liberty Reiter Sanchez

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code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation to these code sections.

2. **Opponents**, contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

Support:

American Federation of State, County, and Municipal Employees
California Applicants' Attorneys Association
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Engineers and Scientist of California, IFPTE Local 20, AFL-CIO
Hotel Employees & Restaurant Employees International Union
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Region 8 States Council of the United Food & Commercial Workers
Western States Council of Sheet Metal Workers

Opposition:

Associated General Contractors of California and the AGC, San Diego Chapter
California Employment Law Council
California Manufacturers and Technology Association
California Chamber of Commerce
Civil Justice Association of California

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EXHIBIT C

SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2003-2004 Regular Session

SB 796	S
Senator Dunn	B
As Amended April 22, 2003	
Hearing Date: April 29, 2003	7
Labor Code	9
CJW	6

SUBJECT

Employment

DESCRIPTION

This bill would allow employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. The bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

This analysis reflects author's amendments to be offered in Committee.

BACKGROUND

California's Labor Code is enforced by the state Labor and Workforce Development Agency (LWDA) and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Committee on Labor and Employment held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size

(more)



California's "underground economy" - businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Ch. 662, Stats. of 2002), requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified below.

CHANGES TO EXISTING LAW

Existing law authorizes the LWDA (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. [Labor Code Secs. 201 et seq.]

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. [Labor Code Sec. 215 et seq.]

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint. [Labor Code Sec. 98.7.]

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity. [Bus. & Profs. Code Sec. 17200 et seq.]

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and

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\$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

COMMENT

1. Stated need for legislation

The California Labor Federation, co-sponsor, states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators:

In the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. . . . The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled



with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing: For example, "company store" arrangements in which workers are required to cash their checks with their employer, for a fee, allegedly are widespread in the agricultural industry. The CRLA Foundation notes that the bill's proposed penalty structure is "nominal" and is based on existing provisions of the Labor Code.

Protection & Advocacy, Inc., which supports the rights of people with disabilities, asserts that SB 796 will assist disabled employees "by providing some mechanism by which to get an employer to comply with the Labor Code."

2. SB 796 would attach civil penalties to existing provisions

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions.

Accordingly, this bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for continuing violations) to any Labor Code provision that does not already contain a financial penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of existing civil penalties attached to other Labor Code provisions, but should be significant enough to deter violations.

3. The bill would allow "aggrieved employees" to bring private actions to recover the civil penalties

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries.

Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to



labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range. [See, e.g., Unruh Civil Rights Act, Civ. Code Sec. 51 *et seq.*, allowing statutory damages in a minimum amount of \$4,000 per violation to prevailing private litigants in actions alleging denial of equal access or other forms of discrimination.]

In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff, as would occur with a damage award. Recovery of civil penalties by private litigants does have some precedent in existing law: The Unruh Civil Rights Act allows either the victim of a hate crime or a public prosecutor to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civ. Code Secs. 51.7, 52.)

4. Opponents' concerns

The employer groups opposing the bill argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing any and all types of Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both attorneys' fees and a portion of the penalties. A representative letter states:

There is a major concern that this type of statute could be abused in a manner similar to the legal community's abuse of Business and Professions Code Section 17200 when it sued thousands of small businesses for minor violations and demanded settlements in order to avoid costly litigation.

The California Chamber of Commerce argues that, since the bill would award attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already-overburdened courts because there would be no disincentive to pursue meritless claims.

The California Employment Law Council states that the the Labor Code contains "innumerable penalty provisions, many of which would be



applicable to minor and inadvertent actions." Under current law, however, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796:

If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a "private attorney general" could sue for penalties that could reach staggering amounts if . . . the inadvertent deletion of information on a paycheck went on for some time.

5. Sponsors say bill has been drafted to avoid abuse of private actions

The sponsors are mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse. First, unlike the UCL, this bill would not open private actions up to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed. (Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors.)

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself or others" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL. This would dispense with the issue of res judicata ("finality of the judgment") that is the subject of some criticism of private UCL actions. An action on behalf of other aggrieved employees would be final as to those plaintiffs, and an employer would not have to be concerned with future suits on the same issues by someone else "on behalf of the general public."

Third, the proposed civil penalties are relatively low, most of the penalty recovery would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. This distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts and under the same code provisions.

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6. Author's amendments

In order to address concerns that the bill might invite frivolous suits or impose excessive penalties, and pursuant to discussions between the sponsors and Committee staff, the author has agreed to accept the following amendments to clarify the bill's intended scope of its private right of action and the assessment and distribution of its civil penalties:

- (a) To clarify who would qualify as an "aggrieved employee" entitled to bring a private action under this section, the author will define the term as follows (at page 2, line 38):

"For purposes of this part, an aggrieved employee means any person employed by the alleged violator within the period covered by the applicable statute of limitations against whom one or more of the violations alleged in the action was committed."

The bill would further be amended to reflect that any civil penalty recoverable by the LWDA under existing law may be recovered through a civil action "brought by an aggrieved employee on behalf of himself or herself or other current or former employees" (at page 2, lines 31-36).

- (b) To clarify that civil penalties would be assessed only with respect to the number of employees aggrieved by the violation, as opposed to the total number of an alleged violator's employees, the author will amend the bill to reflect that penalties will be determined "for each aggrieved employee" instead of "per employee" (at page 3, lines 7 and 8).
- (c) To allay opponents' concerns that res judicata issues may arise if all known potential plaintiffs are not included in the private action, the author will amend the bill as follows (at page 3, lines 11-13):

"An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or ~~others~~ other current or former employees for whom evidence of a violation was developed during the trial or at settlement of the action."

- (d) To conform its attorney's fees provision with similar provisions in existing law, the author will amend the bill to delete the phrase "in whole or in part" from the provision allowing attorney's fees to be awarded to a prevailing plaintiff (at page 3, lines 13-14).



Support: American Federation of State, County and Municipal Employees (AFSCME); California Conference Board of the Amalgamated Transit Union; California Council of Machinists; California Independent Public Employees Legislative Council; California State Pipe Trades Council; California State Association of Electrical Workers; California Teamsters; Engineers and Scientists of California, Local 20; Hotel Employees, Restaurant Employees International Union; Professional and Technical Engineers, Local 21; Protection & Advocacy, Inc.; Region 8 States Council of the United Food & Commercial Workers; Western States Council of Sheet Metal Workers

Opposition: Associated General Contractors of California; California Apartment Association; California Chamber of Commerce; California Employment Law Council; California Landscape Contractors Association; California Manufacturers and Technology Association; Civil Justice Association of California (CJAC); Construction Employers' Association; Motion Picture Association of America; Orange County Business Council

HISTORY

Source: California Labor Federation AFL-CIO; CRLA Foundation

Related Pending Legislation: None Known

Prior Legislation: AB 2985 (Committee on Labor and Private Employment) (Ch. 662, Stats. of 2002) (requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003)

Prior Vote: Senate Labor & Industrial Relations Committee 5-3

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EXHIBIT D

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 796

THIRD READING

Bill No: SB 796
Author: Dunn (D)
Amended: 5/12/03
Vote: 21

SENATE LABOR & IND. RELATIONS COMMITTEE: 5-3, 4/9/03
AYES: Alarcon, Dunn, Figueroa, Kuehl, Romero
NOES: Oller, Margett, McClintock

SENATE JUDICIARY COMMITTEE: 4-2, 4/29/03
AYES: Escutia, Cedillo, Kuehl, Sher
NOES: Morrow, Ackerman

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Employment

SOURCE: California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation, Inc.

DIGEST: This bill allows employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. This bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

ANALYSIS: Existing law authorizes the State Labor and Workforce Development Agency (LWDA) (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

CONTINUED

LIS - 8

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code.

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint.

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity.

This bill is entitled the "Labor Code Private Attorneys General Act of 2004."

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the

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General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

Background

California's Labor Code is enforced by LWDA and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Labor and Employment Committee held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the State Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Senate Judiciary Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size California's "underground economy" -- businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations

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by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Assembly Labor and Employment Committee), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified.

Prior legislation

AB 2985 (Assembly Labor and Employment Committee), Chapter 662, Statutes of 2002, requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/19/03)

- California Labor Federation, AFL-CIO (co-source)
- California Rural Legal Assistance Foundation, Inc.(co-source)
- American Federation of State, County and Municipal Employees (AFSCME)
- California Applicants Attorneys Association
- California Conference Board of the Amalgamated Transit Union
- California Council of Machinists
- California Independent Public Employees Legislative Council
- California State Pipe Trades Council
- California State Association of Electrical Workers
- California Teamsters
- Engineers and Scientists of California, Local 20
- Hotel Employees, Restaurant Employees International Union

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Peace Officers Research Association of California
Professional and Technical Engineers, Local 21
Protection and Advocacy, Inc.
Region 8 States Council of the United Food and Commercial Workers
Western States Council of Sheet Metal Workers

OPPOSITION: (Verified 5/19/03)

Associated Builders and Contractors of California
Associated General Contractors of California
California Apartment Association
California Chamber of Commerce
California Employment Law Council
California Landscape Contractors Association
California Manufacturers and Technology Association
Civil Justice Association of California (CJAC)
Construction Employers' Association
Motion Picture Association of America
Orange County Business Council

ARGUMENTS IN SUPPORT: Proponents, the California Labor Federation asserts that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of

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any misdemeanor prosecution having been undertaken in relation to these code sections.

ARGUMENTS IN OPPOSITION: Opponents contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

NC:s1 5/21/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

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EXHIBIT E

Date of Hearing: July 9, 2003

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Paul Koretz, Chair

SB 796 (Dunn) – As Amended: July 2, 2003

SENATE VOTE: 21-14

SUBJECT: Employment.

SUMMARY: Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 3) Defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."
- 4) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund, 25% to the Labor and Workforce Development Agency (LWDA) for employer and employee education, and 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between General Fund and the LWDA.
- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action.

EXISTING LAW

- 1) Authorizes the LWDA (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.
- 2) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the law, and to sue the employer directly for damages, reinstatement, and other appropriate relief.

- 3) Authorizes the Attorney General and other public prosecutors to seek appropriate injunctive relief and file criminal charges against employers for criminal violations of the Labor Code, where specified.
- 4) Further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and other appropriate remedies.

FISCAL EFFECT: This measure was approved by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS: Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

The Labor Code is enforced by the LWDA and its various subordinate entities, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

The State of Labor Law Enforcement in California

At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so adequately due to budgetary and staff constraints. The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that [s]taffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future."

In 2001, the Assembly Committee on Labor and Employment conducted hearings regarding the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR). The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the Division of Labor Standards Enforcement (DLSE) within DIR for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size of California's "underground economy" – businesses operating outside the state's tax and licensing requirements – ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but that DIR was issuing fewer than 100 wage citations per year for all industries throughout the state.

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Moreover, evidence demonstrates that the resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California. California's enforcement agencies are responsible for protecting the legal rights of over 17 million California workers and regulating almost 800,000 private establishments, in addition to all the public sector workplaces in the state (U.S. Census Bureau 1999). However, according to a recent study, the resources available to the labor enforcement divisions remain below the levels of the mid-1980s. (Bar-Cohen, Limor and Deana Milam Carillo. "Labor Law Enforcement in California, 1970-2000." The State of California Labor. (2002), p. 135). According to the same study, between 1980 and 2000 California's workforce grew 48 percent, while DLSE's budgetary resources increased only 27 percent and Cal/OSHA's actually decreased 14 percent. Similarly, DLSE and Cal/OSHA staffing levels have decreased 7.6 percent and 10.8 percent, respectively, over the last two decades.

As a result of the legislative hearings discussed above, the Legislature enacted AB 2985 (Assembly Committee on Labor and Employment), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

Arguments in Support:

The co-sponsors of the measure, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance (CRLA) Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. The CRLA Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs, for example, when the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. The CRLA Foundation notes that the bill's proposed penalty structure is "nominal" and is based on existing provisions of the Labor Code.

Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact the LWDA and its enforcement activities.

Arguments in Opposition:

Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken the danger of the bill to recent alleged abuse of Business and Professions Code Section § 17200. Representative of this sentiment is the California Landscape Contractors Association, who notes:

[This bill] will create an entirely new litigation arena that will encourage employees, particularly employees who were terminated or subject to a disciplinary action, to file retaliatory claims against their employer. As we have seen with similar causes of action under Section 17200..., innocent businesses will be pressured to settle these claims because of the high cost of defense and the relatively small amounts involved.

Opponents also contend that California already has a formal administrative procedure to handle these type of claims under the Labor Code that is both economical and efficient.

Relationship Between SB 796 and the "Unfair Competition Law" (UCL):

As discussed above, some opponents have expressed concern about the relationship between this bill and the "Unfair Competition Law" (UCL), Section 17200, *et seq.*, of the Business and Professions Code. As reported in press accounts and further illuminated by a joint legislative hearing conducted earlier this year by the Senate and Assembly Committees on Judiciary, there have been allegations of abuse of the UCL by certain law firms and individual attorneys. In light of the recent attention focused on the UCL, a brief discussion of that law's relationship to this bill, and the arguments thereto on both sides, is warranted here.

California law has contained a statute prohibiting "unfair" practices in competition since the first Civil Code was enacted in 1872. Numerous amendments to the UCL and case law interpreting its provisions have provided broad and expansive protections to California consumers to prevent businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

Although the UCL permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsor claim is not a sufficient deterrent to labor law violations. Second, since the UCL does not award attorney's fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, sponsors assert that since most employees fear they will be fired or subject to



hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Opponents, on the other hand, argue that this measure, if enacted, will result in abuse similar to that alleged involving the UCL. For example, the Civil Justice Association of California (CJAC) argues that this bill will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. CJAC argues that similar private attorney general actions have resulted in an excessive amount of meritless, fee-motivated lawsuits. Allowing such "bounty hunter" provisions will increase costs to businesses of all sizes, and add thousands of new cases to California's already over-burdened civil court system.

Similarly, the California Motor Car Dealers Association, writing in opposition to the bill, states, "a private enforcement statute in the hands of unscrupulous lawyers is a recipe for disaster."

The sponsors are mindful of the recent, well-publicized allegations of private plaintiffs abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse, pointing to amendments taken in the Senate to clarify the bill's intended scope. First, unlike the UCL, this bill would not open up private actions to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could only be brought by an "aggrieved employee" – an employee of the alleged violator against whom the alleged violation was committed.

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself and other current or former employees" – that is, fellow employees also harmed by the alleged violation – instead of "on behalf of the general public," as private suits are brought under the UCL.

Third, the proposed civil penalties are relatively low. Most of the penalty recover would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. The sponsors contend that this distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts or theories under the same code provisions.

Related Legislation:

AB 276 (Koretz) of 2003 increases various civil penalties under the Labor Code, many of which have not been increased for decades. AB 276 is currently pending before the Senate Committee on Labor and Industrial Relations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Pipe Trades Council
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California Teamsters Public Affairs Council
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California (PORAC)
Professional and Technical Engineers, Local 21
Region 8 States Council of United Food & Commercial Workers
Sierra Club California
Western States Council of Sheet Metal Workers

Opposition

Alliance of American Insurers
Associated Builders and Contractors of California
Association of California Water Agencies
California Apartment Association
California Chamber of Commerce
California Landscaper Contractors Association
California Manufacturers & Technology Association
California Motor Car Dealers Association
California Restaurant Association
Civil Justice Association of California
Motion Picture Association of America, California Group
Wine Institute

Analysis Prepared by: Ben Ebbink / L. & E. / (916) 319-2091

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EXHIBIT F

Date of Hearing: June 26, 2003

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 796 (Dunn) – As Amended: May 12, 2003

As Proposed to be Amended

SENATE VOTE: 21-14

SUBJECT: LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

KEY ISSUES:

- 1) SHOULD CIVIL PENALTIES BE ESTABLISHED, AS SPECIFIED, FOR THE VIOLATION OF LABOR CODE PROVISIONS FOR WHICH THERE IS NO CURRENT CIVIL PENALTY?
- 2) SHOULD AGGRIEVED EMPLOYEES BE EMPOWERED TO ENFORCE EXISTING LABOR CODE OBLIGATIONS BY PRIVATE ACTIONS FOR CIVIL PENALTIES TO BE DISTRIBUTED PRIMARILY TO THE STATE?

SYNOPSIS

This bill, co-sponsored by the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, is designed to improve enforcement of existing Labor Code obligations. The first part of the bill prescribes a civil penalty for those existing Labor Code sections for which a civil penalty has not otherwise been established. The second part of the bill provides that an aggrieved employee may bring a private action on behalf of himself or herself and other current or former employees to enforce civil penalties for employer violations of the Labor Code, if the Labor and Workforce Development Agency (LWDA) does not issue a citation for a violation of the same sections on the same facts and theories. Seventy-five percent of the civil penalties imposed by a court would be distributed to the General Fund and to the LWDA for education of employers and workers regarding labor law obligations; 25% would go to the aggrieved employee(s). Prevailing employees would be permitted to recover attorneys' fees in these cases. Opponents representing employers argue that the bill will foster frivolous litigation, and lawsuits for minor or technical violations of the law, and accordingly will drive up the cost of doing business.

SUMMARY: Enacts the Labor Code Private Attorneys General Act of 2004. Specifically, this bill:

- 1) Provides that any Labor Code violation for which specific civil penalties have not otherwise been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. The penalty would be \$500 per violation for a violator who is not an employer.



- 2) Provides that an aggrieved employee may sue to recover civil penalties under the Labor Code, as well as attorneys' fees and costs, in an action brought on behalf of himself or herself and other current or former employees. However, no private action may be maintained where the state labor agency (LWDA) issues a citation against the alleged violator on the same facts and under the same section or sections of the Labor Code.
- 3) Provides that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employee(s). In the case of penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, the funds would be divided evenly between the General Fund and the LWDA.

EXISTING LAW:

- 1) Authorizes the LWDA (composed of the Department of Industrial Relations (DIR), the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. (Labor Code section 201 et seq. All further statutory references are to this code unless otherwise noted.)
- 2) Authorizes the Attorney General (AG) and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. (Section 215 et seq.)
- 3) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, other appropriate relief and attorneys' fees if the Commissioner declines to bring an action based on the employee's complaint. (Section 98.7.)
- 4) Provides that the AG, other prosecutors and any person acting for him or herself, members of a group or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and that a court may make any orders or judgments as may be necessary to prevent the use or employment by any entity of any practice which constitutes unfair competition, including issuing an injunction or appointing a receiver, and may order restitution of any money or property which may have been acquired by means of the unfair competition. (Business and Professions Code sections 17203 and 17535.)

FISCAL EFFECT: The bill as currently in print is keyed fiscal.

COMMENTS: In support of this measure, the author states: "This bill is critical to the enforcement of worker's rights. California has some important worker protections in statute – some of the strongest in the nation. However, these laws are meaningless if they are not enforced. Workers must be able to seek redress against employers who break the law."

Co-sponsor California Labor Federation states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators. The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states



that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing.

This Bill Provides Specified Civil Penalties for Violations of Existing Labor Code Provisions. The Labor Code is enforced by the LWDA, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the AG and other public prosecutors. As the author notes, however, some provisions of the Labor Code have criminal penalties but no civil penalties. The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, supporters argue, Labor Code violations rarely result in criminal investigations and prosecutions. As a result, supporters state, employers may violate the law with impunity.

This bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for subsequent violations) for any Labor Code provision that does not otherwise specify a civil penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of the range of existing civil penalties for violation of other Labor Code provisions, but should be significant enough to deter violations. Indeed, serious safety and health violations are punishable by civil penalties up to \$25,000. (Section 6428.) Civil penalties collected in any such action would be distributed as follows: 50 % to the General Fund, 25 % to the LWDA for education of employers and workers regarding labor law obligations, and 25 % to the aggrieved employee(s). If the defendant is not an employer (e.g., a labor contractor who violates licensing obligations), the entire civil penalty recovery would be distributed to the General Fund and the LWDA.

The Bill Would Allow Aggrieved Employees To Bring Private Actions To Recover Civil Penalties. The author states: "Unfortunately, creating a civil penalty is not enough. As we face a budget crisis of epic proportions, the enforcement staff of state labor law enforcement agencies is being cut. A civil penalty is meaningless to an injured worker if there is no mechanism to collect the penalty. This bill allows the employee to seek redress directly where the state has not done so on the employee's behalf. Additionally, SB 796 helps generate revenues to the state at a time when we need them."

According to the California Labor Federation, in the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries. Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL permits private litigants to obtain only injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to some labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford

to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil penalties are recoverable only by prosecutors, not by private litigants, and the monies are paid directly to the government. However, recovery of civil penalties by private litigants does have precedent in the law. For example, the Unruh Civil Rights Act allows the victim of a hate crime to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civil Code sections 51.7, 52.) In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff.

Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors under this bill, not by private parties.

Current Law Allows Private Actions for Injunctive Relief For Violations of the Labor Code, As Well As Money Damages For Some Labor Code Violations. Under the UCL, employers may be sued by employees and other private parties for injunctive relief for violation of any provision of the Labor Code. In addition, some Labor Code provisions allow for private actions for money damages, including attorneys' fees. As noted above, employers are also subject to civil penalties and criminal prosecution for some Labor Code violations. Thus, the primary change effected by this bill would be to add the specified civil penalties to private actions for violations of the Labor Code.

Only Persons Who Have Actually Been Harmed May Bring An Action to Enforce The Civil Penalties. Mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, the sponsors state that they have attempted to craft a private right of action that will not be subject to such abuse. Unlike the UCL, this bill would not permit private actions by persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an employee or former employee of the alleged violator against whom the alleged violation was committed. This action could also include fellow employees also harmed by the alleged violation. Because there is no provision in the bill allowing for private prosecution on behalf of the general public, there is no issue regarding the lack of finality of judgments against employers, as there has been with respect to private UCL actions. In addition, the bill precludes any private action when the LWDA issues a citation on the same facts and under the same code provisions. Thus, there is no prospect of public and private prosecution for the same violation.

The sponsors state that because the proposed civil penalties are relatively low and nearly all of the penalty recovery would be divided between the LWDA and the General Fund, the addition of civil penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

ARGUMENTS IN OPPOSITION: The employer groups opposing the bill do not contest the provision imposing new civil penalties. However, they argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing frivolous Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both



attorneys' fees and a portion of the penalties. Opponents liken the danger of the bill to the recent abuse of the UCL by the Trevor Law Group.

The California Chamber of Commerce argues in particular against allowing recovery of attorneys' fees, contending that recovery for the aggrieved party would be minimal and secondary to attorneys' fees and cost. In addition the Chamber argues that since the bill would allow for an award of attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already overburdened courts because there would be no disincentive to pursue meritless claims. Moreover, the Chamber contends, since the bill does not contain any requirement for the employee to exhaust the administrative procedure or even file the claim with the Labor Commissioner before filing with the civil court, SB 796 is an open invitation for bounty hunting attorneys to aggressively pursue these cases.

The California Employment Law Council states that the Labor Code contains innumerable penalty provisions, many of which would be applicable to minor and inadvertent actions. Under current law, CELC argues, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796. If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a private attorney general could sue for penalties that could reach staggering amounts if the inadvertent deletion of information on a paycheck went on for some time, CELC argues.

The Civil Justice Association of California likewise opposes the measure, writing:

If enacted, SB 796 will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. It will drive up costs to businesses and taxpayers, and further California's reputation for having an unfair liability law system. ... The Legislature should find another solution to the staffing problems of state agencies rather than "deputizing" employees who would usually hire a private attorney to act as a private attorney general.

ARGUMENTS IN SUPPORT: In response to opposition arguments, supporters contend that this bill is consistent with other provisions of the Labor Code. With respect to attorneys' fees, supporters argue that the bill adopts the customary Labor Code approach that attorneys' fees are limited to a prevailing employee. Supporters also note that current law provides sanctions for any frivolous filings. On the issue of exhaustion of administrative procedures, supporters contend that there is no current requirement that employees file claims with the LWDA or exhaust administrative procedures prior to bringing an action for violation of their rights. As increasing the cost to business, supporters contend that it is more accurate to state that the bill will increase the cost of violating established labor standards.

Author's Technical Amendments. In order to clarify the intent of the bill and correct drafting errors, the author properly proposes the following amendments:

On page 3, line 4, to correct a drafting error, the bill should read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development

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Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself ~~or~~ *and* other current or former employees.

On page 3, lines 9-10, in order to avoid confusing the statute of limitations with the standing requirement, the bill should read:

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator ~~within the period of time covered by the applicable statute of limitations~~ and against whom one or more of the alleged violations was committed.

On page 3, starting on line 14, to clarify the author's intent, the bill should read:

(d) For all provisions of this code except those for which a civil penalty ~~has already been established is specifically provided~~, there is established a civil penalty for a violation of these provisions, as follows:

(1) ~~If, at the time of the alleged violation~~, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) ~~If, at the time of the alleged violation~~, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

On page 3, beginning on line 24, to correct a drafting error and otherwise more clearly state the author's intention, the bill should read:

(e) An aggrieved employee may recover the civil penalty described in subdivision (b) ~~d~~ in a civil action filed on behalf of himself or herself and other current or former employees ~~for whom evidence of a violation was developed during the trial or during settlement of the action against whom one or more of the alleged violations was committed~~. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

On page 4, line 1, in order to clarify the author's intention and improve the operation of the statute, the bill should read:

(f) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others ~~and or initiates a proceedings to collect applicable penalties pursuant to section 98.3.~~

On page 4, line 4, in order to correct a drafting error, "subdivision (g)" should be changed to "subdivision (h)"



Prior Related Legislation. AB 2985 (Committee on Labor and Private Employment), Chap. 662, Stats. of 2002, required the Labor and Workforce Development Agency to contract with an independent research organization to study the most effective ways to enforce wage and hour laws and to identify all available state and federal resources available for enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO (co-sponsor)
California Rural Legal Assistance Foundation (co-sponsor)
American Federation of State, County and Municipal Employees (AFSCME)
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California
Professional & Technical Engineers, Local 21
Protection and Advocacy Inc
Region 8 States Council of the United Food and Commercial Workers
Sierra Club California
Western States Council of Sheet Metal Workers

Opposition

Associated Builders and Contractors of California
Associated General Contractors
Association of California Water Agencies
California Apartment Association
California Association of Sheet Metal and Air Conditioning Contractors
California Chamber of Commerce
California Employment Law Council
California Landscape Contractors Association
California Manufacturers and Technology Association
California Motor Car Dealers Association
California Restaurant Association
Civil Justice Association of California
Construction Employers Association
Lumber Association of California and Nevada
Orange County Business Council

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334



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DECLARATION OF ANNA MARIA BERECZKY-ANDERSON

I, Anna Maria Berezky-Anderson, declare:

I am an attorney licensed to practice in California, State Bar No. 227794, 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 Senate Bill 796 of 2003. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Senate Bill 796 was approved by the Legislature and was enacted as Chapter 906 of the Statutes of 2003.

The following list identifies all documents purchased on June 12, 2018, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Senate Bill 796 of 2003. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

SENATE BILL 796 OF 2003:

1. All versions of Senate Bill 796 (Dunn-2003);
2. Procedural history of Senate Bill 796 from the 2003-04 *Senate Final History*;
3. Analysis of Senate Bill 796 prepared for the Senate Committee on Labor and Industrial Relations;
4. Material from the legislative bill file of the Senate Committee on Labor and Industrial Relations on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - + b. Updated Collection of Material;

5. Analysis of Senate Bill 796 prepared for the Senate Committee on Judiciary;
6. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 7. Material from the legislative bill file of the Senate Committee on Appropriations on Senate Bill 796;
8. Third Reading analysis of Senate Bill 796 prepared by the Office of Senate Floor Analyses;
9. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 796;
10. Material from the legislative bill file of the Senate Republican Office of Policy on Senate Bill 796;
11. Material from the legislative bill file of the Senate Republican Fiscal Office on Senate Bill 796;
12. Analysis of Senate Bill 796 prepared for the Assembly Committee on Labor and Employment;
13. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 14. Analysis of Senate Bill 796 prepared for the Assembly Committee on Judiciary;
15. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 16. Analysis of Senate Bill 796 prepared for the Assembly Committee on Appropriations;
17. Material from the legislative bill file of the Assembly Committee on Appropriations on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 18. Two Third Reading analyses of Senate Bill 796 prepared by the Assembly Committee on Labor and Employment;
19. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 796;
20. Unfinished Business analysis of Senate Bill 796 prepared by the Office of Senate Floor Analyses;
21. Material from the legislative bill file of Senator Joe Dunn on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 22. Material from the legislative bill file of Senator Joe Dunn on Senate Bill 796 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;

22. Post-enrollment documents regarding Senate Bill 796;
23. Press Release #L03:194 issued by the Office of the Governor on October 12, 2003, to announce that Senate Bill 796 had been signed;
24. Excerpt regarding Senate Bill 796 from the *Digest of Legislation*, prepared by the Office of Senate Floor Analyses, November 2003;
25. Material from the legislative bill file of the Department of Finance on Senate Bill 796;
26. Article entitled "Senate OKs Consumer Privacy Bill" from the *Los Angeles Times*, May 30, 2003, obtained from <http://www.latimes.com>;
27. Excerpt regarding Senate Bill 796 from the *2003-2004 Legislative Summary*, prepared by the Senate Committee on Labor and Industrial Relations, October 22, 2004;
28. Excerpt regarding Senate Bill 796 from the *2003-2004 Bill Summary*, prepared by the Assembly Committee on Judiciary.

+

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 12th day of June, 2018 at Woodland, California.



ANNA MARIA BERECZKY-ANDERSON

In the
Supreme Court
of the
State of California

JUSTIN KIM,

Plaintiff and Appellant,

v.

REINS INTERNATIONAL CALIFORNIA,

Defendant and Respondent.

APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT CASE NO. B278642
SUPERIOR COURT OF LOS ANGELES COUNTY, NO. BC539194,
HON. KENNETH FREEMAN

**[PROPOSED] ORDER GRANTING MOTION FOR JUDICIAL
NOTICE**

Pursuant to Evidence Code sections 451, 452, 453, and 459, and
Rules 8.252(a) and 8.520(g) of the California Rules of Court, Petitioner
Justin Kim's motion for judicial notice is hereby granted.

Date: _____

JUSTICE

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the State of New York, County of New York. I am over the age of 18 and not a party to the within action. My business address is 7 West 36th Street, New York, New York 10018.

On June 25, 2018, I served the foregoing document described as **MOTION FOR JUDICIAL NOTICE** on the interested parties in this action.

I caused the above document(s) to be served on each person on the attached list by the following means:

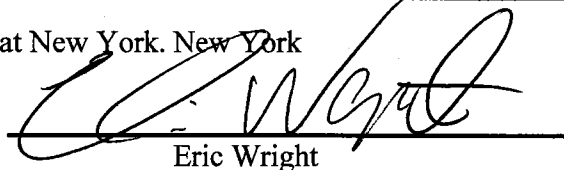
I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on June 25, 2018, following the ordinary business practice. As indicated in the service list attached, each listed individual or court is served as indicated.

I electronically served a copy of the foregoing document via the court's TrueFiling portal on June 25, 2018, following the ordinary business practice. As indicated in the service list attached, each listed individual or court is served as indicated.

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

ERIC F WRIGHT
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WR6362222
KINGS COUNTY 7/31/21
COMM. EXP. _____

Executed on 25th day of June, 2018, at New York, New York


Eric Wright

SERVICE LIST

*Justin Kim v. Reins International California
Supreme Court of the State California Case No. S246911
Second Appellate District, Division Four, Case No. B278642
Superior Court of Los Angeles County, Case No. BC539194*

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ELECTRONICALLY SERVED
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT — DIVISION FOUR

(Served via TrueFiling)