

Supreme Court No. S289305

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

CHRISTINA LEEPER,

Plaintiff and Respondent,

v.

SHIPT, INC.; TARGET CORPORATION,

Defendants and Appellants.

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Division One, Case No. B339670

EXHIBITS TO MOTION FOR JUDICIAL NOTICE

**[Filed in Support of Application for Permission to File
Amici Curiae Brief and Proposed *Amici Curiae* Brief]**

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Dated: January 7, 2026

Respectfully submitted,

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Exhibit A

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

SB 796	S
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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)

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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



\$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.



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 B

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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.

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- 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



Exhibit C

Document received by the CA Supreme Court.

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.

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Document received by the CA Supreme Court.

- 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



Exhibit D

Document received by the CA Supreme Court.

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CHIEF OF STAFF

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California State Senate

SENATOR
JOSEPH L. DUNN
THIRTY-FOURTH SENATORIAL DISTRICT



September 16, 2003

COMMITTEES:
CHAIR, BUDGET AND FISCAL REVIEW
SUBCOMMITTEE #4
BANKING, COMMERCE AND
INTERNATIONAL TRADE
ENERGY, UTILITIES AND
COMMUNICATIONS
GOVERNMENTAL ORGANIZATION
HOUSING AND COMMUNITY
DEVELOPMENT
LABOR & INDUSTRIAL RELATIONS
VETERANS AFFAIRS

SELECT COMMITTEES:
CHAIR, INVESTIGATE PRICE
MANIPULATION OF THE
WHOLESALE ENERGY MARKET
CHAIR, MOBILE AND
MANUFACTURED HOMES
CHAIR, CITIZEN PARTICIPATION

JOINT COMMITTEE:
JOINT RULES

Honorable Gray Davis
State Capitol
Sacramento, CA 95814

Dear Governor:

I would appreciate your signature on SB 796, a bill co-sponsored by the California Labor Federation and the California Rural Assistance Foundation. The bill has widespread support by the labor community.

This bill increases enforcement of current Labor Code provisions by establishing civil penalties for existing violations of the Labor Code and allowing aggrieved employees to bring a civil action when the state does not pursue such an action on their behalf.

California has important worker protections in statute – some of the strongest in the nation. However, these laws are meaningless if not enforced. Despite increases made by your administration to staff for state labor law enforcement, there are only 14 more enforcement staff positions now than there were 15 years ago – while there are three million more workers. Unfortunately, further gains are unlikely because enforcement staff are being cut as a result of the budget crisis.

SB 796 creates penalties and a way to collect them, giving harmed employees the ability to enforce labor laws themselves. The establishment of fines is critical because there are many provisions of the Labor Code for which there are criminal penalties, but for which there are no civil penalties. Local district attorneys are likely to prosecute only the most heinous of Labor Code violations, which leaves injured workers without redress for many code provisions.

For example, the Labor Code requires employers to supply drinking water. However there is no civil penalty for violating this provision of law, only a criminal one. It is unlikely that a district attorney would prosecute this case, yet it is a very important safety provision for workers – especially farmworkers.

Unfortunately, imposing a fine is not enough. A civil penalty is meaningless to an injured worker if there is no one to collect it. SB 796 allows employees to go to court to collect the fine when the state has not done so on their behalf.

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The opposition to this measure argues that this bill invites the same types of abuses that have arisen under Business & Professions Code Section 17200. That is untrue. SB 796 has been drafted to protect against the types of problems that have surfaced around 17200.

First, the primary criticism of 17200 is that anyone has standing to bring a lawsuit. That is not the case under SB 796. Only aggrieved employees can bring actions. Unlike 17200 cases where an attorney can find any plaintiff to file a suit, under SB 796 a case can't be brought on behalf of the general public. It can't even be brought on behalf of an aggrieved employee if the plaintiff themselves has not also been harmed.

Second, SB 796 only allows employees to keep 25 percent of the fine (with the rest going back to the state general fund and labor agency). It is hardly a get rich quick scheme.

The bill contains two other important protections for employers. An employee can't bring an action in court if the labor commissioner is already pursuing the claim. Also, employers are protected from excessive fines by a provision that gives a judge discretion to adjust a civil penalty if a judge believes that the penalties are disproportionate to the violation.

Fundamentally, we have a choice. We can choose to enforce our labor laws or we can ignore them. If we want our worker protections to be more than just words on a page, then we have to provide a method for enforcement.

We likely agree that government is best suited to enforce these laws. Unfortunately, government has failed to keep pace with the growing workforce – and none of us can say with certainty that there will be more money in the budget for enforcement any time soon. Given that reality, do we tell injured workers that they have to wait 10 years until we have a better budget situation before they can expect their employer to follow the law? I hope not.

I respectfully request you sign SB 796 into law to allow workers to seek redress against employers who break the law. I appreciate your consideration.

Very truly yours,



JOSEPH L. DUNN
Senator, 34th District

JLD/el

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Exhibit E

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ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: SB 796 **AUTHOR:** Dunn **DATE:** 10/21/03 **DATE DUE:** 10/12/03

SENATE: 21-14 **ASSEMBLY:** 42-34 **CONCURRENCE:** 21-17

REVIEWED BY: **RECOMMENDATION:** Sign Veto

SUMMARY: This bill would enact the Private Attorneys General Act of 2004 for enforcement of the Labor Code and states that aggrieved employees would be allowed to bring civil actions to recover penalties for any alleged violation of the Labor Code that the Labor and Workforce Development Agency does not take action on. Any penalties collected would be distributed amongst the General Fund (50%), Labor and Workforce Development Agency (25%), and the aggrieved employee (25%).

SPONSOR: California Labor Federation
California Rural Legal Assistance Foundation

SUPPORT: American Federation of State, County and Municipal Employees
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
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: California Labor and Workforce Development Agency
Department of Industrial Relations
Department of Finance

FISCAL IMPACT: This bill would result in unknown additional revenue to the state to the extent civil penalties are assessed and recovered. It is not likely that this revenue would be significant. This bill could increase state trial court caseloads, which would create pressure for additional General Fund resources and could create delays in the court system. It is possible that this bill could create an unnecessary burden on employers to the extent that they are prosecuted for frivolous or retaliatory reasons. In addition, note that though this bill would authorize prevailing employees to recover attorneys' fees and costs, no such provision is available for employers that prevail.

ARGUMENTS IN SUPPORT: Proponents argue 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. They also note that resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking.

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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.

BACKGROUND INFORMATION: AB 2985 (Negrete-McLeod, 2002) requires the Labor and Workforce Development Agency to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal sources that may be utilized to enhance Labor Code enforcement. The completed study is to be submitted to the Legislature by December 31, 2003. The Labor and Workforce Development Agency is responsible for coordinating and enforcing labor laws and workforce development activities in the state.

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Exhibit F

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SENATE RULES COMMITTEE

SB 1809

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1809
Author: Dunn (D)
Amended: 7/27/04
Vote: 27 - Urgency

SENATE LABOR & INDUST. RELATIONS COMMITTEE: 7-1, 4/28/04

AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock, Romero

NOES: Oller

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 21-13, 5/26/04

AYES: Alarcon, Bowen, Burton, Cedillo, Chesbro, Dunn, Escutia,
Figueroa, Florez, Karnette, Kuehl, Murray, Ortiz, Perata, Romero, Scott,
Soto, Speier, Torlakson, Vasconcellos, Vincent

NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham,
Hollingsworth, Johnson, Margett, McPherson, Morrow, Oller,
Poochigian

NO VOTE RECORDED: Alpert, Ducheny, Machado, McClintock, Sher,
Vacancy

ASSEMBLY FLOOR: Not available

SUBJECT: Labor Code Private Attorneys General Act of 2004

SOURCE: California Rural Legal Assistance Foundation

DIGEST: This bill significantly amends "The Labor Code Private Attorneys General Act of 2004" [SB 796 (Dunn), Chapter 906, Statutes of 2003], by enacting specified procedural and administrative requirements that

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must be met prior to bringing a private action to recover civil penalties for Labor Code violations.

Assembly Amendments delete the prior version, however, the subject remains the same. As it left the Senate, the bill amended the Act to (1) clarify that a court has discretion to award less than the maximum civil penalty, and (2) eliminate the ability of employees to recover civil penalties for violation of “posting” or “notice” provisions.

ANALYSIS: Existing law allows employees to bring civil actions against their employers to recover penalties for violations of the Labor Code if the LWDA, or its subordinate agencies or employees do not do so. LWDA enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act. Any penalties recovered by an aggrieved employee must be distributed as follows: 50 percent to the General Fund, 25 percent to LWDA for employer education and 25 percent to the aggrieved employees.

This bill significantly amends “The Labor Code Private Attorneys General Act of 2004” by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations. Specifically, this bill:

Serious Labor Code Violations. Establishes a new procedure that an aggrieved employee must follow prior to bringing a civil action to recover penalties for enumerated, serious Labor Code violations (including, but not limited to, violations of wage and hour, overtime, child labor, agricultural, entertainment and garment industry labor laws, and public works laws).

1. The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.
2. If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
3. If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

Notice and Cure Procedures for Other Labor Code Violations. Establishes Notice and Cure provisions for those Labor Code violations not enumerated in paragraph (1) above, nor subject to the Cal-OSHA provisions specified in the health and safety violations section below.

1. The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
2. The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
3. If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
4. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
5. For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.
6. If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.
7. No employer may avail himself or herself of the Notice and Cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

Health and Safety (Cal-OSHA) Violations. Establishes a new procedure that an aggrieved employee must follow prior to initiating a civil action to recover penalties for violations of Labor Code provisions pertaining to occupational safety and health (Cal-OSHA), other than sections that are specifically enumerated in the serious Labor Code violations section above.

1. The aggrieved employee must give written notice to the Division of Occupational Safety and Health (DOSH) within the State Department of Industrial Relations (DIR) and the employer of the alleged violation.
2. DOSH must inspect or investigate the alleged violation pursuant to existing provisions of law.
3. If DOSH issues a citation, no civil action pursuant to SB 796 may commence.
4. If, by the end of the period for inspection or investigation, DOSH fails to issue a citation and the employee disputes that decision, the employee may challenge the decision in the superior court. If the court finds that DOSH should have issued a citation and orders DOSH to issue a citation, then no civil action pursuant to SB 796 may commence.
5. If DOSH fails to inspect or investigate the alleged violation within the period specified in existing law, the Notice and Cure provisions outlined above apply to the determination of the alleged violation.
6. Requires superior court review of any proposed settlement of alleged safety in employment violations to ensure that they are at least as effective as the protections or remedies provided in federal and state law.

Judicial Discretion Over Award Amounts. Authorizes a court to award a lesser amount than the maximum civil penalty amount allowed if to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”

Exemption for Minor Violations. Provides that no action under SB 796 may be brought for any violation of a posting, notice, agency reporting, or filing requirement except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

Prohibition on Retaliation. Prohibits an employer from retaliating against any employee that brings a civil action under SB 796 in the form of discharge or any manner of discrimination.

Comments

The California Rural Legal Assistance Foundation, the bill's sponsor, argue that last year's enactment of SB 796, (Dunn), Chapter 906, Statutes of 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf. Today, the budget picture is even worse and SB 796 is still good policy.

Background. SB 796 established an alternative "private attorneys general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. SB 796 established a civil penalty where one was not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, \$200 for each aggrieved employee per pay period for subsequent violations, and \$500 per violation where the violator did not employ any employees at the time of the violation.

SB 796 authorizes an aggrieved employee to recover civil penalties plus reasonable attorney's fees and costs 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. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable only as 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 resulted in criminal investigations and prosecutions.

Rationale. Business groups and others opposed to SB 796 argue that it tips the balance of labor law protection in disproportionate favor of employees, by encouraging private attorneys to act as bounty hunters pursuing frivolous violations on behalf of employees, in the same manner in which Section 17200 of the Business and Professions Code has been abused.

This bill significantly amends the provisions of SB 796 by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties. Moreover, this bill provides that no action shall be brought for a posting, notice, agency reporting, or filing requirement, except as specified.

This bill also expands judicial review of SB 796 claims by requiring courts to review and approve any penalties sought as part of a proposed settlement agreement, and those portions of settlements concerning violations of health and safety laws. In addition, courts are authorized to award a lesser amount if to do so otherwise results in an award that is unjust, arbitrary and oppressive, or confiscatory.

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

Appropriates \$150,000 from the General Fund to the Labor Agency to implement this act. The Labor Agency indicates that its costs likely will exceed this amount, and it will redirect resources as necessary to accomplish the purposes of this act.

Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs one or more employees, as follows:

1. Increases the amount distributed to the Labor Agency for enforcement and education from 25 percent to 75 percent, and adds a continuous appropriation for these purposes.
2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.
3. Retains the current distribution of 25 percent of these civil penalties to the aggrieved employees.

Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs does not employ one or more employees, as follows:

1. Increases the amount distributed to the Labor Agency for enforcement and education from 50 percent to 100 percent, and adds a continuous appropriation for these purposes.

CONTINUED

SFA - 30b

2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.

(The Labor Agency reports that most civil actions brought to date under SB 796 have been settled out of court, where these civil penalty distributions formulas do not apply. To date, the Labor Agency has only received distribution of civil penalty revenues, totaling less than \$100.)

SUPPORT: (Verified 7/28/04)

American Federation of Television and Radio Artists
California Chamber of Commerce
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Labor Federation
California Manufacturers and Technology Association
California Restaurant Association
California Rural Legal Assistance Foundation
California Teamsters Public Affairs Council
Engineers and Scientists of California
Hotel Employees, Restaurant Employees International Union
Jockeys' Guild
Professional and Technical Engineers, Local 21
Region 8 States Council of the United Food & Commercial Workers

NC:mel 7/28/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

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Exhibit G

Document received by the CA Supreme Court.

(Without Reference to File)

SENATE THIRD READING
SB 1809 (Dunn)
As Amended July 27, 2004
2/3 vote. Urgency

SENATE VOTE :21-13

LABOR AND EMPLOYMENT 6-2 JUDICIARY 6-3

Ayes: Koretz, Mullin, Chan, Chu, Laird, Leno	Ayes: Corbett, Jackson, Lieber, Longville, Montanez, Steinberg
Nays: Shirley Horton, Campbell	Nays: Harman, Bates, Dutton

APPROPRIATIONS

(vote not available)

SUMMARY : Amends the "Labor Code Private Attorneys General Act of 2004," enacted pursuant to SB 796 (Dunn), Chapter 906, Statutes of 2003. Specifically, this bill :

- 1) Enumerates certain sections of the Labor Code for which the following procedural and administrative requirements apply:
 - a) The aggrieved employee shall give written notice to the Labor and Workforce Development Agency (LWDA) and the employer of the alleged violation;
 - b) Within 30 calendar days, LWDA shall notify the employer and the employee if it does not intend to investigate the alleged violation. Upon such notice, or if no notice is provided, the aggrieved employee may proceed with a civil action;
 - c) If LWDA intends to investigate the alleged violation, it shall notify the employer and the employee within 33 calendar days. Within 120 calendar days of that decision, LWDA may investigate the alleged violation and issue any appropriate citation;

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- d) If LWDA determines that no citation will be issued, it shall notify the employer and aggrieved employee within five business days; and,
- e) Upon receipt of such notice, or if no citation is issued within the specified period, or if LWDA fails to provide any notification, the aggrieved employee may proceed with a civil action.
- 1) Specifies that for those non-enumerated sections of the Labor Code, the following procedural and administrative requirements apply:
- a) The aggrieved employee shall give written notice to LWDA and the employer of the alleged violation;
- b) The employer may cure the alleged violation within 33 calendar days and shall give written notice to the employee and LWDA if the alleged violation is cured;
- c) The term "cure" is defined to mean that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice provided, and any aggrieved employee is made whole;
- d) If the alleged violation is cured, no civil action pursuant to SB 796 may commence;
- e) If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action;
- f) If the aggrieved employee disputes that the alleged violation has been cured, the employee shall provide written notice to the employer and LWDA. Within 17 calendar days LWDA shall review the actions of the employer and provide written notice of whether the alleged violation has been cured;
- g) If LWDA determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to

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the superior court; and,

- h) No employer may avail himself or herself of the notice and cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.
- 2) Specifies that the following procedural and administrative requirements apply to the provisions of the Labor Code related to safety in employment (other than sections that are specifically enumerated and covered by the procedures discussed above):
 - a) The aggrieved employee shall give written notice to the Division of Occupational Safety and Health (DOSH) and the employer, with a copy to LWDA, of the alleged violation;
 - b) DOSH shall inspect or investigate the alleged violation pursuant to existing provisions of law;
 - c) If DOSH issues a citation, no civil action pursuant to SB 796 may commence;
 - d) If, by the end of the period for inspection or investigation, DOSH fails to issue a citation and the employee disputes that decision, the employee may challenge the decision in the superior court. If the court finds that DOSH should have issued a citation and orders DOSH to issue a citation, then no civil action pursuant to SB 796 may commence;
 - e) If DOSH fails to inspect or investigate the alleged violation within the period specified in existing law, the notice and cure provisions outlined in #2) above apply to the determination of the alleged violation;
 - f) Nothing shall be construed to alter the authority of DOSH to permit long-term abatement periods or to enter into agreements with employers in the case of long-term abatement issues;
 - g) Superior courts shall review and approve any proposed settlement of alleged safety in employment violations to ensure that they are at least as effective as the protections or remedies provided by state and federal law

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or regulation for the alleged violation. The provisions of the settlement related to health and safety laws shall be submitted to DOSH, who is authorized and permitted to comment on those settlement provisions; and,

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CA Supreme Court.

- h) These provisions will be subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection in consultation with the Senate Committee on Labor and Industrial Relations and the Assembly Committee on Labor and Employment. The first review shall be completed within three years.
- 3) Authorizes a plaintiff as a matter of right to amend an existing complaint to add a cause of action arising under SB 796 at any time within 60 days of the time periods specified in that act.
- 4) Specifies that the procedural and administrative time periods are not counted as part of the time limited for the commencement of the civil actions to recover penalties.
- 5) Authorizes a court to award a lesser amount than the maximum civil penalty amount allowed if to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."
- 6) Provides that no action under SB 796 shall be brought for any violation of a posting, notice, agency reporting, or filing requirement except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting. This amendment shall apply retroactively to January 1, 2004, and shall affect all applicable pending proceedings.
- 7) Modifies the civil penalty distribution formula (where the person employs one or more employees) as follows: 75% to LWDA for enforcement of labor laws and employer and employee education, to be continuously appropriated to supplement and not supplant the funding to LWDA for those purposes; and, 25% to the aggrieved employees.
- 8) Modifies the civil penalty distribution formula (where the person does not employ one or more employees) as follows: 100% to LWDA for enforcement of labor laws and employer and employee education, to be continuously appropriated to supplement and not supplant the funding to LWDA for those

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purposes.

- 9) Requires the superior court to review and approve any penalties sought as part of a proposed settlement agreement. This amendment shall apply retroactively to January 1, 2004, and shall affect all applicable pending proceedings.
- 10) Authorizes LWDA or any of its subdivisions to promulgate regulations to implement the provisions of SB 796.

- 11) Amends provisions of existing law related to employment retaliation and discrimination to include among those specifically-protected employee rights the bringing of a civil action or initiating any notice pursuant to SB 796.
- 12) Repeals Labor Code Section 431, which requires employers to submit copies of specified applications for employment to the Division of Labor Standards Enforcement.
- 13) Appropriates \$150,000 from the General Fund (GF) to LWDA for the purposes of implementing these provisions.
- 14) Contains an urgency clause.

EXISTING LAW establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, existing law :

- 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 employee per pay period for subsequent violations. The penalty is \$500 per violation where the violator does not employ any employees at the time of the violation.
- 2) Authorizes an "aggrieved employee" 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.
- 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.

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- 4) Provides that no private right of action may be maintained where LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.
- 5) Specifies that where LWDA or any of its subdivisions has discretion to assess a civil penalty, a court may exercise the same discretion with respect to civil penalties established by SB 796.
- 6) Provides that the civil penalties recovered against a person

that employs one or more employees shall be distributed as follows: 50% to the GF; 25% to LWDA for employer and employee education; and, 25% to the aggrieved employees. Civil penalties recovered against person that do not employ any employees are to be divided evenly between the GF and LWDA.

- 7) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in a civil action.
- 8) Specifies that these provisions of law are not intended to affect the exclusive remedy provided by the workers' compensation provisions of existing law.

FISCAL EFFECT : According to the Assembly Committee on Appropriations, appropriates \$150,000 from the GF to LWDA to implement this act. LWDA indicates that its costs likely will exceed this amount, and it will redirect resources as necessary to accomplish the purposes of this act. With respect to the modifications to the penalty distribution formula, LWDA reports that most civil actions brought to date under SB 796 have been settled out of court.

COMMENTS : SB 796 was passed by the Legislature last year and signed by the Governor in October. The legislation went into effect on January 1, 2004.

The co-sponsors of SB 796, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, argued that the bill would address inadequacies in labor law enforcement in two major ways. First, the bill assigned civil fine amounts to the large number of Labor Code provisions, which previously carried criminal fines, but not civil penalties.

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Second, it authorized the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors stated that many Labor Code provisions are simply not enforced 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. Proponents also contended 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 required a creative solution to help the state crack down on labor law violators. Therefore, supporters argued that private actions to enforce the provisions of the

Labor Code were necessary to ensure compliance with the law.

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

Opponents of SB 796 argued that the bill would tip 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, cited the fact that employees are entitled to attorney's fees and costs if they prevail in their action under SB 796, yet similar attorney's fees and costs were not provided for prevailing employers. Additionally, opponents cited the fact that there was no requirement imposed upon employees prior to filing civil actions such as preliminary claim filing with the Labor Commissioner.

Opponents also expressed concern that SB 796 would encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents likened the danger to recent alleged abuse of Business and Professions Code Section 17200.

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

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SB 1809 significantly amends the provisions of SB 796 by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties. Moreover, SB 1809 provides that no action shall be brought for a posting, notice, agency reporting, or filing requirement, except as specified.

The provisions of SB 1809 also expand judicial review of SB 796 claims by requiring courts to review and approve any penalties sought as part of a proposed settlement agreement, and those portions of settlements concerning violations of health and safety laws. In addition, courts are authorized to award a lesser amount if to do so otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

Finally, SB 1809 appropriates \$150,000 from the GF to LWDA for the purposes of implementing these provisions, and changes the existing penalty formula to provide that 75% of most civil penalties recovered pursuant to SB 796 shall go to LWDA for labor law enforcement and education.

Related legislation: AB 2181 (Campbell) of 2004 would have repealed the provisions of SB 796. That measure died in the Assembly Committee on Labor and Employment.

AB 2650 (Bates) of 2004 would have precluded aggrieved employees from bringing a civil action against employers who, at the time of the violation, employed fewer than 100 employees. That measure failed passage in the Assembly Committee on Labor and Employment, and reconsideration was granted.

AB 3002 (Houston) of 2004, as introduced, makes technical, nonsubstantive changes to the provisions enacted by SB 796. AB 3002 was not referred by the Assembly Committee on Rules.

SB 1861 (Ashburn) of 2004 would have required, prior to the commencement of a civil action, that the employee certify that he or she reported the alleged violation to LWDA or any of its subdivisions and that "no state enforcement action or active investigation by a state enforcement official" commenced within 60 days. SB 1861 failed passage in the Senate Committee on Labor and Industrial Relations, and reconsideration was granted.

□

SB 1809

Page 9

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

FN: 0007229

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 50 California Street, 23rd Floor, San Francisco, California 94111.

On January 7, 2026, I caused to be served the following document(s):

EXHIBITS TO MOTION FOR JUDICIAL NOTICE

**[Filed in Support of Application for Permission to File
Amici Curiae Brief and Proposed Amici Curiae Brief]**


I caused the above document(s) to be served on the person(s) listed below by the following means and as indicated on the attached Service List:

- (VIA TRUEFILING)** – On January 7, 2026, I consigned a true and correct electronic copy of said document(s) for service via True Filing pursuant to California Rules of Court, Rule 8.70.
- (VIA FEDEX OVERNIGHT DELIVERY)** and by sealing the envelope and placing it for collection and delivery by FedEx overnight service with delivery fees paid or provided for in accordance with ordinary business practices.

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

Executed on January 7, 2026, at San Francisco, California.

Amanda Henderson
Print Name


Signature

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