

CRLA Foundation

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

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

(2) This Bill , entitled the "Labor Code Private Attorneys General Act of 2004", has four components:

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

Comments:

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

_____ When individuals have a right to act in the capacity of
Hearing Date: April 9, 2003 SB
796

Consultant: Liberty Reiter Sanchez

Page 2

Senate Committee on Labor and Industrial Relations

CRLA Foundation

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

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

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

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

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

(5) Distinction Between Right to Act as Private Attorney

Hearing Date: April 9, 2003

SB

796

Consultant: Liberty Reiter Sanchez

Page 3

Senate Committee on Labor and Industrial Relations

General Under SB 796 and
The UCA:

This PAG rights afforded individuals under this bill are separate and distinct from those afforded individuals under the UCA. While PAG rights have been interpreted to have broad applicability under the UCA, the right to act as a PAG under this bill is available to further the

CRLA Foundation

purposes of protecting the rights of workers under the Labor Code. Additionally, unlike the UCA, this bill entitles an individual to act in the capacity of PAG to seek remedy of a labor law violation solely because they have been aggrieved by that violation. Finally, this bill provides for a percentage share of penalties to go directly to the aggrieved worker, unlike the UCA, which does not entitle an individual claimant to obtain damages.

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

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

The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that "[s]taffing levels for state labor law enforcement agencies, have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future" and that, accordingly, "[i]t is therefore in the public interest to

Hearing Date: April 9, 2003 SB
796

Consultant: Liberty Reiter Sanchez

Page 4

Senate Committee on Labor and Industrial Relations

provide that civil penalties for violation of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general."

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

(7) Staff Comments :

(a)The term "person" is defined for the general purposes of the Labor Code to mean any "person, association, organization, partnership, business trust, limited liability company or corporation." The term "person" has a different definition for application in the

CRLA Foundation

"Garment Manufacturing" Part of the Labor Code. That Part of the Labor Code is in the same Division of the Labor Code, entitled "Employment Regulation and Supervision," in which this bill, if enacted, would be located. The term "person" is used throughout the Labor Code, often interchangeably with the term "employer," but when the term "person" is used, it is interpreted to provide a more expansive and comprehensive applicability than the term "employer." Additionally, often when the term "person" is used it is used in conjunction with the phrase "or officer or agent thereof," to provide even broader applicability.

As the author is creating a new titled Part to the Labor Code, the author may wish to add a definition of "person" specifically applicable to that Part of the Labor Code.

- (b)The bill specifies a formula for distribution of civil awards where an aggrieved employee has prevailed against a "person employing one or more employees," yet the bill provides no formula for instances where the Agency has prevailed against a person who does not employ one or more employees. The author may wish to

Hearing Date: April 9, 2003

SB

796

Consultant: Liberty Reiter Sanchez

Page 5

Senate Committee on Labor and Industrial Relations

specify whether such collected penalties should go to the General Fund, the Agency or elsewhere.

- (c)The bill specifies that an action, may not be maintained by an aggrieved employee, if the Agency cites a person and initiates proceedings for a violation of the code on the same facts and theories. The author may wish to amend the bill to clarify that this prohibition would only be applicable if the Agency proceeded under the "same labor code section or sections under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others." Ostensibly, without this clarification an aggrieved employee might be inadvertently precluded from maintaining an action under a different Labor Code section violation which the Agency has declined to pursue, but where the basis of such action relies on the same facts and theories as the action which the Agency is pursuing.

(8)Dual Referral:

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

CRLA Foundation

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

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

Hearing Date: April 9, 2003

SB

796

Consultant: Liberty Reiter Sanchez

Page 6

Senate Committee on Labor and Industrial Relations

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

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

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no

CRLA Foundation

requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

Hearing Date: April 9, 2003

SB

796

Consultant: Liberty Reiter Sanchez

Page 7

Senate Committee on Labor and Industrial Relations

Support:

American Federation of State, County, and Municipal Employees

California Applicants' Attorneys Association

California Conference Board of the Amalgamated Transit Union

California Conference of Machinists

California Independent Public Employees Legislative Council

California Labor Federation, AFL-CIO

California Rural Legal Assistance Foundation

California State Association of Electrical Workers

California State Pipe Trades Council

California Teamsters Public Affairs Council

Consumer Attorneys of California

Engineers and Scientist of California, IFPTE Local 20, AFL-CIO

Hotel Employees & Restaurant Employees International Union

Professional and Technical Engineers, IFPTE Local 21, AFL-CIO

Region 8 States Council of the United Food & Commercial Workers

Western States Council of Sheet Metal Workers

Opposition:

Associated General Contractors of California and the AGC, San Diego Chapter

California Employment Law Council

California Manufacturers and Technology Association

California Chamber of Commerce

Civil Justice Association of California

Hearing Date: April 9, 2003

SB

796

Consultant: Liberty Reiter Sanchez

Page 8

Senate Committee on Labor and Industrial Relations

+++++

SENATE JUDICIARY COMMITTEE

Martha M. Escutia, Chair
2003-2004 Regular Session

CRLA Foundation

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

SUBJECT

Employment

DESCRIPTION

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

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

BACKGROUND

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

In 2001, the Assembly Committee on Labor and Employment held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to

(more)

SB 796 (Dunn)
Page 2

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

CRLA Foundation

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

SB 796 (Dunn)
Page 3

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.

CRLA Foundation

[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

SB 796 (Dunn)

Page 4

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

CRLA Foundation

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

SB 796 (Dunn)
Page 5

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

CRLA Foundation

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

SB 796 (Dunn)

Page 6

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

CRLA Foundation

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

SB 796 (Dunn)

Page 7

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

CRLA Foundation

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.

SB 796 (Dunn)
Page 8

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

CRLA Foundation

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."

SB 796 (Dunn)
Page 9

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

CRLA Foundation

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

SB 796 (Dunn)
Page 10

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

CRLA Foundation

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

+++++

SENATE RULES COMMITTEE	SB 796
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

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

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

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

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Employment

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

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

ANALYSIS : Existing law authorizes the State Labor and Workforce Development Agency (LWDA) (comprised of the DIR,
CONTINUED

CRLA Foundation

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.

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

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

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

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

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

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

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

CRLA Foundation

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.

Background

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

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

CRLA Foundation

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

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

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

Prior legislation

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

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

CRLA Foundation

SUPPORT : (Verified 5/19/03)

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

OPPOSITION : (Verified 5/19/03)

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

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

CRLA Foundation

violations as crimes, are similarly lacking.

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

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

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

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the

employee to exhaust the administrative procedure or even

CRLA Foundation

file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

NC:s1 5/21/03 Senate Floor Analyses

+++++

SB 796

Page 1

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.

CRLA Foundation

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

- 1) Provides that any Labor Code violation for which specific civil penalties have not otherwise been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Provides that an aggrieved employee may sue to recover civil penalties under the Labor Code, as well as attorneys' fees and costs, in an action brought on behalf of himself or herself and other current or former employees. However, no private action may be maintained where the state labor agency (LWDA) issues a citation against the alleged violator on the same facts and under the same section or sections of the Labor Code.
- 3) Provides that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employee(s). In the case of penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, the funds would be divided evenly between the General Fund and the LWDA.

EXISTING LAW :

- 1) Authorizes the LWDA (composed of the Department of Industrial Relations (DIR), the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. (Labor Code section 201 et seq . All further statutory references are to this code unless otherwise noted.)
- 2) Authorizes the Attorney General (AG) and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. (Section 215 et seq .)
- 3) Authorizes an individual employee to file a claim with the

CRLA Foundation

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

CRLA Foundation

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.

CRLA Foundation

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

CRLA Foundation

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

CRLA Foundation

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

CRLA Foundation

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 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

CRLA Foundation

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 proceeding ~~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.

CRLA Foundation

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

+++++

CRLA Foundation

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.

CRLA Foundation

- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action.

EXISTING LAW

- 1) Authorizes the LWDA (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.
- 2) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the law, and to sue the employer directly for damages, reinstatement, and other appropriate relief.
- 3) Authorizes the Attorney General and other public prosecutors to seek appropriate injunctive relief and file criminal charges against employers for criminal violations of the Labor Code, where specified.
- 4) Further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and other appropriate remedies.

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

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

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

CRLA Foundation

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.

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

CRLA Foundation

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

CRLA Foundation

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

CRLA Foundation

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

SB 796
Page 7

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

CRLA Foundation

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

CRLA Foundation

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

SB 796
Page 9

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

CRLA Foundation

FISCAL EFFECT

Potential increased penalty revenue to the General Fund and to the LWDA.

COMMENTS

1)Purpose . This bill is sponsored by the California Labor Federation and the California Rural Assistance Legal Foundation. 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. The sponsors also 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. The bill would authorize civil penalties for any Labor Code violation currently lacking a specific penalty provision and authorizes aggrieved employees to bring private civil actions against employers.

2)Opposition . Opponents include several employer groups, the California Employment Law Council, and the Civil Justice Association of California. Opponents are concerned that, in particular, the provision for recovery of attorneys' fees will encourage private attorneys to "act as vigilantes" to file frivolous Labor Code-related lawsuits.

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081

++++++

SENATE THIRD READING
SB 796 (Dunn)
As Amended July 16, 2003
Majority vote

SENATE VOTE :21-14

<u>JUDICIARY</u>	9-4	<u>LABOR AND</u>
<u>EMPLOYMENT</u>	5-2	

CRLA Foundation

Ayes:	Corbett, Dutra, Hancock, Jackson, Lieber, Longville, Montanez, Steinberg, Berg	Ayes:	Koretz, Mullin, Chu, Hancock, Laird
Nays:	Harman, La Malfa, Pacheco, Spitzer	Nays:	Shirley Horton, Houston

APPROPRIATIONS 16-7

Ayes:	Steinberg, Berg, Calderon, Corbett, Correa, Diaz, Goldberg, Leno, Nation, Negrete McLeod, Nunez, Pavley, Ridley-Thomas, Simitian, Wiggins, Yee		
Nays:	Bates, Daucher, Haynes, Maldonado, Pacheco, Runner, Samuelian		

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

CRLA Foundation

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 (GF), 25% to 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 GF and LWDA.
- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to affect the exclusive remedy provided by workers' compensation provisions of existing law.

FISCAL EFFECT : According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

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.

SB 796
Page 3

Arguments in Support: The co-sponsors of this bill, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance 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

CRLA Foundation

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. 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 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 this bill to recent alleged abuse of Business and Professions Code Section 17200.

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

AB 276 (Koretz), pending in the Assembly, increases various civil penalties under the Labor Code, many of which have not been increased for decades.

CRLA Foundation

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

+++++

SB 796

Page 1

SENATE THIRD READING
SB 796 (Dunn)
As Amended September 2, 2003
Majority vote

SENATE VOTE : 21-14

JUDICIARY 9-4 LABOR AND
EMPLOYMENT 5-2

Ayes:	Corbett, Dutra, Hancock, Jackson, Lieber, Longville, Montanez, Steinberg, Berg	Ayes:	Koretz, Mullin, Chu, Hancock, Laird
Nays:	Harman, La Malfa, Pacheco, Spitzer	Nays:	Shirley Horton, Houston

APPROPRIATIONS 16-7

Ayes:	Steinberg, Berg, Calderon, Corbett, Correa, Diaz, Goldberg, Leno, Nation, Negrete McLeod, Nunez, Pavley, Ridley-Thomas, Simitian, Wiggins, Yee		
Nays:	Bates, Daucher, Haynes, Maldonado, Pacheco, Runner, Samuelian		

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

CRLA Foundation

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) Specifies that where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions has discretion to assess civil penalties, a court may exercise the same discretion with respect to the civil penalties established by this bill. Moreover, the civil penalties do not apply if the alleged violation is a failure to act by the LWDA or any of its subdivisions.
- 3) 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 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.
- 4) 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.
- 5) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund (GF), 25% to 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 GF and LWDA.
- 6) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to affect the exclusive remedy provided by workers' compensation provisions of existing law.

FISCAL EFFECT : According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

CRLA Foundation

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.

Arguments in Support: The co-sponsors of this bill, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance 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. 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 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

CRLA Foundation

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 this bill to recent alleged abuse of Business and Professions Code Section 17200.

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

AB 276 (Koretz), pending in the Assembly, increases various civil penalties under the Labor Code, many of which have not been increased for decades.

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

+++++

SENATE RULES COMMITTEE	SB 796
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

UNFINISHED BUSINESS

Bill No: SB 796
Author: Dunn (D)
Amended: 9/2/03
Vote: 21

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

SENATE JUDICIARY COMMITTEE : 4-2, 4/29/03
AYES: Escutia, Cedillo, Kuehl, Sher
NOES: Morrow, Ackerman
NO VOTE RECORDED: Ducheny

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

CRLA Foundation

SENATE FLOOR : 21-14, 5/29/03
AYES: Alarcon, Alpert, Bowen, Burton, Cedillo, Chesbro,
Ducheny, Dunn, Escutia, Figueroa, Karnette, Kuehl,
Murray, Ortiz, Perata, Romero, Sher, Soto, Speier,
Torlakson, Vincent
NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham,
Hollingsworth, Johnson, Knight, Margett, McClintock,
McPherson, Oller, Poochigian
NO VOTE RECORDED: Florez, Machado, Morrow, Scott,
Vasconcellos

SUBJECT : Employment

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

CONTINUED

SB 796
Page

2

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

Assembly Amendments (1) provide that the bill will not affect the exclusive remedy provided by workers' compensation provisions of current law, (2) clarify that no penalty is established for any failure to act by the Labor and Workplace Development Agency, as specified, and (3) make clarifying changes.

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

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

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and

CRLA Foundation

to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint.

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

This bill is entitled the "Labor Code Private Attorneys General Act of 2004", and establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for

SB 796
Page

3

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 will be \$500 per violation for a violator who is not an employer.
2. Specifies that where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions has discretion to assess civil penalties, a court may exercise the same discretion with respect to the civil penalties established by this bill. Moreover, the civil penalties do not apply if the alleged violation is a failure to act by the LWDA or any of its subdivisions.
3. 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 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.
4. 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.

CRLA Foundation

5. Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50 percent to the General Fund (GF), 25 percent to LWDA for employer and employee education; and, 25 percent to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between GF and LWDA.
6. Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to

SB 796

Page

4

affect the exclusive remedy provided by workers' compensation provisions of existing law.

Background

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

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

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

CRLA Foundation

employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

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

SB 796
Page

5

enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

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

Prior legislation

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

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

According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

SUPPORT : (Verified 9/4/03)

California Labor Federation, AFL-CIO (co-source)
California Rural Legal Assistance Foundation,
Inc.(co-source)
American Federation of State, County and Municipal
Employees (AFSCME)
California Applicants Attorneys Association
California Conference Board of the Amalgamated Transit
Union
California Council of Machinists

CRLA Foundation

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

SB 796
Page

6

Protection and Advocacy, Inc.
Region 8 States Council of the United Food and Commercial
Workers
Western States Council of Sheet Metal Workers

OPPOSITION : (Verified 9/4/03)

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

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

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

The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to

CRLA Foundation

cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation

SB 796
Page

7

to these code sections.

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

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

NC:s1 9/10/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

+++++

CRLA Foundation

PART TWO: COMMITTEE AND FLOOR VOTES ON SB 796

++++++

VOTES - ROLL CALL

MEASURE: SB 796

AUTHOR: Dunn

TOPIC: Employment.

DATE: 04/09/2003

LOCATION: SEN. L. & I.R.

MOTION: Do pass as amended, and re-refer to the Committee on Judiciary.
(AYES 5. NOES 3.) (PASS)

AYES

Alarcon Dunn Figueroa Kuehl
Romero

NOES

Oller Margett McClintock

ABSENT, ABSTAINING, OR NOT VOTING

++++++

VOTES - ROLL CALL

MEASURE: SB 796

AUTHOR: Dunn

TOPIC: Employment.

DATE: 04/29/2003

LOCATION: SEN. JUD.

MOTION: Do pass as amended, and re-refer to the Committee on Appropriations.
(AYES 4. NOES 2.) (PASS)

AYES

Escutia Cedillo Kuehl Sher

NOES

Morrow Ackerman

ABSENT, ABSTAINING, OR NOT VOTING

CRLA Foundation

++++++

VOTES - ROLL CALL
MEASURE: SB 796
AUTHOR: Dunn
TOPIC: Employment.
DATE: 05/29/2003
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB796 Dunn
(AYES 21. NOES 14.) (PASS)

AYES

Alarcon Alpert Bowen Burton
Cedillo Chesbro Ducheny Dunn
Escutia Figueroa Karnette Kuehl
Murray Ortiz Perata Romero
Sher Soto Speier Torlakson
Vincent

NOES

Aanestad Ackerman Ashburn Battin
Brulte Denham Hollingsworth Johnson
Knight Margett McClintock McPherson
Oller Poochigian

ABSENT, ABSTAINING, OR NOT VOTING

++++++

VOTES - ROLL CALL
MEASURE: SB 796
AUTHOR: Dunn
TOPIC: Employment.
DATE: 06/26/2003
LOCATION: ASM. JUD.
MOTION: Do pass and be re-referred to the Committee on Labor and Employment.
(AYES 9. NOES 4.) (PASS)

AYES

Corbett Dutra Hancock Jackson
Lieber Longville Montanez Steinberg
Berg

CRLA Foundation

NOES

Harman La Malfa Pacheco Spitzer

ABSENT, ABSTAINING, OR NOT VOTING

Levine

+++++++

VOTES - ROLL CALL
MEASURE: SB 796
AUTHOR: Dunn
TOPIC: Employment.
DATE: 07/09/2003
LOCATION: ASM. L. & E.
MOTION: Do pass as amended and be re-referred to the Committee on
Appropriations.
(AYES 5. NOES 2.) (PASS)

AYES

Koretz Mullin Chu Hancock
Laird

NOES

Shirley Horton Houston

ABSENT, ABSTAINING, OR NOT VOTING

Negrete McLeod

+++++++

VOTES - ROLL CALL
MEASURE: SB 796
AUTHOR: Dunn
TOPIC: Employment.
DATE: 08/20/2003
LOCATION: ASM. APPR.
MOTION: Do pass.
(AYES 16. NOES 7.) (PASS)

AYES

CRLA Foundation

Steinberg Berg Calderon Corbett
Correa Diaz Goldberg Leno
Nation Negrete McLeod Nunez Pavley
Ridley-Thomas Simitian Wiggins Yee

NOES

Bates Daucher Haynes Maldonado
Pacheco Runner Samuelian

ABSENT, ABSTAINING, OR NOT VOTING

Firebaugh Vacancy

+++++++

VOTES - ROLL CALL

MEASURE: SB 796

AUTHOR: Dunn

TOPIC: Employment.

DATE: 09/02/2003

LOCATION: ASM. FLOOR

MOTION: SB 796 Dunn Senate Third Reading By Dutra Amend By Dutra Set #1
(AYES 44. NOES 30.) (PASS)

AYES

Berg Bermudez Calderon Canciamilla
Chan Chavez Chu Cohn
Corbett Correa Diaz Dutra
Dymally Frommer Goldberg Hancock
Jerome Horton Jackson Kehoe Koretz
Laird Leno Levine Lieber
Longville Lowenthal Montanez Mullin
Nakano Nation Negrete McLeod Nunez
Parra Pavley Reyes Ridley-Thomas
Salinas Simitian Steinberg Vargas
Wiggins Wolk Yee Wesson

NOES

Aghazarian Bates Benoit Bogh
Campbell Cogdill Cox Daucher
Dutton Garcia Harman Haynes
Shirley Horton Houston Keene La Malfa
La Suer Maddox Maldonado Matthews
McCarthy Mountjoy Nakanishi Pacheco

CRLA Foundation

Richman Runner Samuelian Spitzer
Strickland Wyland

ABSENT, ABSTAINING, OR NOT VOTING

Firebaugh Leslie Liu Maze
Oropeza Plescia

+++++

VOTES - ROLL CALL

MEASURE: SB 796

AUTHOR: Dunn

TOPIC: Employment.

DATE: 09/11/2003

LOCATION: ASM. FLOOR

MOTION: SB 796 Dunn Senate Third Reading By Dutra
(AYES 42. NOES 34.) (PASS)

AYES

Berg Bermudez Chan Chavez
Chu Cohn Corbett Correa
Diaz Dutra Dymally Frommer
Goldberg Hancock Jerome Horton Jackson
Kehoe Koretz Laird Leno
Levine Lieber Liu Longville
Lowenthal Montanez Mullin Nakano
Nation Negrete McLeod Nunez Oropeza
Pavley Reyes Ridley-Thomas Salinas
Simitian Steinberg Vargas Wiggins
Yee Wesson

NOES

Aghazarian Bates Benoit Bogh
Campbell Cogdill Cox Daucher
Dutton Garcia Harman Haynes
Shirley Horton Houston Keene La Malfa
La Suer Leslie Maddox Maldonado
Matthews Maze McCarthy Mountjoy
Nakanishi Pacheco Parra Plescia
Richman Runner Samuelian Spitzer
Strickland Wyland

ABSENT, ABSTAINING, OR NOT VOTING

Calderon Canciamilla Firebaugh Wolk

CRLA Foundation

+++++

VOTES - ROLL CALL

MEASURE: SB 796

AUTHOR: Dunn

TOPIC: Employment.

DATE: 09/12/2003

LOCATION: SEN. FLOOR

MOTION: UNFINISHED BUSINESS- SB796 Dunn
(AYES 21. NOES 17.) (PASS)

AYES

Alarcon	Bowen	Burton	Cedillo	
Chesbro	Ducheny	Dunn	Escutia	
Figueroa	Florez	Karnette		Kuehl
Murray	Ortiz	Perata	Romero	
Sher	Soto	Speier	Torlakson	
Vincent				

NOES

Aanestad	Ackerman	Ashburn	Battin
Brulte	Denham	Hollingsworth	Johnson
Knight	Margett	McClintock	McPherson
Morrow	Oller	Poochigian	Scott
Vasconcellos			

ABSENT, ABSTAINING, OR NOT VOTING

+++++

PART THREE: AMENDMENTS TO THE BILL

+++++

BILL NUMBER: SB 796 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

CRLA Foundation

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as introduced, Dunn. Employment.

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

2699. (a) Notwithstanding any other provision of law, any

CRLA Foundation

provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action.

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

(1) If no criminal penalty amount has been established for a violation of the provision, the civil penalty is one hundred dollars (\$100) per employee per pay period for the initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation. If the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

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

(c) 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. Any employee who prevails, in whole or in part, 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.

(d) 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 code and initiates proceedings to collect applicable penalties.

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

+++++

BILL NUMBER: SB 796 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 26, 2003

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

CRLA Foundation

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

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

CRLA Foundation

assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action.

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

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

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

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

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

(c) 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. Any employee who prevails, in whole or in part, 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.

(d) 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 code and initiates proceedings to collect applicable penalties.

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

+++++

BILL NUMBER: SB 796 AMENDED
BILL TEXT

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

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

CRLA Foundation

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

CRLA Foundation

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

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

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

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

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

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

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

~~—(c)~~

(d) 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. Any employee who prevails, in whole or in part, 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.

~~—(d)~~

(e) 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 ~~code~~ *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 initiates proceedings to collect applicable penalties.

~~—(e) Civil~~

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

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

BILL NUMBER: SB 796 AMENDED

BILL TEXT

CRLA Foundation

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

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

(d) It is therefore in the public interest to provide that civil

CRLA Foundation

penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act.

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

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

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

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

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

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

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

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

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

(d) 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~~ *and other current or former employees for whom evidence of a violation was developed during the trial or during settlement of the action* . Any employee who prevails ~~, in whole or in part,~~ 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.

(e) 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 initiates proceedings to collect applicable penalties.

(f) Except as provided in subdivision (g), civil penalties

CRLA Foundation

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

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

+++++

BILL NUMBER: SB 796 AMENDED
BILL TEXT

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

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

CRLA Foundation

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

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

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

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

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

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

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

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

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

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

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

~~—(c)~~

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

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

(2) If 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.

~~—(d)~~

(e) An aggrieved employee may recover the civil penalty

CRLA Foundation

described in subdivision (b) 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. 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.

~~—(e)~~

(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 initiates proceedings to collect applicable penalties.

~~—(f)~~

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

~~—(g)~~

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

+++++

BILL NUMBER: SB 796 AMENDED
BILL TEXT

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

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

CRLA Foundation

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

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

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

CRLA Foundation

be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself ~~or~~ and other current or former employees.

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

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

(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.

(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.

(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 initiates proceedings to collect applicable penalties~~ or initiates a proceeding pursuant to Section 98.3 .

(g) Except as provided in subdivision ~~(g)~~

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

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

+++++

CRLA Foundation

BILL NUMBER: SB 796 AMENDED
BILL TEXT

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

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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

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

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

This bill would not affect that exclusive remedy.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(b) Although innovative labor law education programs and

CRLA Foundation

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

CRLA Foundation

theories, cites a person for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

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

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

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

+++++

BILL NUMBER: SB 796 AMENDED
BILL TEXT

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

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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

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

CRLA Foundation

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

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

This bill would not affect that exclusive remedy.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

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

CRLA Foundation

employees.

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

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

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

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

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

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

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

~~—(e)~~

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

~~—(f)~~

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

~~—(g)~~

(h) Except as provided in subdivision ~~—(h)—~~

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

~~—(h)~~

(i) Civil penalties recovered under paragraph (1) of

CRLA Foundation

subdivision ~~(d)~~ (e) shall be distributed as follows: 50 percent to the General Fund and 50 percent to the Labor and Workforce Development Agency available for expenditure upon appropriation by the Legislature.

~~(i)~~

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

+++++

BILL NUMBER: SB 796 ENROLLED
BILL TEXT

PASSED THE SENATE SEPTEMBER 12, 2003
PASSED THE ASSEMBLY SEPTEMBER 11, 2003
AMENDED IN ASSEMBLY SEPTEMBER 2, 2003
AMENDED IN ASSEMBLY JULY 16, 2003
AMENDED IN ASSEMBLY JULY 2, 2003
AMENDED IN SENATE MAY 12, 2003
AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, Dunn. Employment.

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

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

CRLA Foundation

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

This bill would not affect that exclusive remedy.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

CRLA Foundation

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

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

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

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

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

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

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

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

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

+++++

BILL NUMBER: SB 796 CHAPTERED
BILL TEXT

CHAPTER 906
FILED WITH SECRETARY OF STATE OCTOBER 12, 2003
APPROVED BY GOVERNOR OCTOBER 12, 2003
PASSED THE SENATE SEPTEMBER 12, 2003

CRLA Foundation

PASSED THE ASSEMBLY SEPTEMBER 11, 2003
AMENDED IN ASSEMBLY SEPTEMBER 2, 2003
AMENDED IN ASSEMBLY JULY 16, 2003
AMENDED IN ASSEMBLY JULY 2, 2003
AMENDED IN SENATE MAY 12, 2003
AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 26, 2003

INTRODUCED BY Senator Dunn

FEBRUARY 21, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

SB 796, Dunn. Employment.

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

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

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

This bill would not affect that exclusive remedy.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(b) Although innovative labor law education programs and

CRLA Foundation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) An aggrieved employee may recover the civil penalty described in subdivision (e) in a civil action filed on behalf of himself or

CRLA Foundation

herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

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

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

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

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

#####