

# CRLA Foundation

## SB 1809 Legislative History

(2003-2004 Session)

### Bill Text (In Reverse Chronological Order)

BILL NUMBER: SB 1809    CHAPTERED  
BILL TEXT

CHAPTER 221  
FILED WITH SECRETARY OF STATE    AUGUST 11, 2004  
APPROVED BY GOVERNOR    AUGUST 11, 2004  
PASSED THE SENATE    JULY 29, 2004  
PASSED THE ASSEMBLY    JULY 28, 2004  
AMENDED IN ASSEMBLY    JULY 27, 2004  
AMENDED IN SENATE    MAY 26, 2004  
AMENDED IN SENATE    MAY 20, 2004  
AMENDED IN SENATE    MAY 11, 2004  
AMENDED IN SENATE    MAY 4, 2004  
AMENDED IN SENATE    APRIL 12, 2004

INTRODUCED BY    Senator Dunn

FEBRUARY 20, 2004

An act to amend Sections 98.6 and 2699 of, to add Sections 2699.3 and 2699.5 to, and to repeal Section 431 of, the Labor Code, relating to private employment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1809, Dunn. Labor Code Private Attorneys General Act of 2004.

(1) Existing law allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are 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 are distributed 50% to the General Fund and 50% to the agency. In addition, existing law provides that the aggrieved employee is authorized to recover attorney's fees and costs and, in some cases, penalties.

# CRLA Foundation

This bill would redistribute these penalties, so that 75% is distributed to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except that if the person does not employ one or more persons, 100% of the penalties are distributed to the agency by continuous appropriation.

This bill would provide that an aggrieved employee may recover these penalties only after complying with specified procedural and administrative requirements and providing specified written notice to the agency and to the employer.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute and would require a court to review and authorize any settlement. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code, other than a requirement relating to mandatory payroll or workplace injuries, may be recovered only by the agency or its subdivisions. The bill would provide that these provisions are retroactive to January 1, 2004.

The bill would require the Joint Committee on Boards, Commissions, and Consumer Protection, in consultation with the standing committees of the Legislature with jurisdiction over employment matters, to review certain functions created by this bill.

The bill would appropriate \$150,000 from the General Fund to the agency for the purpose of implementing these provisions.

(2) Existing provisions prohibit an employer from discriminating against an employee because the employee has specified existing rights. This bill would include among those protected rights the bringing of an action to collect penalties for the violation of labor laws pursuant to the provisions described in (1) above.

(3) Existing law requires an employer to file in the office of the Director of Labor Standards Enforcement a copy of any application for employment that the employer requires an applicant to sign.

This bill would repeal that requirement.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

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

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in any such

# CRLA Foundation

proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in paragraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

SEC. 2. Section 431 of the Labor Code is repealed.

SEC. 3. Section 2699 of the Labor Code is amended to read:

# CRLA Foundation

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 pursuant to the procedures specified in Section 2699.3.

(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, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

(e) (1) 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.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) 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.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 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 part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

# CRLA Foundation

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought 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 within the timeframes set forth in Section 2699.3 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.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) 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.

(1) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

SEC. 4. Section 2699.3 is added to the Labor Code, to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the

# CRLA Foundation

postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the 158-day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph

# CRLA Foundation

(1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) No employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall

# CRLA Foundation

provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

SEC. 5. Section 2699.5 is added to the Labor Code, to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 shall apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Section 98.6, 201, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 212, subdivision (d) of Section 213, 221, 222, 222.5, 223, 224, subdivision (a) of Section 226, 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, 233, 234, 351, 353, 403, subdivision (b) of Section 404, 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, subdivision (c) or (d) of Section 1174, 1194, 1197, 1197.1, 1197.5, 1198, subdivision (b) of Section 1198.3, 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, 1695, subdivision (a) of Section 1695.5, 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, 2673, subdivision (a) of Section 2673.1, 2695.2, 2800, 2801, 2802, 2806, 2810, subdivision (b) of Section 2929, 3095, 6310, 6311, or 6399.7.

SEC. 6. (a) The Legislature finds and declares that, as enunciated in long-standing judicial precedent, its inherent authority to create causes of action or remedies necessarily includes the authority to abolish them. Therefore, a plaintiff seeking recovery upon a legislatively created cause of action runs the risk that the Legislature may repeal or alter that cause during the pendency of the claim. Thus, the Legislature further finds and declares that the alteration of the right to recover civil penalties for violations of the Labor Code made by this act may be applied retroactively to any applicable pending proceeding without depriving any person of a substantive right without due process of law.

(b) (1) The provisions of paragraph (2) of subdivision (g) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003,

# CRLA Foundation

and shall affect all applicable pending proceedings.

(2) The provisions of subdivision (1) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 8. Notwithstanding any other provision of law, the provisions of Section 5 of this act relating to the duties and functions of the Division of Occupational Safety and Health shall be subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code in consultation with the Senate Committee on Labor and Industrial Relations and the Assembly Committee on Labor and Employment. The first review shall be completed no later than three years from the effective date of this act.

SEC. 9. There is appropriated from the General Fund one hundred fifty thousand dollars (\$150,000) to the Labor and Workforce Development Agency for the purposes of implementing the purposes of this act.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To provide relief to some employers who may be adversely affected by frivolous lawsuits brought pursuant to the Labor Code Private Attorneys General Act of 2004 and to provide meaningful remedies to employees suffering from egregious violations of the Labor Code at the earliest possible time, it is necessary for this act to take effect immediately.

=====

BILL NUMBER: SB 1809    ENROLLED  
BILL TEXT

PASSED THE SENATE    JULY 29, 2004  
PASSED THE ASSEMBLY    JULY 28, 2004  
AMENDED IN ASSEMBLY    JULY 27, 2004  
AMENDED IN SENATE    MAY 26, 2004  
AMENDED IN SENATE    MAY 20, 2004  
AMENDED IN SENATE    MAY 11, 2004  
AMENDED IN SENATE    MAY 4, 2004  
AMENDED IN SENATE    APRIL 12, 2004

INTRODUCED BY    Senator Dunn

FEBRUARY 20, 2004

An act to amend Sections 98.6 and 2699 of, to add Sections 2699.3 and 2699.5 to, and to repeal Section 431 of, the Labor Code, relating

# CRLA Foundation

to private employment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1809, Dunn. Labor Code Private Attorneys General Act of 2004.

(1) Existing law allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are 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 are distributed 50% to the General Fund and 50% to the agency. In addition, existing law provides that the aggrieved employee is authorized to recover attorney's fees and costs and, in some cases, penalties.

This bill would redistribute these penalties, so that 75% is distributed to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except that if the person does not employ one or more persons, 100% of the penalties are distributed to the agency by continuous appropriation.

This bill would provide that an aggrieved employee may recover these penalties only after complying with specified procedural and administrative requirements and providing specified written notice to the agency and to the employer.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute and would require a court to review and authorize any settlement. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code, other than a requirement relating to mandatory payroll or workplace injuries, may be recovered only by the agency or its subdivisions. The bill would provide that these provisions are retroactive to January 1, 2004.

The bill would require the Joint Committee on Boards, Commissions, and Consumer Protection, in consultation with the standing committees of the Legislature with jurisdiction over employment matters, to review certain functions created by this bill.

The bill would appropriate \$150,000 from the General Fund to the agency for the purpose of implementing these provisions.

(2) Existing provisions prohibit an employer from discriminating against an employee because the employee has specified existing rights. This bill would include among those protected rights the bringing of an action to collect penalties for the violation of labor laws pursuant to the provisions described in (1) above.

(3) Existing law requires an employer to file in the office of the Director of Labor Standards Enforcement a copy of any application for employment that the employer requires an applicant to sign.

This bill would repeal that requirement.

# CRLA Foundation

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

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

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in paragraphs (A) and (B), nor shall this subdivision be

# CRLA Foundation

construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

SEC. 2. Section 431 of the Labor Code is repealed.

SEC. 3. Section 2699 of the Labor Code is amended to 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 and other current or former employees pursuant to the procedures specified in Section 2699.3.

(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, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

(e) (1) 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.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) 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

# CRLA Foundation

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.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 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 part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought 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 within the timeframes set forth in Section 2699.3 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.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) 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.

(l) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.

(m) This section shall not apply to the recovery of administrative

# CRLA Foundation

and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

SEC. 4. Section 2699.3 is added to the Labor Code, to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the 158-day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged

# CRLA Foundation

violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the

# CRLA Foundation

following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) No employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

SEC. 5. Section 2699.5 is added to the Labor Code, to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 shall apply to any alleged violation of the following provisions:

subdivision (k) of Section 96, Section 98.6, 201, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 212, subdivision (d) of Section 213, 221, 222, 222.5, 223, 224, subdivision (a) of Section 226, 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, 233, 234, 351, 353, 403, subdivision (b) of Section 404, 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, subdivision (c) or (d) of Section 1174, 1194, 1197, 1197.1, 1197.5, 1198, subdivision (b) of Section 1198.3, 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, 1695, subdivision (a) of Section 1695.5, 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,

# CRLA Foundation

paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, 2673, subdivision (a) of Section 2673.1, 2695.2, 2800, 2801, 2802, 2806, 2810, subdivision (b) of Section 2929, 3095, 6310, 6311, or 6399.7.

SEC. 6. (a) The Legislature finds and declares that, as enunciated in long-standing judicial precedent, its inherent authority to create causes of action or remedies necessarily includes the authority to abolish them. Therefore, a plaintiff seeking recovery upon a legislatively created cause of action runs the risk that the Legislature may repeal or alter that cause during the pendency of the claim. Thus, the Legislature further finds and declares that the alteration of the right to recover civil penalties for violations of the Labor Code made by this act may be applied retroactively to any applicable pending proceeding without depriving any person of a substantive right without due process of law.

(b) (1) The provisions of paragraph (2) of subdivision (g) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

(2) The provisions of subdivision (1) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 8. Notwithstanding any other provision of law, the provisions of Section 5 of this act relating to the duties and functions of the Division of Occupational Safety and Health shall be subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code in consultation with the Senate Committee on Labor and Industrial Relations and the Assembly Committee on Labor and Employment. The first review shall be completed no later than three years from the effective date of this act.

SEC. 9. There is appropriated from the General Fund one hundred fifty thousand dollars (\$150,000) to the Labor and Workforce Development Agency for the purposes of implementing the purposes of this act.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To provide relief to some employers who may be adversely affected by frivolous lawsuits brought pursuant to the Labor Code Private Attorneys General Act of 2004 and to provide meaningful remedies to employees suffering from egregious violations of the Labor Code at the earliest possible time, it is necessary for this act to take effect immediately.

# CRLA Foundation

=====

BILL NUMBER: SB 1809    AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    JULY 27, 2004  
AMENDED IN SENATE      MAY 26, 2004  
AMENDED IN SENATE      MAY 20, 2004  
AMENDED IN SENATE      MAY 11, 2004  
AMENDED IN SENATE      MAY 4, 2004  
AMENDED IN SENATE      APRIL 12, 2004

INTRODUCED BY    Senator Dunn

FEBRUARY 20, 2004

~~An act to amend Section 2699 of the Labor Code, relating to employment.~~    An act to amend Sections 98.6 and 2699 of, to add Sections 2699.3 and 2699.5 to, and to repeal Section 431 of, the Labor Code, relating to private employment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as amended, Dunn.    Labor Code Private Attorneys General Act of 2004.

(1) Existing law allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are 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 are distributed 50% to the General Fund and 50% to the agency. In addition, existing law provides that the aggrieved employee is authorized to recover attorney's fees and costs and, in some cases, penalties.

This bill would redistribute these penalties, so that 75% is distributed to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except that if the person does not employ one or more persons, 100% of the penalties are distributed to the agency by continuous appropriation.

This bill would provide that an aggrieved employee may recover these penalties only after complying with specified procedural and administrative requirements and providing specified written notice to the agency and to the employer.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified

# CRLA Foundation

by the underlying applicable statute and would require a court to review and authorize any settlement. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code, other than a requirement relating to mandatory payroll or workplace injuries, may be recovered only by the agency or its subdivisions. The bill would provide that these provisions are retroactive to January 1, 2004.

The bill would require the Joint Committee on Boards, Commissions, and Consumer Protection, in consultation with the standing committees of the Legislature with jurisdiction over employment matters, to review certain functions created by this bill.

The bill would appropriate \$150,000 from the General Fund to the agency for the purpose of implementing these provisions.

(2) Existing provisions prohibit an employer from discriminating against an employee because the employee has specified existing rights. This bill would include among those protected rights the bringing of an action to collect penalties for the violation of labor laws pursuant to the provisions described in (1) above.

(3) Existing law requires an employer to file in the office of the Director of Labor Standards Enforcement a copy of any application for employment that the employer requires an applicant to sign.

This bill would repeal that requirement.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes aggrieved employees to bring civil actions to recover specified civil penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The act authorizes a court to exercise the same discretion to assess a civil penalty as the agency or its subdivisions.~~

~~This bill would require the plaintiff or his or her representative, as a condition to bringing a civil action pursuant to the act, to report the alleged violation of the Labor Code to the Labor and Workforce Development Agency in writing and would require that, within 15 calendar days of the report, no state enforcement action, as defined, has commenced. The bill also would require the plaintiff to file with the civil action a certification stating that he or she has complied with these requirements.~~

~~This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if certain findings are made based on the facts and circumstances of the particular case. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code may be recovered only by the agency or its subdivisions.~~

~~The bill would specify that these amendments shall apply to civil actions filed on or after, or pending on, the effective date of this bill.~~

Vote: ~~majority~~ 2/3 . Appropriation:  
~~no~~ yes . Fiscal committee: yes.  
State-mandated local program: no.

# CRLA Foundation

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

~~SECTION 1. Section 2699 of the Labor Code is amended to~~

*SECTION 1. Section 98.6 of the Labor Code is amended to read:*

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (*commencing with Section 1101*) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, *or because the employee has initiated any action or notice pursuant to Section 2699*, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (*commencing with Section 1101*) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part , *or because the employee has initiated any action or notice pursuant to Section 2699* shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration , or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (*commencing with Section 1101*) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part , *or because the employee has initiated any action or notice pursuant to Section 2699* shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in paragraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement

# CRLA Foundation

to sign an employment contract that protects either or both of the following ~~as specified in paragraphs (A) and (B)~~ :

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

*SEC. 2. Section 431 of the Labor Code is repealed.*

~~431. If an employee or applicant is required to sign an application for employment, the employer shall file in the office of the Division of Labor Standards Enforcement a copy of the form of such application.~~

*SEC. 3. Section 2699 of the Labor Code is amended to 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 and other current or former employees pursuant to the procedures specified in Section 2699.3 .

(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, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.*

(e) (1) 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)~~

(2) *In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.*

# CRLA Foundation

(f) 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~~

(g) (1) *Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision ~~—(e)— (f) in a civil action pursuant to the procedures specified in Section 2699.3 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— part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this ~~section— part .~~~~~~*

~~—(g)~~

(2) *No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.*

(h) No action may be ~~maintained~~ brought 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 *within the timeframes set forth in Section 2699.3* 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)~~

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

(j) , civil penalties recovered by aggrieved employees shall be distributed as follows: ~~50 percent to the General Fund, 25~~ 75 percent to the Labor and Workforce Development Agency for *enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, ~~available for expenditure upon appropriation by the Legislature, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes;~~ and 25 percent to the aggrieved employees.*

# CRLA Foundation

~~—(i)~~

(j) Civil penalties recovered under paragraph (1) of subdivision ~~—(e)—~~ (f) 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~~ for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes .

~~—(j)~~

(k) 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.

~~—(k)~~

(l) *The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.*

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) *The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.*

*SEC. 4. Section 2699.3 is added to the Labor Code, to read:*

*2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:*

*(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.*

*(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.*

*(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision*

# CRLA Foundation

within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the 158-day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an

# CRLA Foundation

employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) No employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

# CRLA Foundation

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

SEC. 5. Section 2699.5 is added to the Labor Code, to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 shall apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Section 98.6, 201, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 212, subdivision (d) of Section 213, 221, 222, 222.5, 223, 224, subdivision (a) of Section 226, 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, 233, 234, 351, 353, 403, subdivision (b) of Section 404, 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, subdivision (c) or (d) of Section 1174, 1194, 1197, 1197.1, 1197.5, 1198, subdivision (b) of Section 1198.3, 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, 1695, subdivision (a) of Section 1695.5, 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, 2673, subdivision (a) of Section 2673.1, 2695.2, 2800, 2801, 2802, 2806, 2810, subdivision (b) of Section 2929, 3095, 6310, 6311, or 6399.7.

SEC. 6. (a) The Legislature finds and declares that, as enunciated in long-standing judicial precedent, its inherent authority to create causes of action or remedies necessarily includes the authority to abolish them. Therefore, a plaintiff seeking recovery upon a legislatively created cause of action runs the risk that the Legislature may repeal or alter that cause during the pendency of the claim. Thus, the Legislature further finds and declares that the alteration of the right to recover civil penalties for violations of the Labor Code made by this act may be applied retroactively to any applicable pending proceeding without depriving any person of a substantive right without due process of law.

(b) (1) The provisions of paragraph (2) of subdivision (g) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

(2) The provisions of subdivision (1) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 8. Notwithstanding any other provision of law, the provisions of Section 5 of this act relating to the duties and functions of the Division of Occupational Safety and Health shall be subject to review by the Joint Committee on Boards, Commissions, and Consumer

# CRLA Foundation

Protection pursuant to Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code in consultation with the Senate Committee on Labor and Industrial Relations and the Assembly Committee on Labor and Employment. The first review shall be completed no later than three years from the effective date of this act.

SEC. 9. There is appropriated from the General Fund one hundred fifty thousand dollars (\$150,000) to the Labor and Workforce Development Agency for the purposes of implementing the purposes of this act.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To provide relief to some employers who may be adversely affected by frivolous lawsuits brought pursuant to the Labor Code Private Attorneys General Act of 2004 and to provide meaningful remedies to employees suffering from egregious violations of the Labor Code at the earliest possible time, it is necessary for this act to take effect immediately. ~~—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 and other current or former employees if the following requirements are met:~~

~~— (1) The alleged violation was reported by the plaintiff or his or her representative to the Labor and Workforce Development Agency in writing, and no state enforcement action, as that term is defined in paragraph (2), has commenced within 15 calendar days of the report. The plaintiff shall file with the civil action a certification that states that he or she has complied with the requirements of this subdivision.~~

~~— (2) For purposes of this section, the term "state enforcement action" means that the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, has cited 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 has initiated a proceeding pursuant to Section 98.3.~~

~~— (3) If, after the filing of a civil action, such a citation is issued or such a proceeding is initiated, the court shall apply the provisions of subdivision (g) to those aspects of the case or causes of action brought pursuant to this section. However, a court may not stay or extinguish aspects of the case or causes of action brought pursuant to this section on the basis of any state enforcement action except upon a showing of the issuance of a citation or the filing of an action pursuant to Section 98.3 that is based on the same facts and theories and for a violation of the same section or sections of the Labor Code.~~

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

# CRLA Foundation

~~—(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) (1) 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.~~

~~—(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (c), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.~~

~~—(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) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (c) 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.~~

~~—(2) A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.~~

~~—(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~~

# 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.~~

~~— (i) Civil penalties recovered under paragraph (1) of subdivision (c) 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.~~

~~— (k) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.~~

~~— (l) The amendments to subdivisions (a), (d), and (f) of this section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.~~

=====

BILL NUMBER: SB 1809            AMENDED  
BILL TEXT

AMENDED IN SENATE    MAY 26, 2004  
AMENDED IN SENATE    MAY 20, 2004  
AMENDED IN SENATE    MAY 11, 2004  
AMENDED IN SENATE    MAY 4, 2004  
AMENDED IN SENATE    APRIL 12, 2004

INTRODUCED BY    Senator Dunn

FEBRUARY 20, 2004

An act to amend Section 2699 of the Labor Code, relating to employment ~~, and declaring the urgency thereof, to take effect immediately~~ .

LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as amended, Dunn. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes aggrieved employees to bring civil actions to recover specified civil penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments,

# CRLA Foundation

divisions, commissions, boards, agencies, or employees do not do so. The act authorizes a court to exercise the same discretion to assess a civil penalty as the agency or its subdivisions.

This bill would require the plaintiff or his or her representative, as a condition to bringing a civil action pursuant to the act, to report the alleged violation of the Labor Code to the Labor and Workforce Development Agency in writing and would require that, within 15 calendar days of the report, no state enforcement action, as defined, has commenced. The bill also would require the plaintiff to file with the civil action a certification stating that he or she has complied with these requirements.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if certain findings are made based on the facts and circumstances of the particular case. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code may be recovered only by the agency or its subdivisions.

The bill would specify that these amendments shall apply to civil actions filed on or after, or pending on, the effective date of this bill.

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~ majority .

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

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

SECTION 1. Section 2699 of the Labor Code is amended to 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 and other current or former employees if the following requirements are met:

(1) The alleged violation was reported by the plaintiff or his or her representative to the Labor and Workforce Development Agency in writing, and no state enforcement action, as that term is defined in paragraph (2), has commenced within 15 calendar days of the report. The plaintiff shall file with the civil action a certification that states that he or she has complied with the requirements of this subdivision.

(2) For purposes of this section, the term "state enforcement action" means that the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, has cited 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 has initiated a proceeding pursuant to Section 98.3.

# CRLA Foundation

(3) If, after the filing of a civil action, such a citation is issued or such a proceeding is initiated, the court shall apply the provisions of subdivision (g) to those aspects of the case or causes of action brought pursuant to this section. However, a court may not stay or extinguish aspects of the case or causes of action brought pursuant to this section on the basis of any state enforcement action except upon a showing of the issuance of a citation or the filing of an action pursuant to Section 98.3 that is based on the same facts and theories and for a violation of the same section or sections of the Labor Code.

(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) (1) 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.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (e), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.

(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) (1) Except as provided in paragraph (2), 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.

# CRLA Foundation

(2) A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.

(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.

(k) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(l) The amendments to subdivisions (a), (d), and (f) of this section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

~~SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to provide relief to some employers who may be adversely affected by lawsuits pursuing automatic application of mandatory penalties for minor posting or notice violations brought pursuant to the Labor Code Private Attorneys General Act of 2004 at the earliest possible time, it is necessary for this act to take effect immediately.~~

=====

BILL NUMBER: SB 1809 AMENDED  
BILL TEXT

AMENDED IN SENATE MAY 20, 2004  
AMENDED IN SENATE MAY 11, 2004

# CRLA Foundation

AMENDED IN SENATE MAY 4, 2004  
AMENDED IN SENATE APRIL 12, 2004

INTRODUCED BY Senator Dunn

FEBRUARY 20, 2004

An act to amend Section 2699 of the Labor Code, relating to employment , and declaring the urgency thereof, to take effect immediately .

## LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as amended, Dunn. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes aggrieved employees to bring civil actions to recover specified civil penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The act authorizes a court to exercise the same discretion to assess a civil penalty as the agency or its subdivisions.

This bill would require the plaintiff or his or her representative, as a condition to bringing a civil action pursuant to the act, to report the alleged violation of the Labor Code to the Labor and Workforce Development Agency in writing and would require that, within 15 calendar days of the report, no state enforcement action, as defined, has commenced. The bill also would require the plaintiff to file with the civil action a certification stating that he or she has complied with these requirements.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if certain findings are made based on the facts and circumstances of the particular case. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code may be recovered only by the agency or its subdivisions.

The bill would specify that these amendments shall apply to civil actions filed on or after, or pending on, the effective date of this bill.

*The bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ 2/3 .

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

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

SECTION 1. Section 2699 of the Labor Code is amended to read:

# CRLA Foundation

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 if the following requirements are met:

(1) The alleged violation was reported by the plaintiff or his or her representative to the Labor and Workforce Development Agency in writing, and no state enforcement action, as that term is defined in paragraph (2), has commenced within 15 calendar days of the report. The plaintiff shall file with the civil action a certification that states that he or she has complied with the requirements of this subdivision.

(2) For purposes of this section, the term "state enforcement action" means that the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, has cited 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 has initiated a proceeding pursuant to Section 98.3.

(3) If, after the filing of a civil action, such a citation is issued or such a proceeding is initiated, the court shall apply the provisions of subdivision (g) to those aspects of the case or causes of action brought pursuant to this section. However, a court may not stay or extinguish aspects of the case or causes of action brought pursuant to this section on the basis of any state enforcement action except upon a showing of the issuance of a citation or the filing of an action pursuant to Section 98.3 that is based on the same facts and theories and for a violation of the same section or sections of the Labor Code.

(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) (1) 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.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (e), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.

(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:

# CRLA Foundation

(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) (1) Except as provided in paragraph (2), 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.

(2) A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.

(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.

(k) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(l) The amendments to subdivisions (a), (d), and (f) of this

# CRLA Foundation

section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

*SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to provide relief to some employers who may be adversely affected by lawsuits pursuing automatic application of mandatory penalties for minor posting or notice violations brought pursuant to the Labor Code Private Attorneys General Act of 2004 at the earliest possible time, it is necessary for this act to take effect immediately.*

=====

BILL NUMBER: SB 1809    AMENDED  
BILL TEXT

AMENDED IN SENATE    MAY 11, 2004  
AMENDED IN SENATE    MAY 4, 2004  
AMENDED IN SENATE    APRIL 12, 2004

INTRODUCED BY    Senator Dunn

FEBRUARY 20, 2004

An act to amend Section 2699 of the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as amended, Dunn. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes aggrieved employees to bring civil actions to recover specified civil penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The act authorizes a court to exercise the same discretion to assess a civil penalty as the agency or its subdivisions.

*This bill would require the plaintiff or his or her representative, as a condition to bringing a civil action pursuant to the act, to report the alleged violation of the Labor Code to the Labor and Workforce Development Agency in writing and would require that, within 15 calendar days of the report, no state enforcement action, as defined, has commenced. The bill also would require the plaintiff to file with the civil action a certification stating that he or she has complied with these requirements.*

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to

# CRLA Foundation

award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if certain findings are made based on the facts and circumstances of the particular case. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code may be recovered only by the agency or its subdivisions. ~~The~~

The bill would specify that these amendments shall apply to civil actions filed on or after, or pending on, the effective date of this bill.

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. Section 2699 of the Labor Code is amended to 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 and other current or former employees ~~—~~ if the following requirements are met:

(1) *The alleged violation was reported by the plaintiff or his or her representative to the Labor and Workforce Development Agency in writing, and no state enforcement action, as that term is defined in paragraph (2), has commenced within 15 calendar days of the report. The plaintiff shall file with the civil action a certification that states that he or she has complied with the requirements of this subdivision.*

(2) *For purposes of this section, the term "state enforcement action" means that the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, has cited 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 has initiated a proceeding pursuant to Section 98.3.*

(3) *If, after the filing of a civil action, such a citation is issued or such a proceeding is initiated, the court shall apply the provisions of subdivision (g) to those aspects of the case or causes of action brought pursuant to this section. However, a court may not stay or extinguish aspects of the case or causes of action brought pursuant to this section on the basis of any state enforcement action except upon a showing of the issuance of a citation or the filing of an action pursuant to Section 98.3 that is based on the same facts and theories and for a violation of the same section or sections of the Labor Code.*

(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) (1) For purposes of this part, whenever the Labor and

# CRLA Foundation

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.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (e), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.

(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) (1) Except as provided in paragraph (2), 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.

(2) A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.

(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

# CRLA Foundation

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.

(k) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(l) The amendments to subdivisions ~~(d)~~ (a), (d), and (f) of this section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

=====

BILL NUMBER: SB 1809 AMENDED  
BILL TEXT

AMENDED IN SENATE MAY 4, 2004  
AMENDED IN SENATE APRIL 12, 2004

INTRODUCED BY Senator Dunn

FEBRUARY 20, 2004

An act to amend Section 2699 of the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as amended, Dunn. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes aggrieved employees to bring civil actions to recover specified civil penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The act authorizes a court to exercise the same discretion to assess a civil penalty as the agency or its subdivisions.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to

# CRLA Foundation

award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if certain findings are made based on the facts and circumstances of the particular case. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code may be recovered only by the agency or its subdivisions. The bill would specify that these amendments shall apply to civil actions filed on or after, or pending on, the effective date of this bill.

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. Section 2699 of the Labor Code is amended to~~

*SECTION 1. Section 2699 of the Labor Code is amended to 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 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) (1) 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.

(2) *In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (e), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.*

(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

# CRLA Foundation

(\$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~~ (1) *Except as provided in paragraph (2), 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.*

(2) *A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.*

(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.

(k) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

*(1) The amendments to subdivisions (d) and (f) of this section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.*

~~read:~~

~~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 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) (1) 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.~~

~~—(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (c), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.~~

~~—(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) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (c) 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.~~

~~—(2) A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.~~

# CRLA Foundation

~~—(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 (c) 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.~~

~~—(k) The amendments to subdivisions (d) and (f) of this section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.~~

=====BILL NUMBER: SB 1809      AMENDED  
BILL TEXT

AMENDED IN SENATE    APRIL 12, 2004

INTRODUCED BY    Senator Dunn

FEBRUARY 20, 2004

An act to amend Section ~~1194.2~~ 2699  
of the Labor Code, relating to ~~employees.~~  
*employment.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as amended, Dunn. ~~Employees: liquidated  
damages~~ *Labor Code Private Attorneys General Act of  
2004 .*

*Existing law, the Labor Code Private Attorneys General Act of  
2004, authorizes aggrieved employees to bring civil actions to  
recover specified civil penalties for violations of the Labor Code if  
the Labor and Workforce Development Agency or its departments,*

# CRLA Foundation

divisions, commissions, boards, agencies, or employees do not do so. The act authorizes a court to exercise the same discretion to assess a civil penalty as the agency or its subdivisions.

This bill would authorize a court, in any action by an aggrieved employee seeking recovery of a civil penalty pursuant to the act, to award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if certain findings are made based on the facts and circumstances of the particular case. The bill would provide that a civil penalty for any violation of a posting or notice requirement of the Labor Code may be recovered only by the agency or its subdivisions. The bill would specify that these amendments shall apply to civil actions filed on or after, or pending on, the effective date of this bill.

~~Existing law provides that an employee, in any action to recover wages because of the payment of a wage less than the minimum wage, is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. However, existing law provides that if the employer demonstrates that the act or omission giving rise to the action was in good faith and the employer had reasonable grounds for believing that the act or omission was not a violation of any law, the court may, in its discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding a specified amount.~~

~~This bill would additionally allow an employee to bring an action to recover wages because of the payment of a wage less than the overtime compensation, as specified, and would make conforming changes to the existing law.~~

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. Section 1194.2 of the Labor Code is amended to~~

*SECTION 1. Section 2699 of the Labor Code is amended to 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 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) (1) 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

# CRLA Foundation

same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) *In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (e), a court may award a lesser amount than the maximum civil penalty amount specified by the underlying applicable statute if, based on the facts and circumstances of the particular case, to do otherwise would result in an unfair, arbitrary and oppressive, or confiscatory award, that is wholly disproportionate to any discernible and legitimate legislative goal, and that demonstrably overbalances and outweighs the goals of punishment, regulation, and deterrence.*

(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~~ (1) *Except as provided in paragraph (2), 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.*

(2) *A civil penalty for any violation of a posting or notice requirement of this code may be recovered only by the agency or its departments, divisions, commissions, boards, agencies, or employees.*

(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

# CRLA Foundation

(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.

*(k) The amendments to subdivisions (d) and (f) of this section made at the 2003-04 Regular Session shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.*

~~read:~~

~~— 1194.2. (a) In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage or the overtime compensation fixed by an order of the commission or this code, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.~~

~~— (b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of this code relating to minimum wage or overtime compensation, or an order of the commission, the court may, in its discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).~~

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

===BILL NUMBER: SB 1809  
BILL TEXT

INTRODUCED

INTRODUCED BY Senator Dunn

FEBRUARY 20, 2004

An act to amend Section 1194.2 of the Labor Code, relating to employees.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1809, as introduced, Dunn. Employees: liquidated damages.

Existing law provides that an employee, in any action to recover wages because of the payment of a wage less than the minimum wage, is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. However, existing law provides that if the employer demonstrates that the act or omission

# CRLA Foundation

giving rise to the action was in good faith and the employer had reasonable grounds for believing that the act or omission was not a violation of any law, the court may, in its discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding a specified amount.

This bill would additionally allow an employee to bring an action to recover wages because of the payment of a wage less than the overtime compensation, as specified, and would make conforming changes to the existing law.

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. Section 1194.2 of the Labor Code is amended to read:

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

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

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

=====

## Committee & Floor Analyses (In Reverse Chronological Order)

BILL ANALYSIS

SB 1809  
Page 1

(Without Reference to File)

SENATE THIRD READING

# CRLA Foundation

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

SENATE VOTE :21-13

LABOR AND EMPLOYMENT            6-2    JUDICIARY                            6-3

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

APPROPRIATIONS

(vote not available)

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

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

SB 1809  
Page 2

- d) If LWDA determines that no citation will be issued, it shall notify the employer and aggrieved employee within

# CRLA Foundation

five business days; and,

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

the superior court; and,

# CRLA Foundation

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

# CRLA Foundation

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

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

# CRLA Foundation

purposes.

- 9) Requires the superior court to review and approve any penalties sought as part of a proposed settlement agreement. This amendment shall apply retroactively to January 1, 2004, and shall affect all applicable pending proceedings.
- 10) Authorizes LWDA or any of its subdivisions to promulgate regulations to implement the provisions of SB 796.
- 11) Amends provisions of existing law related to employment retaliation and discrimination to include among those specifically-protected employee rights the bringing of a civil action or initiating any notice pursuant to SB 796.
- 12) Repeals Labor Code Section 431, which requires employers to submit copies of specified applications for employment to the Division of Labor Standards Enforcement.
- 13) Appropriates \$150,000 from the General Fund (GF) to LWDA for the purposes of implementing these provisions.
- 14) Contains an urgency clause.

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

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for subsequent violations. The penalty is \$500 per violation where the violator does not employ any employees at the time of the violation.
- 2) Authorizes an "aggrieved employee" to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed.
- 3) Defines an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

- 4) Provides that no private right of action may be maintained where LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.
- 5) Specifies that where LWDA or any of its subdivisions has discretion to assess a civil penalty, a court may exercise the same discretion with respect to civil penalties established by SB 796.
- 6) Provides that the civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the GF; 25% to LWDA for employer and employee education; and, 25% to the aggrieved employees. Civil penalties recovered against person that do not employ any employees are to be divided evenly between the GF and LWDA.
- 7) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in a civil action.
- 8) Specifies that these provisions of law are not intended to affect the exclusive remedy provided by the workers' compensation provisions of existing law.

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

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

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

# CRLA Foundation

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

The sponsors stated that many Labor Code provisions are simply not enforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. Proponents also contended that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall required a creative solution to help the state crack down on labor law violators. Therefore, supporters argued that private actions to enforce the provisions of the Labor Code were necessary to ensure compliance with the law.

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

Opponents of SB 796 argued that the bill would tip the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Several employer groups, including the California Chamber of Commerce, cited the fact that employees are entitled to attorney's fees and costs if they prevail in their action under SB 796, yet similar attorney's fees and costs were not provided for prevailing employers. Additionally, opponents cited the fact that there was no requirement imposed upon employees prior to filing civil actions such as preliminary claim filing with the Labor Commissioner.

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

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

# CRLA Foundation

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

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

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

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

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

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

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

# CRLA Foundation

SB 1809

Page 9

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

FN: 0007229

=====  
BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1809
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

## UNFINISHED BUSINESS

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

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 7-1, 4/28/04  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock,  
Romero  
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 21-13, 5/26/04  
AYES: Alarcon, Bowen, Burton, Cedillo, Chesbro, Dunn,  
Escutia, Figueroa, Florez, Karnette, Kuehl, Murray,  
Ortiz, Perata, Romero, Scott, Soto, Speier, Torlakson,  
Vasconcellos, Vincent  
NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham,  
Hollingsworth, Johnson, Margett, McPherson, Morrow,  
Oller, Poochigian  
NO VOTE RECORDED: Alpert, Ducheny, Machado, McClintock,  
Sher, Vacancy

ASSEMBLY FLOOR : 79-0, 7/28/04 - See last page for vote

# CRLA Foundation

SUBJECT : Labor Code Private Attorneys General Act of 2004

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill significantly amends "The Labor Code  
CONTINUED

SB 1809  
Page

---

2

Private Attorneys General Act of 2004" [SB 796 (Dunn), Chapter 906, Statutes of 2003], by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations.

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

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

---

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

Serious Labor Code Violations . Establishes a new procedure that an aggrieved employee must follow prior to bringing a civil action to recover penalties for enumerated, serious Labor Code violations (including, but not limited to,

# CRLA Foundation

violations of wage and hour, overtime, child labor, agricultural, entertainment and garment industry labor laws, and public works laws).

1. The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.

SB 1809  
Page

---

3

2. If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
3. If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

## Notice and Cure Procedures for Other Labor Code Violations

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

1. The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
2. The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
3. If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
4. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
5. For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.

# CRLA Foundation

6. If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to

SB 1809  
Page

---

4

the superior court.

7. No employer may avail himself or herself of the Notice and Cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

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

1. The aggrieved employee must give written notice to the Division of Occupational Safety and Health (DOSH) within the State Department of Industrial Relations (DIR) and the employer of the alleged violation.
2. DOSH must inspect or investigate the alleged violation pursuant to existing provisions of law.
3. If DOSH issues a citation, no civil action pursuant to SB 796 may commence.
4. If, by the end of the period for inspection or investigation, DOSH fails to issue a citation and the employee disputes that decision, the employee may challenge the decision in the superior court. If the court finds that DOSH should have issued a citation and orders DOSH to issue a citation, then no civil action pursuant to SB 796 may commence.
5. If DOSH fails to inspect or investigate the alleged

# CRLA Foundation

violation within the period specified in existing law, the Notice and Cure provisions outlined above apply to the determination of the alleged violation.

6. Requires superior court review of any proposed settlement of alleged safety in employment violations to ensure that they are at least as effective as the protections or remedies provided in federal and state

SB 1809  
Page

---

5

law.

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

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

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

Funding . Appropriates \$150,000 from the General Fund in the current year for implementation.

Urgency . Is an urgency measure and applies retroactively to January 1, 2004 (the date SB 796 was enacted).

## Comments

The California Rural Legal Assistance Foundation, the bill's sponsor, argue that last year's enactment of SB 796, (Dunn), Chapter 906, Statutes of 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress

# CRLA Foundation

directly when the state has not done so on their behalf.

SB 1809 is a result of an agreement reached between the Labor Agency, business and labor representatives. SB 1809 improves SB 796 by allowing the Labor Agency to act first on more "serious" violations such as wage and hour violations and give employers an opportunity to cure less serious violations. The bill protects businesses from

SB 1809  
Page

---

6

shakedown lawsuits, yet ensures that labor laws protecting California's working men and women are enforced - either through the Labor Agency or through the courts.

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

SB 796 authorizes an aggrieved employee to recover civil penalties plus reasonable attorney's fees and costs in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable only as misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely resulted in criminal investigations and prosecutions.

Rationale . Business groups and others opposed to SB 796

# CRLA Foundation

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

This bill significantly amends the provisions of SB 796 by

SB 1809  
Page

---

7

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

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

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

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

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

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

# CRLA Foundation

civil penalties to the aggrieved employees.

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

1. Increases the amount distributed to the Labor Agency for enforcement and education from 50 percent to 100

SB 1809  
Page

---

8

percent, and adds a continuous appropriation for these purposes.

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

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

SUPPORT : (Verified 7/28/04)

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

ASSEMBLY FLOOR :

AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz,

# CRLA Foundation

Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas,

SB 1809  
Page

9

Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, Yee, Nunez  
NO VOTE RECORDED: Maze

NC:mel 7/29/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

=====

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1809
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

UNFINISHED BUSINESS

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

# CRLA Foundation

Vote: 27 - Urgency

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 7-1, 4/28/04  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock,  
Romero  
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 21-13, 5/26/04  
AYES: Alarcon, Bowen, Burton, Cedillo, Chesbro, Dunn,  
Escutia, Figueroa, Florez, Karnette, Kuehl, Murray,  
Ortiz, Perata, Romero, Scott, Soto, Speier, Torlakson,  
Vasconcellos, Vincent  
NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham,  
Hollingsworth, Johnson, Margett, McPherson, Morrow,  
Oller, Poochigian  
NO VOTE RECORDED: Alpert, Ducheny, Machado, McClintock,  
Sher, Vacancy

ASSEMBLY FLOOR : Not available

SUBJECT : Labor Code Private Attorneys General Act of  
2004

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill significantly amends "The Labor Code  
CONTINUED

SB 1809  
Page

2

Private Attorneys General Act of 2004" [SB 796 (Dunn), Chapter 906, Statutes of 2003], by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations.

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

# CRLA Foundation

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

---

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

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

1. The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.

SB 1809  
Page

---

3

2. If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
3. If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

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

# CRLA Foundation

and safety violations section below.

1. The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
2. The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
3. If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
4. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
5. For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.
6. If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to

SB 1809  
Page

---

4

the superior court.

7. No employer may avail himself or herself of the Notice and Cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

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

# CRLA Foundation

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

SB 1809  
Page

---

5

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

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

Prohibition on Retaliation . Prohibits an employer from

# CRLA Foundation

retaliating against any employee that brings a civil action under SB 796 in the form of discharge or any manner of discrimination.

## Comments

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

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

SB 1809  
Page

---

6

SB 796 authorizes an aggrieved employee to recover civil penalties plus reasonable attorney's fees and costs in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable

# CRLA Foundation

only as misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely resulted in criminal investigations and prosecutions.

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

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

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

SB 1809  
Page

---

7

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

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

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

1. Increases the amount distributed to the Labor Agency for

# CRLA Foundation

enforcement and education from 25 percent to 75 percent, and adds a continuous appropriation for these purposes.

2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.
3. Retains the current distribution of 25 percent of these civil penalties to the aggrieved employees.

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

1. Increases the amount distributed to the Labor Agency for enforcement and education from 50 percent to 100 percent, and adds a continuous appropriation for these purposes.
2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.

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

SUPPORT : (Verified 7/28/04)

American Federation of Television and Radio Artists

SB 1809  
Page

---

8

California Chamber of Commerce  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Federation of Teachers  
California Labor Federation  
California Manufacturers and Technology Association  
California Restaurant Association  
California Rural Legal Assistance Foundation  
California Teamsters Public Affairs Council  
Engineers and Scientists of California  
Hotel Employees, Restaurant Employees International Union  
Jockeys' Guild  
Professional and Technical Engineers, Local 21

# CRLA Foundation

Region 8 States Council of the United Food & Commercial  
Workers

NC:mel 7/28/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

=====  
BILL ANALYSIS

SB 1809  
Page 1

Date of Hearing: July 28, 2004

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Judy Chu, Chair

SB 1809 (Dunn) - As Amended: July 27, 2004

Policy Committee:		Labor and
Employment	Vote:	6-2
	Judiciary	6-3

Urgency: Yes State Mandated Local Program:  
No Reimbursable:

## SUMMARY

This bill significantly amends "The Labor Code Private Attorneys General Act of 2004" (SB 796, Dunn, Chapter 906 of 2003), by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations. Specifically, this bill:

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

- a) The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.

# CRLA Foundation

- b) If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
- c) If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

SB 1809  
Page 2

---

## 2) Notice and Cure Procedures for Other Labor Code Violations .

Establishes Notice and Cure provisions for those Labor Code violations not enumerated in paragraph (1) above, nor subject to the Cal-OSHA provisions specified in paragraph (3) below.

- a) The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
- b) The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
- c) If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
- d) If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
- e) For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.
- f) If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

# CRLA Foundation

- g) No employer may avail himself or herself of the Notice and Cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

3)Health and Safety (Cal-OSHA) Violations . Establishes a new procedure that an aggrieved employee must follow prior to initiating a civil action to recover penalties for violations of Labor Code provisions pertaining to occupational safety and health (Cal-OSHA), other than sections that are specifically enumerated in paragraph (1).

SB 1809

Page 3

---

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

4)Judicial Discretion Over Award Amounts . Authorizes a court to award a lesser amount than the maximum civil penalty amount allowed if to do otherwise would result in an award that is

# CRLA Foundation

"unjust, arbitrary and oppressive, or confiscatory."

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

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

SB 1809

Page 4

---

## FISCAL EFFECT

- 1)Appropriates \$150,000 from the General Fund to the Labor Agency to implement this act. The Labor Agency indicates that its costs likely will exceed this amount, and it will redirect resources as necessary to accomplish the purposes of this act.
- 2)Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs one or more employees, as follows:
  - a) Increases the amount distributed to the Labor Agency for enforcement and education from 25% to 75%, and adds a continuous appropriation for these purposes.
  - b) Eliminates the distribution of 50% of these civil penalties to the General Fund.
  - c) Retains the current distribution of 25% of these civil penalties to the aggrieved employees.
- 3)Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs does not employ one or more employees, as follows:
  - a) Increases the amount distributed to the Labor Agency for enforcement and education from 50% to 100%, and adds a continuous appropriation for these purposes.
  - b) Eliminates the distribution of 50% of these civil penalties to the General Fund.

# CRLA Foundation

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

## COMMENTS

1)Background . SB 796, Dunn, Chapter 906 of 2004, established an alternative "private attorneys general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. SB 796 established a civil

SB 1809

Page 5

---

penalty where one was not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, \$200 for each aggrieved employee per pay period for subsequent violations, and \$500 per violation where the violator did not employ any employees at the time of the violation.

SB 796 authorizes an aggrieved employee to recover civil penalties plus reasonable attorney's fees and costs in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable only as misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely resulted in criminal investigations and prosecutions.

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

# CRLA Foundation

Business and Professions Code Section 17200 has been abused.

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

This bill also expands judicial review of SB 796 claims by requiring courts to review and approve any penalties sought as part of a proposed settlement agreement, and those portions of settlements concerning violations of health and safety laws. In addition, courts are authorized to award a lesser amount if

SB 1809  
Page 6

---

to do so otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

Analysis Prepared by : Stephen Shea / APPR. / (916) 319-2081

=====  
BILL ANALYSIS

SB 1809  
Page 1

---

Date of Hearing: June 22, 2004

ASSEMBLY COMMITTEE ON JUDICIARY  
Ellen M. Corbett, Chair  
SB 1809 (Dunn) - As Amended: May 26, 2004

SENATE VOTE : 21-13

SUBJECT : LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

---

# CRLA Foundation

KEY ISSUE : SHOULD THE LABOR CODE ENFORCEMENT MECHANISMS ENACTED BY THE AUTHOR'S SB 796 LAST YEAR BE REVISED AND RESTRICTED IN ORDER TO PREVENT POTENTIAL MISUSE?

## SYNOPSIS

This bill responds to criticisms of the author's measure last year by which aggrieved employees were permitted to enforce existing Labor Code requirements when state regulators fail to do so. Although supporters maintain that it is sound policy to supplement scarce state enforcement efforts with private efforts by workers whose rights are violated, they believe that it is appropriate to narrow the circumstances in which private actions may be brought and to clarify the power of the courts to exercise discretion in the determination of civil penalties when the employer is found to have violated the law. Despite their opposition to the author's bill last year, opponents of this measure are unmollified by these reforms; they argue for nothing less than the complete repeal of the act.

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

- 1) Provides that a civil penalty for any violation of a posting or notice requirement of the Labor Code may only be recovered by the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees.
- 2) States that trial courts have the discretion to award less than the maximum civil penalty available under current law when to do otherwise would be unfair, arbitrary and capricious, or confiscatory, would be wholly disproportionate to any discernible and legitimate legislative goal, and would demonstrably overbalance and outweigh the goals of punishment,

SB 1809

Page 2

---

regulation, and deterrence.

- 3) Requires an individual, prior to bringing a civil action, to report the alleged violation in writing to the LWDA and requires that, within 15 calendar days of the report, no state enforcement action has commenced. An individual would be required to file with any civil action a certification stating that he or she has complied with these requirements.

# CRLA Foundation

- 4) Specifies that these amendments to the provisions of existing law shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

## EXISTING LAW:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for subsequent violations. The penalty is \$500 per violation where the violator does not employ any employees at the time of the violation.
- 2) Authorizes an aggrieved employee to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. (Labor Code section 2699.)
- 3) Provides that no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings. (Section 2699.)
- 4) Specifies that where the LWDA or any of its subdivisions has discretion to assess a civil penalty, a court may exercise the same discretion with respect to civil penalties established by SB 796. (Section 2699.)
- 5) Provides that the civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the

SB 1809  
Page 3

---

LWDA for employer and employee education, and 25 percent to the aggrieved employees. Civil penalties recovered against person that do not employ any employees are to be divided evenly between the General Fund and the LWDA. (Section 2699.)

- 6) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in a civil action. (Section 2699.)

# CRLA Foundation

FISCAL EFFECT : As currently in print, this bill is keyed fiscal.

COMMENTS : The author states:

The Labor Code Private Attorney General Act (SB 796 Dunn) was enacted because of inadequate state enforcement of labor laws. California has important worker protections in statute - some of the strongest in the nation. However, these laws are meaningless if they are not enforced.

Last year the Legislature and the governor acknowledged that we are unable to increase state enforcement and we were unwilling to tell workers that the state will turn a blind eye to enforcing laws enacted to protect their safety and their earnings. The law now allows the employee to seek redress directly where the state has not done so on the employee's behalf. That is why we enacted SB 796 and it is still good policy today.

Opponents of SB 796 have asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations can lead to astronomical penalties.

SB 1809 addresses these issues as follows:

It allows a judge the ability to reduce the civil penalties where appropriate.

SB 1809 eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of posting or notice provisions of the Labor Code.

SB 1809 will be retroactive to the effective date of

SB 1809  
Page 4

---

SB 796 provided that a matter has not already reached a final, unappealable determination.

As a condition of bringing an action, requires the aggrieved employee to report the alleged violation to the Labor Agency in writing and no state enforcement action is initiated within 15 days.

# CRLA Foundation

The Author's SB 796 Last Year Sought To Bolster State Resources For Enforcement of Existing Labor Laws And Augment State Efforts To Enforce These Laws By Allowing Aggrieved Employees To Pursue The Employer For Unlawful Acts When State Fails To Do So.

According to the author, enforcement staff for state labor law agencies has fallen drastically behind the growth in the labor force. "There are only 14 more enforcement staff positions now than there were 15 years ago. At the same time, there are roughly 3 million more workers. Last year 710 positions at the Department of Industrial Relations - roughly 140 of which are attributable to enforcement - were eliminated. The budget picture is getting worse, not better."

SB 796 (Dunn) took effect on January 1, 2004. The co-sponsors of SB 796, the California Labor Federation and the California Rural Legal Assistance Foundation (CRLAF), argued that the bill would address inadequacies in labor law enforcement in two major ways. The bill did not change any obligation employers had under the Labor Code. Rather, the bill assigned civil fines to the large number of Labor Code provisions, which previously carried criminal fines, but not civil penalties. Second, SB 796 authorized employees aggrieved by a violation of the Labor Code to file a civil action to recover civil penalties when the state has not done so on their behalf. That is, SB 796 gave courts the authority - when a defendant is found to have violated the Labor Code in a case brought by an aggrieved worker - to penalize that defendant to the same extent that it could if the State of California had brought the case.

This Bill Revises and Restricts The Circumstances In Which An Employer Can Be Held Liable To An Aggrieved Employee For Violating Existing Labor Laws, And Makes These Changes Retroactive to the Effective Date of SB 796. While SB 796 is still good policy, proponents state, this bill addresses an issue raised by opponents of last year's bill who asserted that it provided no discretion to reduce the penalties under the law and that significant inadvertent violations could lead to

SB 1809  
Page 5

astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under statute when to do otherwise would be unfair, arbitrary and oppressive, or confiscatory.

# CRLA Foundation

In addition, this bill eliminates the ability of aggrieved employees to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of the LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

This bill also establishes a mechanism to notify the LWDA of the alleged violation, and gives the LWDA time to issue a citation with respect to that alleged violation. CRLAF also points out that the original provisions of SB 796, which remain unchanged by this bill, specify that no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings. CRLAF states that, although it supports state labor posting laws and also believes that existing case law precludes large mandatory civil penalty awards, it agrees that the carefully crafted amendments to SB 796 made by this bill are improvements which deserve to be signed into law.

Finally, the bill makes the foregoing changes retroactive to the effective date of SB 796 as to any cases that have not gone to a final unappealable judgment at the time of enactment.

OPPOSITION : The Chamber of Commerce and other business groups strongly opposed last year's bill. But they also oppose the reforms and restrictions the author has offered here. Their general contention is that the bill does nothing to lessen the opportunities made possible by SB 796 for "bounty hunting" private attorneys to sue employers. Opponents argue that the only sufficient step is the complete repeal of SB 796 in order to return labor law enforcement solely to the government.

Specifically, opponents argue that the amendment regarding posting and notice is a superficial improvement because the provision does no more than to direct the payment of the fine solely to the LWDA and the state general fund, instead of the plaintiff. Moreover, opponents argue, the bill still permits aggressive bounty hunting attorneys to include one or more non

posting or notice requirement in order to hook the employee and pursue these suits because they would still be entitled to receive attorney fees and court costs. Further, the opponents argue that earlier amendments only provide for very limited instances where a court would be permitted to adjust the

# CRLA Foundation

enormous civil fines imposed by SB 796, due to the many findings a court would have to make in order to justify such a reduction.

Finally, opponents argue that the notice provisions are far too abbreviated and that subsequent provisions of the bill take away any relief that that court review might have provided.

Opponents argue that 15 calendar days is an insufficient amount of time for the LWDA to commence the required state enforcement action, and therefore this provision does nothing to ensure that fee-seeking attorneys are prevented from abusing the provisions of SB 796.

For example, The California Manufacturers and Technology Association states, "A major concern of employers to SB 796 is it allows private attorneys to bring a civil action on behalf of employees and former employees for alleged Labor Code violations without ever informing state enforcement officials or the employer of the alleged violation. This is a major problem for employers because it takes away any opportunity for them to resolve the alleged violation before going to court. In response to employer complaints, the author amended SB 1809 to require an aggrieved employee to report alleged violations of the Labor Code to the Labor and Workforce Development Agency prior to bringing a civil action. However, the bill provides only 15 calendar days that equal 11 working days for the agency to investigate the alleged violation(s) and issue citation(s) before a civil suit may be brought by an aggrieved employee or former employee." CMTA argues, "? reducing the time period to 15 calendar days in which to act would be counter productive and creates an impossible hurdle for the agency to overcome. Therefore this provision provides no relief for employers and in fact may even encourage the filing of suits."

CMTA also states, "As amended and according to the author, SB 1809 would provide employers relief from real and potentially outlandish awards by allowing the court to award a lesser amount than the maximum civil penalty under the applicable statute. However, the court would have to rely on certain findings based on the facts and circumstances of the particular case that are so stringent that any relief under this provision by the court is highly unlikely." In addition, it argues that "[w]hile, the

bill would remove an aggrieved employee or former employee from personally collecting 25 percent of any civil penalty imposed by the court for posting or notice requirement violations, it does not preclude employees from bringing the suit nor does it reduce

# CRLA Foundation

the total amount of the award."

Despite the general preference for entrepreneurial pursuit of individual interest underlying our economic model, CMTA objects that "SB 796 is being used for personal gain rather than assisting the Labor and Workforce Development Agency in protecting workers from alleged unscrupulous employers." The Civil Justice Association of California similarly asserts that SB 796 "enacted a bounty hunter provision that currently allows unelected private attorneys to sue employers for any violation of the Labor Code, regardless of the severity of the violation. ? The law took the enforcement of California's Labor Code out of the hands of the state Labor Agency and put it in the hands of fee-seeking attorneys."

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees  
California Labor Federation, AFL-CIO  
California Rural Legal Assistance Foundation

---

Opposition

California Apartment Association  
California Chamber of Commerce  
California Manufacturers & Technology Association  
California Restaurant Association  
Civil Justice Association of California  
Consulting Engineers & Land Surveyors of California  
National Federation of Independent Business

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

=====  
BILL ANALYSIS

SB 1809

Page 1

---

Date of Hearing: June 16, 2004

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT  
Paul Koretz, Chair  
SB 1809 (Dunn) - As Amended: May 26, 2004

SENATE VOTE : 21-13

SUBJECT : Employment.

SUMMARY : Amends the "Labor Code Private Attorneys General Act of 2004," enacted pursuant to SB 796 (Dunn), Chapter # 906,

# CRLA Foundation

Statutes of 2003. Specifically, this bill :

- 1) Provides that a civil penalty for any violation of a posting or notice requirement of the Labor Code may only be recovered the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees.
- 2) States that trial courts have the discretion to award less than the maximum civil penalty available under current law when to do otherwise would be unfair, arbitrary and capricious, or confiscatory, would be wholly disproportionate to any discernible and legitimate legislative goal, and would demonstrably overbalance and outweigh the goals of punishment, regulation, and deterrence.
- 3) Requires an individual, prior to bringing a civil action, to report the alleged violation in writing to the LWDA and requires that, within 15 calendar days of the report, no state enforcement action has commenced. An individual would be required to file with any civil action a certification stating that he or she has complied with these requirements.
- 4) Specifies that these amendments to the provisions of existing law shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

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

- 1) Establishes a civil penalty where one is not specifically

SB 1809

Page 2

---

provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for subsequent violations. The penalty is \$500 per violation where the violator does not employ any employees at the time of the violation.

- 2) Authorizes an "aggrieved employee" to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed.

# CRLA Foundation

- 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 no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.
- 5) Specifies that where the LWDA or any of its subdivisions has discretion to assess a civil penalty, a court may exercise the same discretion with respect to civil penalties established by SB 796.
- 6) Provides that the civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund, 25% to the LWDA for employer and employee education, and 25% to the aggrieved employees. Civil penalties recovered against person that do not employ any employees are to be divided evenly between the General Fund and the LWDA.
- 7) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in a civil action.
- 8) Specifies that these provisions of law are not intended to affect the exclusive remedy provided by the workers' compensation provisions of existing law.

FISCAL EFFECT : Unknown

COMMENTS : SB 796 (Dunn) was passed by the Legislature last

SB 1809

Page 3

---

year and signed by the Governor in October. The legislation went into effect on January 1, 2004. The co-sponsors of SB 796, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation (CRLAF), argued that the bill would address inadequacies in labor law enforcement in two major ways. First, the bill assigned civil fine amounts to the large number of Labor Code provisions, which previously carried criminal fines, but not civil penalties. Second, it authorized the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys

# CRLA Foundation

general.

## Arguments in Support

Proponents of this measure, including its sponsor, CRLAF, argue that last year's SB 796 was a result of an acknowledgment on the part of the Governor and the Legislature that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf. According to supporters, today the budget picture is even worse and SB 796 is still good policy.

Proponents of this measure state that this bill addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that significant inadvertent violations could lead to astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under statute when to do otherwise would be unfair, arbitrary and oppressive, or confiscatory. In addition, this bill eliminates the ability of aggrieved employees to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of the LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations. Finally, this bill establishes a mechanism to notify the LWDA of the alleged violation, and gives the LWDA time to issue a citation with respect to that alleged violation.

CRLAF also points out that the original provisions of SB 796, which remain unchanged by this bill, specify that no private right of action may be maintained where the LWDA or any of its

SB 1809

Page 4

---

subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

CRLAF states that, although it supports state labor posting laws and also believes that existing case law precludes large mandatory civil penalty awards, it agrees that the carefully crafted amendments to SB 796 made by this bill are improvements which deserve to be signed into law.

# CRLA Foundation

## Arguments in Opposition

---

Opponents, including the California Chamber of Commerce and the Civil Justice Association of California, generally argue that this bill is an inadequate attempt to address the lawsuit abuses already associated with SB 796 and that, in reality, this bill does nothing to lessen the opportunities made possible by SB 796 for "bounty hunting" private attorneys to sue employers. Instead, opponents of this measure continue to advocate for the repeal of SB 796 in its entirety.

---

Specifically, opponents argue that the amendment regarding posting and notice is a superficial improvement because the provision does no more than to direct the payment of the fine solely to the LWDA and the state general fund, instead of the plaintiff. Further, the opponents argue that earlier amendments only provide for very limited instances where a court would be permitted to adjust the enormous civil fines imposed by SB 796, due to the many findings a court would have to make in order to justify such a reduction. Finally, opponents argue that the notice provisions are far too abbreviated and that subsequent provisions of the bill take away any relief that that review might have provided. Opponents argue that 15 calendar days is an insufficient amount of time for the LWDA to commence the required state enforcement action, and therefore this provision does nothing to ensure that fee-seeking attorneys are prevented from abusing the provisions of SB 796.

Committee Staff Comment : The author indicates that he is currently drafting additional amendments to significantly limit the applicability of SB 796. The author states that he will be prepared to present and discuss those amendments by the time this bill is heard in the Assembly Judiciary Committee.

---

REGISTERED SUPPORT / OPPOSITION :

SB 1809  
Page 5

---

## Support

American Federation of State, County and Municipal Employees  
California Labor Federation, AFL-CIO  
California Rural Legal Assistance Foundation  
United Nurses Associations of California/Union of Health Care Professionals

# CRLA Foundation

---

## Opposition

American Electronics Association  
Associated General Contractors  
Association of California Insurance Companies  
Automotive Repair Coalition  
Blue Cross of California  
California Apartment Association  
California Association of Health Facilities  
California Association of Sheet Metal & Air Conditioning  
Contractors, National Association  
California Automotive Wholesalers Coalition  
California Bankers Association  
California Business Properties Association  
California Business Roundtable  
California Farm Bureau Federation  
California Grocers Association  
California Healthcare Association  
California Landscape Contractors Association  
California League of Food Processors  
California Manufacturers & Technology Association  
California Restaurant Association  
California Service Station & Automotive Repair Association  
Civil Justice Association of California  
Consulting Engineers & Land Surveyors of California  
Lumber Association of California & Nevada  
Miller Brewing Company  
National Federation of Independent Business  
Orange County Citizens Against Lawsuit Abuse

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

=====  
BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1809
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

Bill No: SB 1809  
Author: Dunn (D)  
Amended: 5/26/04

# CRLA Foundation

Vote: 21

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 7-1, 4/28/04  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock,  
Romero  
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Labor Code Private Attorneys General Act of  
2004

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill amends the Labor Code Private Attorneys General Act of 2004 to (1) provide that only the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees may recover a civil penalty for violation of a posting or notice requirement of the Labor Code, and (2) clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees.

Senate Floor Amendment of 5/26/04 deletes the urgency clause.

Senate Floor Amendment of 5/20/04 adds an urgency clause.  
CONTINUED

SB 1809  
Page

---

2

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

---

This bill provides that a civil penalty for violation of a posting or notice provision of the state Labor Code may

# CRLA Foundation

only be recovered by the LWDA or its subordinate agencies or employees. It also clarifies that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees. The provisions of this bill will be retroactive to January 1, 2004, provided that a matter has not already reached a final, unappealable determination.

This bill requires, as a condition to bringing a civil action, that the alleged violation was reported in writing to the LWDA and that no state enforcement action has commenced within 15 days of that report. The bill defines "state enforcement action."

NOTE: Amending this act to take immediate effect will provide relief to any employers that may have been sued under the Labor Code Private Attorneys General Act for minor posting or notice requirements.

## Comments

Proponents, including the California Rural Legal Assistance Foundation, the bill's sponsor, argue that last year's enactment of SB 796, (Dunn), Chapter 906, Statutes of 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which

SB 1809

Page

---

3

allows employees to seek redress directly when the state has not done so on their behalf. Today, the budget picture is even worse and SB 796 is still good policy.

This bill addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under the statute when to do otherwise, will be unfair, arbitrary and oppressive, or confiscatory. In addition, this bill eliminates the ability of an aggrieved employee to seek to recover civil

# CRLA Foundation

penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

Opponents, including the CJAC, argue that they continue to urge the Legislature to repeal SB 796 in its entirety. They feel that this bill is an inadequate attempt to address the lawsuit abuses already associated with SB 796 and will only lead to more litigation.

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

SUPPORT : (Verified 5/18/04)

California Rural Legal Assistance Foundation (source)  
American Federation of State, County and Municipal Employees  
California Federation of Labor  
California Labor Federation, AFL-CIO  
United Nurses Associations of California/Union of Health Care Professionals

OPPOSITION : (Verified 5/20/04)

Associated Builders and Contractors of California  
American Insurance Association  
California Chamber of Commerce

SB 1809  
Page

4

California Employment Law Council  
California Manufacturers and Technology Association  
Civil Justice Association of California  
Western Growers

NC:mel 5/26/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

=====  
BILL ANALYSIS

# CRLA Foundation

SENATE RULES COMMITTEE	SB 1809
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

## THIRD READING

Bill No: SB 1809  
Author: Dunn (D)  
Amended: 5/20/04  
Vote: 21

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 7-1, 4/28/04  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock,  
Romero  
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Labor Code Private Attorneys General Act of  
2004

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill amends the Labor Code Private Attorneys General Act of 2004 to (1) provide that only the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees may recover a civil penalty for violation of a posting or notice requirement of the Labor Code, and (2) clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees.

Senate Floor Amendment of 5/26/04 deletes the urgency clause.

Senate Floor Amendment of 5/20/04 adds an urgency clause.  
CONTINUED

# CRLA Foundation

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

This bill provides that a civil penalty for violation of a posting or notice provision of the state Labor Code may only be recovered by the LWDA or its subordinate agencies or employees. It also clarifies that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees. The provisions of this bill will be retroactive to January 1, 2004, provided that a matter has not already reached a final, unappealable determination.

This bill requires, as a condition to bringing a civil action, that the alleged violation was reported in writing to the LWDA and that no state enforcement action has commenced within 15 days of that report. The bill defines "state enforcement action."

NOTE: Amending this act to take immediate effect will provide relief to any employers that may have been sued under the Labor Code Private Attorneys General Act for minor posting or notice requirements.

## Comments

Proponents, including the California Rural Legal Assistance Foundation, the bill's sponsor, argue that last year's enactment of SB 796, (Dunn), Chapter 906, Statutes of 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which

# CRLA Foundation

allows employees to seek redress directly when the state has not done so on their behalf. Today, the budget picture is even worse and SB 796 is still good policy.

This bill addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under the statute when to do otherwise, will be unfair, arbitrary and oppressive, or confiscatory. In addition, this bill eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

Opponents, including the CJAC, argue that they continue to urge the Legislature to repeal SB 796 in its entirety. They feel that this bill is an inadequate attempt to address the lawsuit abuses already associated with SB 796 and will only lead to more litigation.

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

SUPPORT : (Verified 5/18/04)

California Rural Legal Assistance Foundation (source)  
American Federation of State, County and Municipal  
Employees  
California Federation of Labor  
California Labor Federation, AFL-CIO  
United Nurses Associations of California/Union of Health  
Care  
Professionals

OPPOSITION : (Verified 5/20/04)

Associated Builders and Contractors of California  
American Insurance Association  
California Chamber of Commerce

# CRLA Foundation

SB 1809  
Page

4

California Employment Law Council  
California Manufacturers and Technology Association  
Civil Justice Association of California  
Western Growers

NC:mel 5/26/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

=====

BILL ANALYSIS

-----

SENATE RULES COMMITTEE	SB 1809
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

-----

THIRD READING

Bill No: SB 1809  
Author: Dunn (D)  
Amended: 5/20/04  
Vote: 27 - Urgency

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 7-1, 4/28/04  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock,  
Romero  
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Labor Code Private Attorneys General Act of  
2004

SOURCE : California Rural Legal Assistance Foundation

# CRLA Foundation

DIGEST : This bill amends the Labor Code Private Attorneys General Act of 2004 to (1) provide that only the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees may recover a civil penalty for violation of a posting or notice requirement of the Labor Code, and (2) clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees.

Senate Floor Amendment of 5/20/04 adds an urgency clause.

ANALYSIS : Existing law allows employees to bring civil actions against their employers to recover penalties for

CONTINUED

SB 1809

Page

---

2

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

---

This bill provides that a civil penalty for violation of a posting or notice provision of the state Labor Code may only be recovered by the LWDA or its subordinate agencies or employees. It also clarifies that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees. The provisions of this bill will be retroactive to January 1, 2004, provided that a matter has not already reached a final, unappealable determination.

This bill requires, as a condition to bringing a civil action, that the alleged violation was reported in writing to the LWDA and that no state enforcement action has commenced within 15 days of that report. The bill defines "state enforcement action."

NOTE: Amending this act to take immediate effect will provide relief to any employers that may have been sued under the Labor Code Private Attorneys General Act for minor posting or notice requirements.

# CRLA Foundation

## Comments

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

SB 1809  
Page

---

3

This bill addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under the statute when to do otherwise, will be unfair, arbitrary and oppressive, or confiscatory. In addition, this bill eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

Opponents, including the CJAC, argue that they continue to urge the Legislature to repeal SB 796 in its entirety. They feel that this bill is an inadequate attempt to address the lawsuit abuses already associated with SB 796 and will only lead to more litigation.

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

SUPPORT : (Verified 5/18/04)

California Rural Legal Assistance Foundation (source)  
American Federation of State, County and Municipal

# CRLA Foundation

Employees  
California Federation of Labor  
California Labor Federation, AFL-CIO  
United Nurses Associations of California/Union of Health  
Care  
Professionals

OPPOSITION : (Verified 5/20/04)

Associated Builders and Contractors of California  
American Insurance Association  
California Chamber of Commerce  
California Employment Law Council  
California Manufacturers and Technology Association  
Civil Justice Association of California

SB 1809  
Page

\_\_\_\_\_4

Western Growers

NC:mel 5/21/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

=====

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1809
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 1809

# CRLA Foundation

Author: Dunn (D)  
Amended: 5/11/04  
Vote: 21

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 7-1, 4/28/04  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock,  
Romero  
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Labor Code Private Attorneys General Act of  
2004

SOURCE : California Rural Legal Assistance Foundation

DIGEST : This bill amends the Labor Code Private Attorneys General Act of 2004 to (1) provide that only the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees may recover a civil penalty for violation of a posting or notice requirement of the Labor Code, and (2) clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees.

ANALYSIS : Existing law allows employees to bring civil actions against their employers to recover penalties for violations of the Labor Code if the LWDA, or its subordinate agencies or employees do not do so. LWDA

CONTINUED

SB 1809

Page

---

2

enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act. Any penalties recovered by an aggrieved employee must be distributed as follows: 50 percent to the General Fund, 25 percent to LWDA for employer education and 25 percent to the aggrieved employees.

---

This bill provides that a civil penalty for violation of a posting or notice provision of the state Labor Code may only be recovered by the LWDA or its subordinate agencies or employees. It also clarifies that a court is authorized to exercise the same discretion in assessing a civil

# CRLA Foundation

penalty as LWDA or any of its subordinate agencies or employees. The provisions of this bill will be retroactive to January 1, 2004, provided that a matter has not already reached a final, unappealable determination.

This bill requires, as a condition to bringing a civil action, that the alleged violation was reported in writing to the LWDA and that no state enforcement action has commenced within 15 days of that report. The bill defines "state enforcement action."

## Comments

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

This bill addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the

SB 1809  
Page

---

3

maximum civil penalty available under the statute when to do otherwise, will be unfair, arbitrary and oppressive, or confiscatory. In addition, this bill eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

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



# CRLA Foundation

2004 to:

Provide that only the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees may recover a civil penalty for violation of a posting or notice requirement of the Labor Code

Clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees.

Analysis:

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

---

This Bill would provide, that a civil penalty for violation

of a posting or notice provision of the state Labor Code may only be recovered by the LWDA or its subordinate agencies or employees. It would also clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees. The provisions of this bill will be retroactive to January 1, 2004, provided that a matter has not already reached a final, unappealable determination.

Comments:

1. Proponents including the California Rural Legal Assistance Foundation (CRLAF), sponsor of SB1809, argue that last year's enactment of SB 796, (Dunn), Chapter 906, 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen

# CRLA Foundation

drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf. Today, the budget picture is even worse and SB 796 is still good policy.

This measure addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. This bill would give clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under the statute when to do otherwise, would be unfair, arbitrary and oppressive, or confiscatory. In addition, this measure eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of "posting" or

Hearing Date: April 28, 2004 SB

1809

Consultant: Frances Low

Page 2

Senate Committee on Labor and Industrial Relations

"notice" provisions of the Labor Code, while preserving the right of LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

## Support:

California Rural Legal Assistance Foundation, CRLA  
(co-sponsor)  
American Federation of State, County and Municipal  
Employees (AFSCME)  
California Federation of Labor  
California Labor Federation, AFL-CIO  
United Nurses Associations of California/Union of Health  
Care Professionals

## Opposition:

Associated Builders and Contractors of California

# CRLA Foundation

California Bankers Association (CBA)  
California Chamber of Commerce  
California Employment Law Council (CELC)  
California Manufacturers and Technology Association (CMTA)  
Western Growers

\* \* \*

Hearing Date: April 28, 2004  
1809

SB

---

Consultant: Frances Low  
Page 3

Senate Committee on Labor and Industrial Relations

# CRLA Foundation

# CRLA Foundation