

AMENDED IN ASSEMBLY APRIL 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1729**

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**Introduced by Committee on Insurance (Calderon (Chair),  
Chavez, Diaz, Dutra, Frommer, Havice, Horton, Keeley, Kehoe,  
and Vargas)**

March 26, 2001

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An act to amend Sections 305, 320.5, 329, 411, 633, 832, 931.5, 1087, 1177.5, ~~1379, 1537~~, 2739, 3011, 13003, 13021.5, 13028, 13050, and 13101 of, and to repeal Sections 328, 605.5, and 1141.5 of, the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1729, as amended, Committee on Insurance. Unemployment insurance.

(1) Existing law designates the Director of Employment Development as the chairperson of a strike force on the underground economy. The strike force is required to make annual reports to the Governor and the Legislature.

This bill would require the annual reports to be made by June 30 of each year.

(2) Existing law requires that the director provide certain information to school employers by October 15 of each year.

This bill would change the reporting date to February 15.

~~(3) Existing law permits the director to file a civil action or, under certain circumstances, initiate proceedings for a summary judgment, for the recovery of overpaid unemployment compensation benefits.~~

~~The director must take these actions within 3 years of the occurrence of certain events:~~

~~The bill would extend the 3-year statute of limitations to 6 years.~~

~~(4) Existing law provides that when a warrant drawn on certain accounts relating to unemployment compensation benefits remains unclaimed after 3 years, the amount of the warrant reverts the account and the fund from which it was payable.~~

~~This bill would reduce the 3-year period to one year.~~

~~(5)~~

(3) Under existing law relating to employer withholding of taxes from employee wages, a banking day is defined as any day other than a weekend day or a banking holiday recognized by the Federal Reserve System.

This bill would revise the definition of a banking day to exclude weekend days and banking holidays recognized by the Internal Revenue Service.

~~(6)~~

(4) The bill would also correct erroneous cross-references, update references to federal law, and repeal outdated provisions or provisions with outdated cross-references.

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

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

1 SECTION 1. Section 305 of the Unemployment Insurance  
2 Code is amended to read:  
3 305. Regulations for the administration of the functions of the  
4 Employment Development Department under this code shall be  
5 adopted, amended, or repealed by the Director of Employment  
6 Development as provided in Chapter 3.5 (commencing with  
7 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
8 Code.  
9 SEC. 2. Section 320.5 of the Unemployment Insurance Code  
10 is amended to read:  
11 320.5. The director may by authorized regulations prescribe  
12 the information required to be reported to the department by  
13 employing units under this division and employers subject to  
14 withholding tax under Division 6 (commencing with Section  
15 13000) in order to make reports required by the Secretary of Labor,



1 to provide information necessary to administer this code, to  
2 estimate unemployment rates or to make other estimates required  
3 for the purpose of dispensing or withholding money payments  
4 under the Welfare Reform Act of 1971, the Employment Security  
5 Amendments of 1970, the Emergency Unemployment  
6 Compensation Act of 1971, or the Workforce Investment Act of  
7 1998, and to make such other reports or estimates as may be  
8 required by any other state or federal law. The authorized  
9 regulations of the director may include requirements for the  
10 reporting of employment, unemployment, hours, wages, earnings,  
11 the location and nature of the industrial, business, or other activity  
12 of each establishment for the conduct of business, performance of  
13 services, or industrial operations, and such other requirements as  
14 are necessary to comply with this section.

15 SEC. 3. Section 328 of the Unemployment Insurance Code is  
16 repealed.

17 SEC. 4. Section 329 of the Unemployment Insurance Code is  
18 amended to read:

19 329. (a) The director, or his or her designee, shall serve as  
20 Chairperson of the Joint Enforcement Strike Force on the  
21 Underground Economy provided for in Executive Order W-66-93.  
22 The strike force shall include, but not be limited to, representatives  
23 of the Employment Development Department, the Department of  
24 Consumer Affairs, the Department of Industrial Relations, and the  
25 Office of Criminal Justice Planning. Other agencies that are not  
26 part of the administration, such as the Franchise Tax Board, the  
27 State Board of Equalization, and the Department of Justice, are  
28 encouraged to participate in the strike force.

29 (b) The strike force shall have the following duties:

30 (1) To facilitate and encourage the development and sharing of  
31 information by the participating agencies necessary to combat the  
32 underground economy.

33 (2) To improve the coordination of activities among the  
34 participating agencies.

35 (3) To develop methods to pool, focus, and target the  
36 enforcement resources of the participating agencies in order to  
37 deter tax evasion and maximize recoveries from blatant tax  
38 evaders and violators of cash-pay reporting laws.

39 (4) To reduce enforcement costs wherever possible by  
40 eliminating duplicative audits and investigations.



- 1 (c) In addition, the strike force shall be empowered to:
- 2 (1) Form joint enforcement teams when appropriate to utilize
- 3 the collective investigative and enforcement capabilities of the
- 4 participating members.
- 5 (2) Establish committees and rules of procedure to carry out the
- 6 activities of the strike force.
- 7 (3) To solicit the cooperation and participation of district
- 8 attorneys and other state and local agencies in carrying out the
- 9 objectives of the strike force.
- 10 (4) Establish procedures for soliciting referrals from the
- 11 public, including, but not limited to, an advertised telephone
- 12 hotline.
- 13 (5) Develop procedures for improved information sharing
- 14 among the participating agencies, such as shared automated
- 15 information data base systems, the use of a common business
- 16 identification number, and a centralized debt collection system.
- 17 (6) Develop procedures to permit the participating agencies to
- 18 use more efficient and effective civil sanctions in lieu of criminal
- 19 actions wherever possible.
- 20 (7) Evaluate, based on its activities, the need for any statutory
- 21 change to do any of the following:
- 22 (A) Eliminate barriers to interagency information sharing.
- 23 (B) Improve the ability of the participating agencies to audit,
- 24 investigate, and prosecute tax and cash-pay violations.
- 25 (C) Deter violations and improve voluntary compliance.
- 26 (D) Eliminate duplication and improve cooperation among the
- 27 participating agencies.
- 28 (E) Establish sharable information data bases.
- 29 (F) Establish a common business identification number for use
- 30 by participating agencies.
- 31 (G) Establish centralized, automated debt collection services
- 32 for the participating agencies.
- 33 (H) Strengthen civil penalty procedures to allow the strike
- 34 force to emphasize civil rather than criminal penalties wherever
- 35 possible.
- 36 (d) The strike force shall report to the Governor and the
- 37 Legislature annually during the period of its existence,
- 38 commencing February 1, 1995, and on June 30 of 2002 and each
- 39 year thereafter, regarding its activities.



1 The report shall include, but not be limited to, all of the  
2 following:

3 (1) The number of cases of blatant violations and  
4 noncompliance with tax and cash-pay laws identified, audited,  
5 investigated, or prosecuted through civil action or referred for  
6 criminal prosecution.

7 (2) Actions taken by the strike force to publicize its activities.

8 (3) Efforts made by the strike force to establish an advertised  
9 telephone hotline for receiving referrals from the public.

10 (4) Procedures for improving information sharing among the  
11 agencies represented on the strike force.

12 (5) Steps taken by the strike force to improve cooperation  
13 among participating agencies, reduce duplication of effort, and  
14 improve voluntary compliance.

15 (6) Recommendations for any statutory changes needed to  
16 accomplish the goals described in paragraph (7) of subdivision (c).

17 (e) This section shall remain in effect only until January 1,  
18 2006, and as of that date is repealed, unless a later enacted statute,  
19 which is enacted before January 1, 2006, deletes or extends that  
20 date.

21 SEC. 5. Section 411 of the Unemployment Insurance Code is  
22 amended to read:

23 411. The appeals board, acting as a whole, may promulgate  
24 rules or amend or rescind rules pertaining to hearing appeals and  
25 other matters falling within its jurisdiction. All such rules,  
26 amendments thereto, or repeals thereof, shall be made in  
27 accordance with the provisions of Chapter 3.5 (commencing with  
28 Section 11340), Part 1, Division 3, Title 2 of the Government  
29 Code.

30 SEC. 6. Section 605.5 of the Unemployment Insurance Code  
31 is repealed.

32 SEC. 7. Section 633 of the Unemployment Insurance Code is  
33 amended to read:

34 633. (a) For purposes of coverage under Part 2 (commencing  
35 with Section 2601) of Division 1, "employment" does not include  
36 services performed as an intermittent or adjunct instructor at a  
37 postsecondary educational institution which meets the  
38 requirements of Article 8 (commencing with Section 94900) of  
39 Chapter 7 of Part 59 of the Education Code if the intermittent or



1 adjunct instructor and the employing unit enter a written contract  
2 with the following provisions:

3 (1) That any federal or state income tax liability shall be the  
4 responsibility of the party providing the services.

5 (2) That no disability insurance coverage is provided under the  
6 contract.

7 (3) That the party performing the services certifies that he or  
8 she is doing so as a secondary occupation or as a supplemental  
9 source of income.

10 (b) This section shall not apply to services performed under a  
11 collective bargaining agreement.

12 (c) This section shall become operative on January 1, 1997.

13 SEC. 8. Section 832 of the Unemployment Insurance Code is  
14 amended to read:

15 832. The administrator shall at least annually calculate, as of  
16 the close of and for the immediately preceding fiscal year, the  
17 experiences of school employers relative to usage of the  
18 Unemployment Fund. The calculations shall include tabulations  
19 on the experience of each school employer in relation to the  
20 expenditures from and the income to the School Employees Fund  
21 from the wages paid by the employer. All school employers shall  
22 be listed and ranked by ratio of use. The report shall contain  
23 comments and recommendations on improvements to the  
24 administration, enforcement, and financing of the provisions  
25 relative to this article. The report by the administrator on the above  
26 shall be made each year to the affected school employer and  
27 governing board thereof prior to the February 15 of each year.

28 The administrator shall develop experience relationships on all  
29 benefits paid to employees via the School Employees Fund and on  
30 school employers' experience related to use and exposure. Data  
31 shall relate to numbers of employees and types of programs and  
32 shall be calculated as of the close of and for the immediately  
33 preceding fiscal year. A report by the administrator on the above  
34 shall be made each year to the Legislature prior to the February 15  
35 containing comments and recommendations on improvement to  
36 administration, enforcement and financing of the provisions  
37 relative thereto.

38 SEC. 9. Section 931.5 of the Unemployment Insurance Code  
39 is amended to read:



1 931.5. (a) Except for Part 2 (commencing with Section 2601)  
2 of this division and Division 6 (commencing with Section 13000),  
3 any third party which makes a payment included in the term  
4 “wages” solely by reason of subdivision (a) of Section 931 shall  
5 be the employer with respect to those wages unless the third-party  
6 payer notifies the last employer, who is a member of the plan and  
7 for whom the services were performed, within 15 days of payment,  
8 and provides all of the following information to that last employer:

9 (1) The name and social security account number of the  
10 recipients of the wages paid pursuant to subdivision (a) of Section  
11 931.

12 (2) The amount of gross wages paid pursuant to subdivision (a)  
13 of Section 931.

14 (b) The special rule prescribed by this subdivision applies to the  
15 payment of sick pay made by a third-party payer, such as an  
16 insurer, under a contract of insurance pursuant to a multiple  
17 employer plan that is obligated to make payments for sick pay to  
18 employees of participating employers. If the third-party payer  
19 provides the plan with the notification required by subdivision (a)  
20 within the time required, the plan, not the third-party payer, shall  
21 be treated as the employer under subdivision (a). If within six  
22 business days after receipt of the notification the plan similarly  
23 notifies the last employer for whom the services are performed,  
24 and who is a plan member, that employer, not the plan, shall be  
25 required to report and pay the contributions due with respect to the  
26 wages.

27 (c) The employer, as determined by subdivision (a) or (b), shall  
28 pay contributions, required by this part, except as provided in  
29 Sections 984 and 986, and shall comply with the requirements of  
30 subdivision (a) of Section 1088.

31 (d) When an employer receives the notification prescribed in  
32 subdivision (a) or (b), the wages described therein shall be deemed  
33 paid when the notice is received.

34 (e) The director shall not make an assessment pursuant to  
35 Section 1126, 1127, or 1137 to assess employee contributions  
36 required by Sections 984 and 13020 on third-party sick pay as  
37 described in subdivision (a) for the period from January 1, 1987,  
38 through the date on which this subdivision became effective.

39 (f) Except as provided by Section 1176 and Section 19301 of  
40 the Revenue and Taxation Code, no refunds may be made for



1 employee contributions required by Sections 984 and 13020 paid  
2 on third-party sick pay as described in subdivision (a) for the  
3 period from January 1, 1987, through the date on which this  
4 subdivision became effective.

5 SEC. 10. Section 1087 of the Unemployment Insurance Code  
6 is amended to read:

7 1087. Any officer or employee of the Sales and Use Tax  
8 Division of the Board of Equalization who is authorized to accept  
9 an application for a seller's permit under Section 6066 of the  
10 Revenue and Taxation Code or authorized to register a retailer  
11 under Section 6226 of the Revenue and Taxation Code is a duly  
12 authorized agent of the Employment Development Department  
13 for purposes of accepting registration of employers as required in  
14 this part.

15 The department shall reimburse the Board of Equalization for  
16 any additional costs incurred by reason of services by any of its  
17 officers or employees to the department pursuant to this section.

18 SEC. 11. Section 1141.5 of the Unemployment Insurance  
19 Code is repealed.

20 SEC. 12. Section 1177.5 of the Unemployment Insurance  
21 Code is amended to read:

22 1177.5. (a) If the director determines that an overpayment  
23 has been made to the department by an employing unit or the  
24 School Employees Fund because of a reason specified in this  
25 subdivision, and the amount of the overpayment has been  
26 reimbursed to the state by the federal government pursuant to the  
27 federal Workforce Investment Act of 1998, then the director shall  
28 credit the employing unit or the School Employees Fund with the  
29 amount of such overpayment, provided that the director  
30 determines that the overpayment was made because of one of the  
31 following:

32 (1) An employing unit paid unemployment insurance  
33 contributions after December 31, 1974, based on wages paid to  
34 individuals participating in a public service employment program  
35 under the federal Workforce Investment Act of 1998.

36 (2) An employing unit paid amounts after December 31, 1975,  
37 pursuant to Section 803 of this part, for benefits awarded based on  
38 wages paid to individuals participating in a public service  
39 employment program under the federal Workforce Investment Act  
40 of 1998.



1 (3) Payments were made by the School Employees Fund after  
2 December 31, 1975, to the Unemployment Fund pursuant to  
3 Section 821 of this part for benefits awarded based on wages paid  
4 to individuals participating in a public service employment  
5 program under the federal Workforce Investment Act of 1998.

6 (b) No overpayment described in subdivision (a) shall be  
7 refunded to an employing unit or to the School Employees Fund.

8 ~~SEC. 13.—Section 1379 of the Unemployment Insurance Code~~  
9 ~~is amended to read:~~

10 ~~1379.—The director, subject to this article, may do any or all of~~  
11 ~~the following in the recovery of overpayments of unemployment~~  
12 ~~compensation benefits:~~

13 ~~(a) File a civil action against the liable person for the recovery~~  
14 ~~of the amount of the overpayment within one year after any of the~~  
15 ~~following, or, in cases where the individual has been overpaid~~  
16 ~~benefits due to fraud, misrepresentation, or nondisclosure as~~  
17 ~~described in Section 1375.1, within six years of any of the~~  
18 ~~following:~~

19 ~~(1) The mailing or personal service of the notice of~~  
20 ~~overpayment determination if the person affected does not file an~~  
21 ~~appeal to an administrative law judge.~~

22 ~~(2) The mailing of the decision of the administrative law judge~~  
23 ~~if the person affected does not initiate a further appeal to the~~  
24 ~~appeals board.~~

25 ~~(3) The date of the decision of the appeals board.~~

26 ~~(b) Initiate proceedings for a summary judgment against the~~  
27 ~~liable person. However, this subdivision applies only where the~~  
28 ~~director has found, pursuant to Section 1375, that the overpayment~~  
29 ~~may not be waived because it was due to fraud, misrepresentation,~~  
30 ~~or willful nondisclosure on the part of the recipient. The director~~  
31 ~~may, not later than six years after the overpayment became final,~~  
32 ~~file with the clerk of the proper court in the county from which the~~  
33 ~~overpayment of benefits was paid or in the county in which the~~  
34 ~~claimant resides, a certificate containing all of the following:~~

35 ~~(1) The amount due, including the assessment made under~~  
36 ~~Section 1375.1, plus interest from the date that the initial~~  
37 ~~determination of overpayment was made pursuant to Section~~  
38 ~~1376.~~

39 ~~(2) A statement that the director has complied with all the~~  
40 ~~provisions of this article prior to the filing of the certificate.~~



1 ~~(3) A request that judgment be entered against the liable person~~  
2 ~~in the amount set forth in the certificate.~~

3 ~~The clerk, immediately upon the filing of the certificate, shall~~  
4 ~~enter a judgment for the State of California against the liable~~  
5 ~~person in the amount set forth in the certificate.~~

6 ~~For the purposes of this subdivision only, an overpayment is~~  
7 ~~final and due and payable after any of the following:~~

8 ~~(A) The liable person has not filed an appeal pursuant to~~  
9 ~~Section 1377.~~

10 ~~(B) The liable person has filed an appeal to the administrative~~  
11 ~~law judge and a decision of an administrative law judge has~~  
12 ~~become final.~~

13 ~~(C) The liable person has filed an appeal to the appeals board~~  
14 ~~and the decision of the appeals board has become final because the~~  
15 ~~liable person has not sought judicial review within the six-month~~  
16 ~~period provided by Section 410.~~

17 ~~(e) Reduce or vacate a summary judgment by filing a certificate~~  
18 ~~to that effect with the clerk of the proper court.~~

19 ~~(d) Offset the amount of the overpayment received by the liable~~  
20 ~~person against any amount of benefits to which he or she may~~  
21 ~~become entitled under this division within six years of the date of~~  
22 ~~the mailing or personal service of the notice of overpayment~~  
23 ~~determination.~~

24 ~~SEC. 14. Section 1537 of the Unemployment Insurance Code~~  
25 ~~is amended to read:~~

26 ~~1537. Whenever any warrant drawn on an account in the~~  
27 ~~Unemployment Fund or on the Unemployment Administration~~  
28 ~~Fund or the Contingent Fund by the State Controller remains~~  
29 ~~unclaimed after one year the amount thereof shall revert to the~~  
30 ~~account and the fund from which the amount was payable.~~

31 ~~SEC. 15.—~~

32 ~~SEC. 13. Section 2739 of the Unemployment Insurance Code~~  
33 ~~is amended to read:~~

34 ~~2739. The Director of Employment Development, subject to~~  
35 ~~this article, may do any or all of the following in the recovery of~~  
36 ~~overpayments of disability benefits:~~

37 ~~(a) File a civil action against the liable person for the recovery~~  
38 ~~of the amount of the overpayment within one year after any of the~~  
39 ~~following, or, in cases where the individual has been overpaid~~  
40 ~~benefits due to fraud, misrepresentation, or nondisclosure as~~



1 described in Section 2735.1, within six years of any of the  
2 following:

3 (1) The mailing or personal service of the notice of  
4 overpayment determination if the person affected does not file an  
5 appeal to an administrative law judge.

6 (2) The mailing of the decision of the administrative law judge  
7 if the person affected does not initiate a further appeal to the  
8 appeals board.

9 (3) The date of the decision of the appeals board.

10 (b) Initiate proceedings for a summary judgment against the  
11 liable person. However, this subdivision applies only where the  
12 director has found, pursuant to Section 2735, that the overpayment  
13 may not be waived because it was due to fraud, misrepresentation,  
14 or willful nondisclosure on the part of the recipient. The director  
15 may, not later than six years after the overpayment became final,  
16 file with the clerk of the proper court in the county in which the  
17 claimant resides, a certificate containing all of the following:

18 (1) The amount due, including the assessment made under  
19 Section 2735.1, plus interest from the date that the initial  
20 determination of overpayment was made pursuant to Section  
21 2735.

22 (2) A statement that the director has complied with all of the  
23 provisions of this article prior to the filing of the certificate.

24 (3) A request that judgment be entered against the liable person  
25 in the amount set forth in the certificate.

26 The clerk, immediately upon filing of the certificate, shall enter  
27 a judgment for the State of California against the liable person in  
28 the amount set forth in the certificate.

29 For purposes of this subdivision only, an overpayment is final  
30 and due and payable after one of the following:

31 (A) The liable person has not filed an appeal pursuant to  
32 Section 2737.

33 (B) The liable person has filed an appeal to the administrative  
34 law judge and a decision of an administrative law judge upholding  
35 the overpayment has become final.

36 (C) The liable person has filed an appeal to the appeals board  
37 and the decision of the appeals board upholding the overpayment  
38 has become final because the liable person has not sought judicial  
39 review within the six month period provided by Section 410.



1 (c) Reduce or vacate a summary judgment by filing a certificate  
2 to that affect with the clerk of the proper court.

3 (d) Offset the amount of the overpayment received by the liable  
4 person against any amount of disability benefits to which he or she  
5 may become entitled under this division within six years of the  
6 date of mailing or personal service of the notice of overpayment  
7 determination.

8 ~~SEC. 16.~~

9 *SEC. 14.* Section 3011 of the Unemployment Insurance Code  
10 is amended to read:

11 3011. Whenever any warrant is drawn on an account in the  
12 Disability fund by the State Controller, and the same remains  
13 unclaimed after one year, the amount thereof shall revert to that  
14 account in the Disability Fund from which the amount was  
15 payable.

16 ~~SEC. 17.~~

17 *SEC. 15.* Section 13003 of the Unemployment Insurance  
18 Code is amended to read:

19 13003. (a) Except where the context otherwise requires, the  
20 definitions set forth in this chapter, and in addition the definitions  
21 and provisions of the Personal Income Tax Law referred to and  
22 hereby incorporated by reference as set forth in the following  
23 provisions of the Revenue and Taxation Code, shall apply to and  
24 govern the construction of this division:

- 25 (1) "Corporation" as defined by Section 17009.
- 26 (2) "Fiduciary" as defined by Section 17006.
- 27 (3) "Fiscal year" as defined by Section 17011.
- 28 (4) "Foreign country" as defined by Section 17019.
- 29 (5) "Franchise Tax Board" as defined by Section 17003.
- 30 (6) "Husband" and "wife" as defined by Section 17021.
- 31 (7) "Individual" as defined by Section 17005.
- 32 (8) "Military or naval forces" as defined by Section 17022.
- 33 (9) "Nonresident" as defined by Section 17015.
- 34 (10) "Partnership" as defined by Section 17008.
- 35 (11) "Person" as defined by Section 17007.
- 36 (12) "Resident" as defined by Sections 17014 and 17016.
- 37 (13) "State" as defined by Section 17018.
- 38 (14) "Taxable year" as defined by Section 17010.
- 39 (15) "Taxpayer" as defined by Section 17004.
- 40 (16) "Trade or business" as defined by Section 17020.



1 (17) “United States” as defined by Section 17017.

2 (b) The provisions of Part 10 (commencing with Section  
3 17001) and Part 10.2 (commencing with Section 18401) of  
4 Division 2 of the Revenue and Taxation Code, relating to the  
5 following items, are hereby incorporated by reference and shall  
6 apply to and govern construction of this division:

7 (1) Trade or business expense (Article 6 (commencing with  
8 Section 17201) of Chapter 3 of Part 10).

9 (2) Deductions for retirement savings (Article 6 (commencing  
10 with Section 17201) of Chapter 3 of Part 10).

11 (3) Distributions of property by a corporation to a shareholder  
12 (Chapter 4 (commencing with Section 17321) of Part 10).

13 (4) Deferred compensation (Chapter 5 (commencing with  
14 Section 17501) of Part 10).

15 (5) Partners and partnerships (Chapter 10 (commencing with  
16 Section 17851) of Part 10).

17 (6) Gross income of nonresident taxpayers Chapter 11  
18 (commencing with Section 17951) of Part 10).

19 (7) Postponement of the time for certain acts by individuals in  
20 or in support of the armed forces (Article 3 (commencing with  
21 Section 18621) of Chapter 2 of Part 10.2).

22 (8) Disclosure of information (Article 1 (commencing with  
23 Section 19530) of Chapter 7 of Part 10.2). For this purpose  
24 “Franchise Tax Board” as used therein shall mean the  
25 Employment Development Department in respect to information  
26 obtained in the administration of this division.

27 ~~SEC. 18.—~~

28 *SEC. 16.* Section 13021.5 of the Unemployment Insurance  
29 Code is amended to read:

30 13021.5. (a) “Electronic funds transfer” means any transfer  
31 of funds, other than a transaction originated by check, draft, or  
32 similar paper instrument, that is initiated through an electronic  
33 terminal, telephonic instrument, or computer or magnetic tape, so  
34 as to order, instruct, or authorize a financial institution to debit or  
35 credit an account. Electronic funds transfers shall be accomplished  
36 by an automated clearinghouse debit, an automated clearinghouse  
37 credit, Fedwire, or by other specific electronic funds transfer  
38 methods approved in advance by the department.

39 (b) “Automated clearinghouse” means any federal reserve  
40 bank, or an organization established in agreement with the



1 National Automated Clearing House Association, that operates as  
2 a clearinghouse for transmitting or receiving entries between  
3 banks and/or bank accounts and which authorizes an electronic  
4 transfer of funds between those banks or bank accounts.

5 (c) “Automated clearinghouse debit” means a transaction in  
6 which the state, through its designated depository bank, originates  
7 an automated clearinghouse transaction debiting the employer’s  
8 bank account and crediting the state’s bank account for the amount  
9 of tax. Banking costs incurred for the automated clearinghouse  
10 debit transaction shall be paid by the state.

11 (d) “Automated clearinghouse credit” means an automated  
12 clearinghouse transaction in which the employer through its own  
13 bank, originates an entry crediting the state’s bank account and  
14 debiting its own bank account. Banking costs incurred for the  
15 automated clearinghouse credit transaction charged to the  
16 employer and to the state shall be paid by the employer.

17 (e) “Fedwire” means any transaction originated by the  
18 employer and utilizing the national electronic payment system to  
19 transfer funds through the federal reserve banks, pursuant to which  
20 the employer debits its own bank account and credits the state’s  
21 bank account. Electronic funds transfer payments may be made by  
22 Fedwire only if prior approval is obtained from the department and  
23 payment cannot, for good cause, be made pursuant to subdivision  
24 (a). Banking costs incurred for the Fedwire transaction charged to  
25 the employer and to the state shall be paid by the employer.

26 (f) “Banking day” means any day other than a Saturday,  
27 Sunday, or banking holiday as recognized by the Internal Revenue  
28 Service.

29 (g) “Settlement date” means the date on which an exchange of  
30 funds with respect to an entry is reflected on the books of the  
31 Federal Reserve Bank.

32 (h) For the purposes of Section 13021, the “cumulative  
33 average payment” means the cumulative dollar amount of  
34 deposits divided by the number of payments submitted during a  
35 given period. For the purposes of this section, the “cumulative  
36 average payment” may also be defined as a single annual deposit,  
37 when only one payment is made during the 12-month period  
38 ending June 30.

39 ~~SEC. 19.—~~



1     *SEC. 17.* Section 13028 of the Unemployment Insurance  
2 Code is amended to read:

3     13028. (a) For purposes of this division (and so much of Part  
4 10 (commencing with Section 17001) and Part 10.2 (commencing  
5 with Section 18401) of Division 2 of the Revenue and Taxation  
6 Code as relates to this division) pensions, annuities, and other  
7 deferred income, as described in Section 3405 of the Internal  
8 Revenue Code, are wages and subject to withholding under this  
9 division. Amounts withheld shall be treated as if the amounts are  
10 withheld by an employer for a payroll period and only amounts  
11 withheld shall be reported to the department pursuant to Section  
12 1088 and Section 13021.

13     (b) If an individual makes an election under Section 3405(a)(2)  
14 or Section 3405(b)(2) of the Internal Revenue Code not to have tax  
15 withheld, that election shall apply to withholding under this  
16 division, unless the individual elects, with the consent of the payer,  
17 to have those payments subject to withholding under this division.  
18 If an individual has not made an election under Section 3405(a)(2)  
19 or Section 3405(b)(2) of the Internal Revenue Code, that  
20 individual may elect to exclude those payments from withholding  
21 under this division. Elections provided in this subdivision shall be  
22 made pursuant to regulations of the director.

23     (c) Where Section 3405 of the Internal Revenue Code provides  
24 that tables or other computational procedures shall be prescribed  
25 by the Secretary of the Treasury, for the purposes of this division,  
26 any of the following amounts may be withheld, upon election of  
27 the payer:

28     (1) An amount determined by the method prescribed under  
29 Section 13020.

30     (2) A designated dollar amount as requested by the payee.

31     (3) Ten percent of the amount of federal withholding computed  
32 pursuant to Section 3405 of the Internal Revenue Code.

33     (d) Where the amount of withholding computed pursuant to  
34 subdivision (c) is less than ten dollars (\$10) per month, the payer  
35 shall not be required to withhold that amount.

36     (e) This section shall not apply to pensions, annuities, and other  
37 deferred income of payees with addresses outside this state, as  
38 shown on the most current records of the payer.

39     (f) The department shall, in consultation with the affected  
40 payers and payees, issue regulations to implement this section.



1 Those regulations shall provide for delay (but not beyond July  
2 1, 1987) of the application of this section with respect to any payer  
3 or class of payers until that time as the payers are able to comply  
4 without undue hardship with the requirements of this section. In  
5 that case, no retroactive compliance shall be required.

6 ~~SEC. 20.—~~

7 *SEC. 18.* Section 13050 of the Unemployment Insurance  
8 Code is amended to read:

9 13050. (a) Every employer or person required to deduct and  
10 withhold from an employee a tax under Section 986, 3260, or  
11 13020, or who would have been required to deduct and withhold  
12 a tax under Section 13020 (determined without regard to Section  
13 13025) if the employee had claimed no more than one withholding  
14 exemption, shall furnish to each employee in respect of the  
15 remuneration paid by the person to the employee during the  
16 calendar year, on or before January 31 of the succeeding year, or,  
17 if his or her employment is terminated before the close of the  
18 calendar year, on the day on which the last payment of  
19 remuneration is made, a written statement showing all of the  
20 following:

21 (1) The name of the person.

22 (2) The name of the employee, and his or her social security or  
23 identifying number if wages have been paid.

24 (3) The total amount of wages subject to personal income tax,  
25 as defined by Section 13009.5.

26 (4) The total amount deducted and withheld as tax under  
27 Section 13020.

28 (5) The total amount of worker contributions paid by the  
29 employee pursuant to Section 986.

30 (6) The total amount of worker contributions paid by the  
31 employee pursuant to Section 3260.

32 (7) The total amount of elective deferrals (within the meaning  
33 of Section 402(g)(3) of the Internal Revenue Code) and  
34 compensation deferred pursuant to Section 457 of the Internal  
35 Revenue Code.

36 (b) The statement required to be furnished pursuant to this  
37 section in respect of any remuneration shall be furnished at other  
38 times, shall contain other information, and shall be in a form, as  
39 the department may by authorized regulations prescribe.



1 (c) (1) A duplicate of any statement made pursuant to this  
2 section and in accordance with authorized regulations prescribed  
3 by the department shall, when required by the regulations, be filed  
4 with the department.

5 (2) Effective January 1, 1995, this subdivision shall apply only  
6 to those employers exempted under subdivision (h) of Section  
7 1088 or subdivision (k) of Section 13021 from the requirements  
8 to report individual amounts withheld on the report of wages and  
9 to file the annual reconciliation return for the 1995 calendar year  
10 only. This subdivision shall remain in effect only until March 1,  
11 1996, and on that date is repealed, unless a later enacted statute that  
12 is enacted before March 1, 1996, deletes or extends that date.

13 (d) If, during any calendar year, any person makes a payment  
14 of third-party sick pay to an employee, that person shall, on or  
15 before January 15 of the succeeding year, furnish a written  
16 statement to the employer in respect of whom the payment was  
17 made showing all of the following:

18 (1) The name and, if there is withholding under this division,  
19 the social security number of that employee.

20 (2) The total amount of the third-party sick pay paid to that  
21 employee during the calendar year.

22 (3) The total amount, if any, deducted and withheld from that  
23 sick pay under this division. For purposes of the preceding  
24 sentence, the term “third-party sick pay” means any sick pay, as  
25 defined in subdivision (b) of Section 13028.6, which does not  
26 constitute wages for purposes of this division, determined without  
27 regard to subdivision (a) of Section 13028.6.

28 (A) The reporting requirements of subdivision (a) with respect  
29 to any payments shall, with respect to those payments, be in lieu  
30 of the requirements of subdivision (a) and of Section 18637 of the  
31 Revenue and Taxation Code.

32 (B) For purposes of Chapter 10 (commencing with Section  
33 2101) of Part 1 of Division 1, the statements required to be  
34 furnished by this subdivision shall be treated as statements  
35 required under this section to be furnished to employees.

36 (C) Every employer who receives a statement under this  
37 subdivision with respect to sick pay paid to any employee during  
38 any calendar year shall, on or before January 31 of the succeeding  
39 year, furnish a written statement to that employee showing all of



1 the information shown on the statement furnished under this  
2 subdivision.

3 (e) The Franchise Tax Board shall be allowed access to the  
4 information filed with the department pursuant to this section.

5 ~~SEC. 21.~~

6 *SEC. 19.* Section 13101 of the Unemployment Insurance  
7 Code is amended to read:

8 13101. (a) In addition to any criminal penalty provided by  
9 law, if any individual makes a statement under Section 13040,  
10 13041, or 13042 which results in a decrease in the amounts  
11 deducted and withheld under this division, and as of the time the  
12 statement was made, there was no reasonable basis for the  
13 statement, the individual shall pay a penalty of five hundred  
14 dollars (\$500) for the statement.

15 (b) The department may waive, in whole or in part, the penalty  
16 imposed under subdivision (a) if the taxes imposed with respect to  
17 the individual under Part 10 (commencing with Section 17001) of  
18 Division 2 of the Revenue and Taxation Code for the taxable year  
19 are equal to or less than the sum of both of the following:

20 (1) The credits against those taxes allowed by Sections 17052.8  
21 through 17053.7 and Section 19002.

22 (2) The payments of estimated tax which are considered  
23 payments on account of those taxes.

24 (c) Article 11 (commencing with Section 1221) of Chapter 4 of  
25 Part 1, relating to administrative appellate review, shall not apply  
26 to the assessment or collection of any penalty imposed by  
27 subdivision (a).

28 (d) This section shall apply to acts and failures to act after  
29 December 31, 1981.

