

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2879

Introduced by Assembly Member Leno

February 22, 2008

An act to add Section 559 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2879, as amended, Leno. Employee wages and working hours: violators.

Existing law requires private employers to perform certain activities with regard to employee wages, hours, and working conditions.

This bill would require the *Labor Commissioner or his or her designee from the* Labor and Workforce Development Agency, in consultation with the Franchise Tax Board and the Economic and Employment Enforcement Coalition (*EEEC*), to develop and implement a set of standards that, if met by an employer, would trigger a recommendation for an audit or investigation by appropriate state tax authorities of employers in violation of statutes relating to employee wages, hours, and working conditions. After July 1, 2009, this bill would require the Labor Commissioner *or the EEEC* to take specified actions to facilitate audits and investigations of employers who meet the standards required by this bill. This bill also would state findings and declarations relating to the underground economy.

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. (a) The Legislature finds and declares all of the
 2 following:
 3 (1) Despite many targeted enforcement efforts in recent years,
 4 including the creation of the Economic and Employment
 5 Enforcement Coalition, evidence indicates that the underground
 6 economy in California is flourishing.
 7 (2) According to the Employment Development Department’s
 8 analysis of findings of the Internal Revenue Service, the
 9 underground economy in California is estimated to be between
 10 \$60 billion and \$140 billion each year.
 11 (3) Employers operating in the underground economy hurt
 12 everyone—the state loses billions of dollars each year in tax
 13 revenues, workers are forced to go without basic employment
 14 protections, and law-abiding businesses are confronted with unfair
 15 competition from scofflaw competitors.
 16 (4) According to the Franchise Tax Board and the *State Board*
 17 of Equalization, an average of \$8.5 billion in owed corporate,
 18 personal, and sales and use taxes ~~go~~ *goes* uncollected in California
 19 each year, with unreported and underreported economic activity
 20 responsible for the vast majority of that total.
 21 (5) As the state faces unprecedented budget shortfalls, rigorous
 22 enforcement of existing state tax laws should be a top priority.
 23 (6) It is therefore in the public interest to establish a coordinated
 24 approach to enforcement in the underground economy, which
 25 would include a nexus between the state’s enforcement of labor
 26 and tax laws.
 27 (b) It is the intent of the Legislature in enacting this act to target
 28 those employers that operate in the underground economy in
 29 flagrant violation of law, and not employers that commit minor or
 30 inadvertent violations of existing law.
 31 SEC. 2. Section 559 is added to the Labor Code, to read:
 32 559. (a) *The Labor Commissioner or his or her designee from*
 33 *the Labor and Workforce Development Agency, in consultation*
 34 *with the Franchise Tax Board and the Economic and Employment*
 35 *Enforcement Coalition (EEEC), shall, by July 1, 2009, develop*
 36 *and implement an appropriate set of standards that, if met by an*
 37 *employer, will trigger a recommendation for an audit or*
 38 *investigation by appropriate state tax authorities of employers in*

1 violation of this chapter, Chapter 1 (commencing with Section
2 200) of Part 1, or Chapter 1 (commencing with Section 1171) of
3 Part 4. The set of standards shall take into account, among other
4 things, the severity and number of violations committed by an
5 employer.

6 (b) After July 1, 2009, the Labor Commissioner *or the EEEEC,*
7 *whichever of the two has authority over the investigation through*
8 *which it was discovered that the standards developed in subdivision*
9 *(a) have been met,* shall take all of the following actions with
10 respect to an employer who has met ~~the set of standards developed~~
11 ~~pursuant to subdivision (a):~~ *those standards:*

12 (1) Notify the appropriate state tax authorities each time the set
13 of standards is met by an employer.

14 (2) Provide the appropriate state tax authorities with the name
15 of the employer and all relevant and necessary information
16 regarding the violations.

17 (3) Make a recommendation to the appropriate state tax
18 authorities that the employer be audited or investigated.