

AMENDED IN SENATE MAY 9, 2007  
AMENDED IN SENATE APRIL 26, 2007  
AMENDED IN SENATE APRIL 23, 2007  
AMENDED IN SENATE APRIL 9, 2007

**SENATE BILL**

**No. 869**

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**Introduced by Senator Ridley-Thomas**

February 23, 2007

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An act to amend Sections 62.5 and 90.3 of the Labor Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 869, as amended, Ridley-Thomas. Workers' compensation insurance: coverage program.

Existing law requires the Labor Commissioner to establish and maintain a workers' compensation insurance coverage program for targeting employers in industries with the highest incidence of unlawfully uninsured employers and annually report to the Legislature concerning the effectiveness of the program. The report is required to include specified information.

This bill would revise these provisions to require the program to systematically identify unlawfully uninsured employers and would authorize the Labor Commissioner to prioritize targets for the program in consideration of available resources. The bill would revise the reporting requirements to, among other things, require the report to be posted on the Labor Commissioner's Web site.

Existing law establishes the Workers' Compensation Administration Revolving Fund in the State Treasury. Money in the fund may be

expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the administration of the workers’ compensation program, except as provided, and for the Return-to-Work Program.

This bill would also authorize these funds to be used for the enforcement of the insurance coverage program maintained by the Labor Commissioner.

Existing law authorizes the Director of Employment Development to permit the use of any information in his or her possession to the extent necessary for specified purposes.

This bill would authorize the director to provide the Labor Commissioner, or his or her agent or contractor, with the names, addresses, and descriptions of employers that report payroll for use in the workers’ compensation insurance coverage program.

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 62.5 of the Labor Code is amended to  
2 read:

3 62.5. (a) The Workers’ Compensation Administration  
4 Revolving Fund is hereby created as a special account in the State  
5 Treasury. Money in the fund may be expended by the department,  
6 upon appropriation by the Legislature, for the administration of  
7 the workers’ compensation program set forth in this division and  
8 Division 4 (commencing with Section 3200), other than the  
9 activities financed pursuant to Section 3702.5, for the  
10 Return-to-Work Program set forth in Section 139.48, and for the  
11 enforcement of the insurance coverage program established and  
12 maintained by the Labor Commissioner pursuant to Section 90.3,  
13 and may not be used or borrowed for any other purpose.

14 (b) The fund shall consist of surcharges made pursuant to  
15 subdivision (e).

16 (c) (1) The Uninsured Employers Benefits Trust Fund is hereby  
17 created as a special trust fund account in the State Treasury, of  
18 which the director is trustee, and its sources of funds are as  
19 provided in subdivision (e). Notwithstanding Section 13340 of the  
20 Government Code, the fund is continuously appropriated for the  
21 payment of nonadministrative expenses of the workers’  
22 compensation program for workers injured while employed by

1 uninsured employers in accordance with Article 2 (commencing  
2 with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall  
3 not be used for any other purpose. All moneys collected shall be  
4 retained in the trust fund until paid as benefits to workers injured  
5 while employed by uninsured employers. Nonadministrative  
6 expenses include audits and reports of services prepared pursuant  
7 to subdivision (b) of Section 3716.1. The surcharge amount for  
8 this fund shall be stated separately.

9 (2) Notwithstanding any other provision of law, all references  
10 to the Uninsured Employers Fund shall mean the Uninsured  
11 Employers Benefits Trust Fund.

12 (3) Notwithstanding paragraph (1), in the event that budgetary  
13 restrictions or impasse prevent the timely payment of administrative  
14 expenses from the Workers' Compensation Administration  
15 Revolving Fund, those expenses shall be advanced from the  
16 Uninsured Employers Benefits Trust Fund. Expense advances  
17 made pursuant to this paragraph shall be reimbursed in full to the  
18 Uninsured Employers Benefits Trust Fund upon enactment of the  
19 annual Budget Act.

20 (4) *Any moneys from penalties collected pursuant to Section*  
21 *3722 as a result of the insurance coverage program established*  
22 *under Section 90.3 shall be deposited in the State Treasury to the*  
23 *credit of the Workers' Compensation Administration Revolving*  
24 *Fund created under Section 62.5, to cover expenses incurred by*  
25 *the director under the insurance coverage program. The amount*  
26 *of any penalties in excess of payment of administrative expenses*  
27 *incurred by the director for the insurance coverage program*  
28 *established under Section 90.3 shall be deposited in the State*  
29 *Treasury to the credit of the Uninsured Employers Benefits Trust*  
30 *Fund for nonadministrative expenses, as prescribed in paragraph*  
31 *(1), and notwithstanding paragraph (1), shall only be available*  
32 *upon appropriation by the Legislature.*

33 (d) (1) The Subsequent Injuries Benefits Trust Fund is hereby  
34 created as a special trust fund account in the State Treasury, of  
35 which the director is trustee, and its sources of funds are as  
36 provided in subdivision (e). Notwithstanding Section 13340 of the  
37 Government Code, the fund is continuously appropriated for the  
38 nonadministrative expenses of the workers' compensation program  
39 for workers who have suffered serious injury and who are suffering  
40 from previous and serious permanent disabilities or physical

1 impairments, in accordance with Article 5 (commencing with  
2 Section 4751) of Chapter 2 of Part 2 of Division 4, and Section 4  
3 of Article XIV of the California Constitution, and shall not be used  
4 for any other purpose. All moneys collected shall be retained in  
5 the trust fund until paid as benefits to workers who have suffered  
6 serious injury and who are suffering from previous and serious  
7 permanent disabilities or physical impairments. Nonadministrative  
8 expenses include audits and reports of services pursuant to  
9 subdivision (c) of Section 4755. The surcharge amount for this  
10 fund shall be stated separately.

11 (2) Notwithstanding any other provision of law, all references  
12 to the Subsequent Injuries Fund shall mean the Subsequent Injuries  
13 Benefits Trust Fund.

14 (3) Notwithstanding paragraph (1), in the event that budgetary  
15 restrictions or impasse prevent the timely payment of administrative  
16 expenses from the Workers' Compensation Administration  
17 Revolving Fund, those expenses shall be advanced from the  
18 Subsequent Injuries Benefits Trust Fund. Expense advances made  
19 pursuant to this paragraph shall be reimbursed in full to the  
20 Subsequent Injuries Benefits Trust Fund upon enactment of the  
21 annual Budget Act.

22 (e) (1) Separate surcharges shall be levied by the director upon  
23 all employers, as defined in Section 3300, for purposes of deposit  
24 in the Workers' Compensation Administration Revolving Fund,  
25 the Uninsured Employers Benefits Trust Fund, and the Subsequent  
26 Injuries Benefits Trust Fund. The total amount of the surcharges  
27 shall be allocated between self-insured employers and insured  
28 employers in proportion to payroll respectively paid in the most  
29 recent year for which payroll information is available. The director  
30 shall adopt reasonable regulations governing the manner of  
31 collection of the surcharges. The regulations shall require the  
32 surcharges to be paid by self-insurers to be expressed as a  
33 percentage of indemnity paid during the most recent year for which  
34 information is available, and the surcharges to be paid by insured  
35 employers to be expressed as a percentage of premium. In no event  
36 shall the surcharges paid by insured employers be considered a  
37 premium for computation of a gross premium tax or agents'  
38 commission. In no event shall the total amount of the surcharges  
39 paid by insured and self-insured employers exceed the amounts  
40 reasonably necessary to carry out the purposes of this section.

1 (2) The regulations adopted pursuant to paragraph (1) shall be  
2 exempt from the rulemaking provisions of the Administrative  
3 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
4 Part 1 of Division 3 of Title 2 of the Government Code).

5 SEC. 2. Section 90.3 of the Labor Code is amended to read:

6 90.3. (a) It is the policy of this state to vigorously enforce the  
7 laws requiring employers to secure the payment of compensation  
8 as required by Section 3700 and to protect employers who comply  
9 with the law from those who attempt to gain a competitive  
10 advantage at the expense of their workers by failing to secure the  
11 payment of compensation.

12 (b) In order to ensure that the laws requiring employers to secure  
13 the payment of compensation are adequately enforced, the Labor  
14 Commissioner shall establish and maintain a program that  
15 systematically identifies unlawfully uninsured employers. The  
16 Labor Commissioner, in consultation with the Administrative  
17 Director of the Division of Workers' Compensation and the  
18 director, may prioritize targets for the program in consideration  
19 of available resources. The employers shall be identified from data  
20 from the Uninsured Employers' Fund, the Employment  
21 Development Department, the rating organizations licensed by the  
22 Insurance Commissioner pursuant to Article 3 (commencing with  
23 Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance  
24 Code, and any other sources deemed likely to lead to the  
25 identification of unlawfully uninsured employers. All state  
26 departments and agencies and any rating organization licensed by  
27 the Insurance Commissioner pursuant to Article 3 (commencing  
28 with Section 11750) of Chapter 3 of Part 3 of Division 2 of the  
29 Insurance Code shall cooperate with the Labor Commissioner and  
30 on reasonable request provide information and data in their  
31 possession reasonably necessary to carry out the program.

32 (c) As part of the program, the Labor Commissioner shall  
33 establish procedures for ensuring that employers with payroll but  
34 with no record of workers' compensation coverage are contacted  
35 and, if no valid reason for the lack of record of coverage is shown,  
36 inspected on a priority basis.

37 (d) The Labor Commissioner shall annually, not later than March  
38 1, prepare a report concerning the effectiveness of the program,  
39 publish it on the Labor Commissioner's Web site, as well as notify  
40 the Legislature, the Governor, the Insurance Commissioner, and

1 the Administrative Director of the Division of Workers'  
2 Compensation of the report's availability. The report shall include,  
3 but not be limited to, all of the following:

4 (1) The number of employers identified from records of the  
5 Employment Development Department who were screened for  
6 matching records of insurance coverage or self-insurance.

7 (2) The number of employers identified from records of the  
8 Employment Development Department that were matched to  
9 records of insurance coverage or self-insurance.

10 (3) The number of employers identified from records of the  
11 Employment Development Department that were notified that  
12 there was no record of their insurance coverage.

13 (4) The number of employers responding to the notices, and the  
14 nature of the responses, including the number of employers who  
15 failed to provide satisfactory proof of workers' compensation  
16 coverage and including information about the reasons that  
17 employers who provided satisfactory proof of coverage were not  
18 appropriately recognized in the comparison performed under  
19 subdivision (b). The report may include recommendations to  
20 improve the accuracy and efficiency of the program in screening  
21 for unlawfully uninsured employers.

22 (5) The number of employers identified as unlawfully uninsured  
23 from records of the Uninsured Employers' Benefits Trust Fund or  
24 from records of the Division of Workers' Compensation, and the  
25 number of those employers that are also identifiable from the  
26 records of the Employment Development Department. These  
27 statistics shall be reported in a manner to permit analysis and  
28 estimation of the percentage of unlawfully uninsured employers  
29 that do not report wages to the Employment Development  
30 Department.

31 (6) The number of employers inspected.

32 (7) The number and amount of penalties assessed pursuant to  
33 Section 3722 as a result of the program.

34 (8) The number and amount of penalties collected pursuant to  
35 Section 3722 as a result of the program.

36 (e) The allocation of funds from the Workers' Compensation  
37 Administration Revolving Fund pursuant to subdivision (a) of  
38 Section 62.5 shall not increase the total amount of surcharges  
39 pursuant to subdivision (e) of Section 62.5. Startup costs for this  
40 program shall be allocated from the fiscal year 2007–08 surcharges

1 collected. The total amount allocated for this program under  
2 subdivision (a) of Section 62.5 in subsequent years shall not exceed  
3 the amount of penalties collected pursuant to Section 3722 as a  
4 result of the program.

5 SEC. 3. Section 1095 of the Unemployment Insurance Code  
6 is amended to read:

7 1095. The director shall permit the use of any information in  
8 his or her possession to the extent necessary for any of the  
9 following purposes and may require reimbursement for all direct  
10 costs incurred in providing any and all information specified in  
11 this section, except information specified in subdivisions (a) to  
12 (e), inclusive:

13 (a) To enable the director or his or her representative to carry  
14 out his or her responsibilities under this code.

15 (b) To properly present a claim for benefits.

16 (c) To acquaint a worker or his or her authorized agent with his  
17 or her existing or prospective right to benefits.

18 (d) To furnish an employer or his or her authorized agent with  
19 information to enable him or her to fully discharge his or her  
20 obligations or safeguard his or her rights under this division or  
21 Division 3 (commencing with Section 9000).

22 (e) To enable an employer to receive a reduction in contribution  
23 rate.

24 (f) To enable federal, state, or local government departments  
25 or agencies, subject to federal law, to verify or determine the  
26 eligibility or entitlement of an applicant for, or a recipient of, public  
27 social services provided pursuant to Division 9 (commencing with  
28 Section 10000) of the Welfare and Institutions Code, or Part A of  
29 Title IV of the Social Security Act, where the verification or  
30 determination is directly connected with, and limited to, the  
31 administration of public social services.

32 (g) To enable county administrators of general relief or  
33 assistance, or their representatives, to determine entitlement to  
34 locally provided general relief or assistance, where the  
35 determination is directly connected with, and limited to, the  
36 administration of general relief or assistance.

37 (h) To enable state or local governmental departments or  
38 agencies to seek criminal, civil, or administrative remedies in  
39 connection with the unlawful application for, or receipt of, relief  
40 provided under Division 9 (commencing with Section 10000) of

1 the Welfare and Institutions Code or to enable the collection of  
2 expenditures for medical assistance services pursuant to Part 5  
3 (commencing with Section 17000) of Division 9 of the Welfare  
4 and Institutions Code.

5 (i) To provide any law enforcement agency with the name,  
6 address, telephone number, birth date, social security number,  
7 physical description, and names and addresses of present and past  
8 employers, of any victim, suspect, missing person, potential  
9 witness, or person for whom a felony arrest warrant has been  
10 issued, when a request for this information is made by any  
11 investigator or peace officer as defined by Sections 830.1 and  
12 830.2 of the Penal Code, or by any federal law enforcement officer  
13 to whom the Attorney General has delegated authority to enforce  
14 federal search warrants, as defined under Sections 60.2 and 60.3  
15 of Title 28 of the Code of Federal Regulations, as amended, and  
16 when the requesting officer has been designated by the head of  
17 the law enforcement agency and requests this information in the  
18 course of and as a part of an investigation into the commission of  
19 a crime when there is a reasonable suspicion that the crime is a  
20 felony and that the information would lead to relevant evidence.  
21 The information provided pursuant to this subdivision shall be  
22 provided to the extent permitted by federal law and regulations,  
23 and to the extent the information is available and accessible within  
24 the constraints and configurations of existing department records.  
25 Any person who receives any information under this subdivision  
26 shall make a written report of the information to the law  
27 enforcement agency that employs him or her, for filing under the  
28 normal procedures of that agency.

29 (1) This subdivision shall not be construed to authorize the  
30 release to any law enforcement agency of a general list identifying  
31 individuals applying for or receiving benefits.

32 (2) The department shall maintain records pursuant to this  
33 subdivision only for periods required under regulations or statutes  
34 enacted for the administration of its programs.

35 (3) This subdivision shall not be construed as limiting the  
36 information provided to law enforcement agencies to that pertaining  
37 only to applicants for, or recipients of, benefits.

38 (4) The department shall notify all applicants for benefits that  
39 release of confidential information from their records will not be  
40 protected should there be a felony arrest warrant issued against

1 the applicant or in the event of an investigation by a law  
2 enforcement agency into the commission of a felony.

3 (j) To provide public employee retirement systems in California  
4 with information relating to the earnings of any person who has  
5 applied for or is receiving a disability income, disability allowance,  
6 or disability retirement allowance, from a public employee  
7 retirement system. The earnings information shall be released only  
8 upon written request from the governing board specifying that the  
9 person has applied for or is receiving a disability allowance or  
10 disability retirement allowance from its retirement system. The  
11 request may be made by the chief executive officer of the system  
12 or by an employee of the system so authorized and identified by  
13 name and title by the chief executive officer in writing.

14 (k) To enable the Division of Labor Standards Enforcement in  
15 the Department of Industrial Relations to seek criminal, civil, or  
16 administrative remedies in connection with the failure to pay, or  
17 the unlawful payment of, wages pursuant to Chapter 1  
18 (commencing with Section 200) of Part 1 of Division 2 of, and  
19 Chapter 1 (commencing with Section 1720) of Part 7 of Division  
20 2 of, the Labor Code.

21 (l) To enable federal, state, or local governmental departments  
22 or agencies to administer child support enforcement programs  
23 under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et  
24 seq.).

25 (m) To provide federal, state, or local governmental departments  
26 or agencies with wage and claim information in its possession that  
27 will assist those departments and agencies in the administration  
28 of the Victims of Crime Program or in the location of victims of  
29 crime who, by state mandate or court order, are entitled to  
30 restitution that has been or can be recovered.

31 (n) To provide federal, state, or local governmental departments  
32 or agencies with information concerning any individuals who are  
33 or have been:

34 (1) Directed by state mandate or court order to pay restitution,  
35 fines, penalties, assessments, or fees as a result of a violation of  
36 law.

37 (2) Delinquent or in default on guaranteed student loans or who  
38 owe repayment of funds received through other financial assistance  
39 programs administered by those agencies. The information released

1 by the director for the purposes of this paragraph shall not include  
2 unemployment insurance benefit information.

3 (o) (1) To provide an authorized governmental agency with  
4 any or all relevant information that relates to any specific workers'  
5 compensation insurance fraud investigation. The information shall  
6 be provided to the extent permitted by federal law and regulations.  
7 For the purposes of this subdivision, "authorized governmental  
8 agency" means the district attorney of any county, the office of  
9 the Attorney General, the Department of Industrial Relations, and  
10 the Department of Insurance. An authorized governmental agency  
11 may disclose this information to the State Bar, the Medical Board  
12 of California, or any other licensing board or department whose  
13 licensee is the subject of a workers' compensation insurance fraud  
14 investigation. This subdivision shall not prevent any authorized  
15 governmental agency from reporting to any board or department  
16 the suspected misconduct of any licensee of that body.

17 (2) To provide the Labor Commissioner, or his or her agent or  
18 contractor, with the names, addresses, and descriptions of  
19 employers that report payroll, for use in the enforcement of the  
20 workers' compensation insurance coverage program set forth in  
21 Section 90.3 of the Labor Code. The employers may be selected  
22 from time to time by type of business, by geographic location, by  
23 absence of payroll reported in prior quarters, or by other selection  
24 criteria agreed upon by the director and the Labor Commissioner.  
25 The information shall be provided to the extent permitted by federal  
26 law and regulations.

27 (p) To enable the Director of the Bureau for Private  
28 Postsecondary and Vocational Education, or his or her  
29 representatives, to access unemployment insurance quarterly wage  
30 data on a case-by-case basis to verify information on school  
31 administrators, school staff, and students provided by those schools  
32 who are being investigated for possible violations of Chapter 7  
33 (commencing with Section 94700) of Part 59 of the Education  
34 Code.

35 (q) To provide employment tax information to the tax officials  
36 of Mexico, if a reciprocal agreement exists. For purposes of this  
37 subdivision, "reciprocal agreement" means a formal agreement to  
38 exchange information between national taxing officials of Mexico  
39 and taxing authorities of the State Board of Equalization, the  
40 Franchise Tax Board, and the Employment Development

1 Department. Furthermore, the reciprocal agreement shall be limited  
2 to the exchange of information that is essential for tax  
3 administration purposes only. Taxing authorities of the State of  
4 California shall be granted tax information only on California  
5 residents. Taxing authorities of Mexico shall be granted tax  
6 information only on Mexican nationals.

7 (r) To enable city and county planning agencies to develop  
8 economic forecasts for planning purposes. The information shall  
9 be limited to businesses within the jurisdiction of the city or county  
10 whose planning agency is requesting the information, and shall  
11 not include information regarding individual employees.

12 (s) To provide the State Department of Developmental Services  
13 with wage and employer information that will assist in the  
14 collection of moneys owed by the recipient, parent, or any other  
15 legally liable individual for services and supports provided pursuant  
16 to Chapter 9 (commencing with Section 4775) of Division 4.5 of,  
17 and Chapter 2 (commencing with Section 7200) and Chapter 3  
18 (commencing with Section 7500) of Division 7 of, the Welfare  
19 and Institutions Code.

20 (t) Nothing in this section shall be construed to authorize or  
21 permit the use of information obtained in the administration of this  
22 code by any private collection agency.

23 (u) The disclosure of the name and address of an individual or  
24 business entity that was issued an assessment that included  
25 penalties under Section 1128 or 1128.1 shall not be in violation  
26 of Section 1094 if the assessment is final. The disclosure may also  
27 include any of the following:

- 28 (1) The total amount of the assessment.
- 29 (2) The amount of the penalty imposed under Section 1128 or  
30 1128.1 that is included in the assessment.
- 31 (3) The facts that resulted in the charging of the penalty under  
32 Section 1128 or 1128.1.

33 (v) To enable the Contractors' State License Board to verify  
34 the employment history of an individual applying for licensure  
35 pursuant to Section 7068 of the Business and Professions Code.

36 (w) To provide any peace officer with the Division of  
37 Investigation in the Department of Consumer Affairs information  
38 pursuant to subdivision (i) when the requesting peace officer has  
39 been designated by the Chief of the Division of Investigations and  
40 requests this information in the course of and in part of an

- 1 investigation into the commission of a crime or other unlawful act
- 2 when there is reasonable suspicion to believe that the crime or act
- 3 may be connected to the information requested and would lead to
- 4 relevant information regarding the crime or unlawful act.

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