

Assembly Bill No. 2770

Passed the Assembly August 30, 2010

Chief Clerk of the Assembly

Passed the Senate August 25, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2770, Monning. 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, until January 1, 2017, establish a pilot program to investigate employment and payment practices within the swimming pool and spa construction industry. The bill would require the Employment Development Department, in consultation with the Franchise Tax Board, the Department of Justice, the Department of Insurance, the Labor and Workforce Development Agency, and industry representatives, to develop and implement a set of criteria that, if met by an employer, would trigger a recommendation for an audit or investigation by appropriate state tax authorities to determine if the employer is in violation of statutes relating to employee wages, hours, and working conditions. After July 1, 2011, this bill would require the Employment Development Department to take specified actions with respect to an employer when application of the set of criteria indicates that a violation of the statutes described above may have occurred. This bill also would state findings and declarations relating to the underground economy and the swimming pool and spa construction industry.

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

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

(1) Despite many targeted enforcement efforts in recent years, including the creation of the Economic and Employment Enforcement Coalition, and the addition of 62 personnel years by

the Governor in 2005 to specifically address the problem, evidence indicates that the underground economy in California is flourishing.

(2) According to the Employment Development Department's analysis of findings of the Internal Revenue Service, the underground economy in California is estimated to be between \$60 billion and \$140 billion each year.

(3) Employers operating in the underground economy hurt everyone; the state loses billions of dollars each year in tax revenues, workers are forced to go without basic employment protections, and law-abiding businesses are confronted with unfair competition from scofflaw competitors.

(4) According to the Franchise Tax Board and the State Board of Equalization, an average of \$8.5 billion in owed corporate, personal, and sales and use taxes goes uncollected in California each year, with unreported and underreported economic activity responsible for the vast majority of that total.

(5) As the state faces unprecedented budget shortfalls, rigorous enforcement of existing state tax laws should be a top priority.

(6) It is therefore in the public interest to establish a more coordinated approach to enforcement in the underground economy, which would include a nexus between the state's enforcement of labor and tax laws.

(7) The construction industry has been particularly hard hit by the underground economy, especially the swimming pool and spa construction business, thus making it an appropriate industry to serve as the subject of a pilot program to develop a more coordinated approach to enforcement in the underground economy.

(b) It is the intent of the Legislature in enacting this act to target those employers that operate in the underground economy in flagrant violation of law, and not employers that commit minor or inadvertent violations of existing law.

SEC. 2. Section 559 is added to the Labor Code, to read:

559. (a) A pilot program is hereby established to investigate employment and payment practices within the swimming pool and spa construction industry.

(b) The Employment Development Department, in consultation with the Franchise Tax Board, the Department of Justice, the Department of Insurance, the Labor and Workforce Development Agency, and industry representatives, shall, by July 1, 2011, develop and implement an appropriate set of criteria that, if met

by an employer, will trigger a recommendation for an audit or investigation by appropriate state tax authorities to determine if the employer is in violation of this chapter, Chapter 1 (commencing with Section 200) of Part 1, or Chapter 1 (commencing with Section 1171) of Part 4. The set of criteria shall take into account all relevant factors, including reported workers' compensation exemptions and the ratio of building material purchases to reported labor costs.

(c) After July 1, 2011, the Employment Development Department shall take the following actions with respect to an employer when application of the set of criteria indicates that a violation of the laws specified in subdivision (b) may have occurred:

- (1) Notify the appropriate state tax authorities.
- (2) Provide the appropriate state tax authorities with the name of the employer and all relevant and necessary information regarding the violations.
- (3) Make a recommendation to the appropriate state tax authorities that the employer be audited or investigated.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

Approved _____, 2010

Governor