

AMENDED IN SENATE AUGUST 23, 2012
AMENDED IN SENATE AUGUST 20, 2012
AMENDED IN SENATE JULY 3, 2012
AMENDED IN ASSEMBLY APRIL 9, 2012
AMENDED IN ASSEMBLY MARCH 27, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2674

Introduced by Assembly Member Swanson

March 5, 2012

An act to amend Sections 226 and 1198.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2674, as amended, Swanson. Employment records: right to inspect.

(1) Existing law requires that every employer, semimonthly or at the time of each payment of wages, furnish to each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing specified items. Existing law requires an employer to keep a copy of the statement and the record of deductions on file for at least 3 years at the place of employment or at a central location within the State of California.

This bill would provide that the term "copy," for purposes of these provisions, includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all

of the information that existing law requires to be included in the itemized statement.

(2) Under existing law, an employee has the right to inspect the personnel records that his or her employer maintains relating to the employee's performance or to any grievance concerning the employee.

This bill would require an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, an opportunity to inspect and receive a copy of those records within a specified period of time, except during the pendency of a lawsuit filed by the employee or former employer relating to a personnel matter. The bill would provide that an employer is not required to comply with more than 50 requests for a copy of the above-described records filed by a representative or representatives of employees in one calendar month. The bill would provide that the above provisions shall not apply with respect to an employee covered by a valid collective bargaining agreement if the agreement provides, among other things, for a procedure for inspection and copying of personnel records. In the event an employer violates these provisions, the bill would permit a current or former employee or the Labor Commissioner to recover a penalty of \$750 from the employer, and would further permit a current or former employee to obtain injunctive relief and attorney's fees.

Under existing law, an employer who fails to permit an employee to inspect the employee's personnel records is guilty of a misdemeanor punishable by a fine or imprisonment, as specified.

This bill would, instead, provide that a violation of the above provisions requiring that personnel records be made available for inspection constitutes an infraction. Although this bill would change a violation of the above provisions requiring that personnel records be made available for inspection from a misdemeanor to an infraction, by expanding the scope of what would constitute an infraction, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) *This bill would incorporate changes to Section 226 of the Labor Code proposed by AB 1744 and SB 1255, to be operative only if this*

bill and either or both of those bills are chaptered and became effective on or before January 1, 2013, and this bill is chaptered last.

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

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

1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:
3 226. (a) Every employer shall, semimonthly or at the time of
4 each payment of wages, furnish each of his or her employees,
5 either as a detachable part of the check, draft, or voucher paying
6 the employee's wages, or separately when wages are paid by
7 personal check or cash, an accurate itemized statement in writing
8 showing (1) gross wages earned, (2) total hours worked by the
9 employee, except for any employee whose compensation is solely
10 based on a salary and who is exempt from payment of overtime
11 under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate
13 units earned and any applicable piece rate if the employee is paid
14 on a piece-rate basis, (4) all deductions, provided that all deductions
15 made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates
17 of the period for which the employee is paid, (7) the name of the
18 employee and the last four digits of his or her social security
19 number or an employee identification number other than a social
20 security number, (8) the name and address of the legal entity that
21 is the employer and, if the employer is a farm labor contractor, as
22 defined in subdivision (b) of Section 1682, the name and address
23 of the legal entity that secured the services of the employer, and
24 (9) all applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked at each hourly rate by
26 the employee. The deductions made from payment of wages shall
27 be recorded in ink or other indelible form, properly dated, showing
28 the month, day, and year, and a copy of the statement and the
29 record of the deductions shall be kept on file by the employer for
30 at least three years at the place of employment or at a central
31 location within the State of California. For purposes of this
32 subdivision, "copy" includes a duplicate of the itemized statement

1 provided to an employee or a computer-generated record that
2 accurately shows all of the information required by this subdivision.

3 (b) An employer that is required by this code or any regulation
4 adopted pursuant to this code to keep the information required by
5 subdivision (a) shall afford current and former employees the right
6 to inspect or copy records pertaining to their employment, upon
7 reasonable request to the employer. The employer may take
8 reasonable steps to ensure the identity of a current or former
9 employee. If the employer provides copies of the records, the actual
10 cost of reproduction may be charged to the current or former
11 employee.

12 (c) An employer who receives a written or oral request to inspect
13 or copy records pursuant to subdivision (b) pertaining to a current
14 or former employee shall comply with the request as soon as
15 practicable, but no later than 21 calendar days from the date of the
16 request. A violation of this subdivision is an infraction.
17 Impossibility of performance, not caused by or a result of a
18 violation of law, shall be an affirmative defense for an employer
19 in any action alleging a violation of this subdivision. An employer
20 may designate the person to whom a request under this subdivision
21 will be made.

22 (d) This section does not apply to any employer of any person
23 employed by the owner or occupant of a residential dwelling whose
24 duties are incidental to the ownership, maintenance, or use of the
25 dwelling, including the care and supervision of children, or whose
26 duties are personal and not in the course of the trade, business,
27 profession, or occupation of the owner or occupant.

28 (e) An employee suffering injury as a result of a knowing and
29 intentional failure by an employer to comply with subdivision (a)
30 is entitled to recover the greater of all actual damages or fifty
31 dollars (\$50) for the initial pay period in which a violation occurs
32 and one hundred dollars (\$100) per employee for each violation
33 in a subsequent pay period, not exceeding an aggregate penalty of
34 four thousand dollars (\$4,000), and is entitled to an award of costs
35 and reasonable attorney's fees.

36 (f) A failure by an employer to permit a current or former
37 employee to inspect or copy records within the time set forth in
38 subdivision (c) entitles the current or former employee or the Labor
39 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
40 penalty from the employer.

1 (g) The listing by an employer of the name and address of the
2 legal entity that secured the services of the employer in the itemized
3 statement required by subdivision (a) shall not create any liability
4 on the part of that legal entity.

5 (h) An employee may also bring an action for injunctive relief
6 to ensure compliance with this section, and is entitled to an award
7 of costs and reasonable attorney's fees.

8 (i) This section does not apply to the state, to any city, county,
9 city and county, district, or to any other governmental entity, except
10 that if the state or a city, county, city and county, district, or other
11 governmental entity furnishes its employees with a check, draft,
12 or voucher paying the employee's wages, the state or a city, county,
13 city and county, district, or other governmental entity shall use no
14 more than the last four digits of the employee's social security
15 number or shall use an employee identification number other than
16 the social security number on the itemized statement provided with
17 the check, draft, or voucher.

18 *SEC. 1.3. Section 226 of the Labor Code is amended to read:*

19 226. (a) Every employer shall, semimonthly or at the time of
20 each payment of wages, furnish each of his or her employees,
21 either as a detachable part of the check, draft, or voucher paying
22 the employee's wages, or separately when wages are paid by
23 personal check or cash, an accurate itemized statement in writing
24 showing (1) gross wages earned, (2) total hours worked by the
25 employee, except for any employee whose compensation is solely
26 based on a salary and who is exempt from payment of overtime
27 under subdivision (a) of Section 515 or any applicable order of
28 the Industrial Welfare Commission, (3) the number of piece-rate
29 units earned and any applicable piece rate if the employee is paid
30 on a piece-rate basis, (4) all deductions, provided that all deductions
31 made on written orders of the employee may be aggregated and
32 shown as one item, (5) net wages earned, (6) the inclusive dates
33 of the period for which the employee is paid, (7) the name of the
34 employee and the last four digits of his or her social security
35 number or an employee identification number other than a social
36 security number, (8) the name and address of the legal entity that
37 is the employer and, if the employer is a farm labor contractor, as
38 defined in subdivision (b) of Section 1682, the name and address
39 of the legal entity that secured the services of the employer, and
40 (9) all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate by
2 the employee. The deductions made from payment of wages shall
3 be recorded in ink or other indelible form, properly dated, showing
4 the month, day, and year, and a copy of the statement and the
5 record of the deductions shall be kept on file by the employer for
6 at least three years at the place of employment or at a central
7 location within the State of California. *For purposes of this*
8 *subdivision, “copy” includes a duplicate of the itemized statement*
9 *provided to an employee or a computer-generated record that*
10 *accurately shows all of the information required by this*
11 *subdivision.*

12 (b) An employer that is required by this code or any regulation
13 adopted pursuant to this code to keep the information required by
14 subdivision (a) shall afford current and former employees the right
15 to inspect or copy records pertaining to their employment, upon
16 reasonable request to the employer. The employer may take
17 reasonable steps to ensure the identity of a current or former
18 employee. If the employer provides copies of the records, the actual
19 cost of reproduction may be charged to the current or former
20 employee.

21 (c) An employer who receives a written or oral request to inspect
22 or copy records pursuant to subdivision (b) pertaining to a current
23 or former employee shall comply with the request as soon as
24 practicable, but no later than 21 calendar days from the date of the
25 request. A violation of this subdivision is an infraction.
26 Impossibility of performance, not caused by or a result of a
27 violation of law, shall be an affirmative defense for an employer
28 in any action alleging a violation of this subdivision. An employer
29 may designate the person to whom a request under this subdivision
30 will be made.

31 (d) This section does not apply to any employer of any person
32 employed by the owner or occupant of a residential dwelling whose
33 duties are incidental to the ownership, maintenance, or use of the
34 dwelling, including the care and supervision of children, or whose
35 duties are personal and not in the course of the trade, business,
36 profession, or occupation of the owner or occupant.

37 (e) (1) An employee suffering injury as a result of a knowing
38 and intentional failure by an employer to comply with subdivision
39 (a) is entitled to recover the greater of all actual damages or fifty
40 dollars (\$50) for the initial pay period in which a violation occurs

1 and one hundred dollars (\$100) per employee for each violation
2 in a subsequent pay period, not ~~exceeding~~ *to exceed* an aggregate
3 penalty of four thousand dollars (\$4,000), and is entitled to an
4 award of costs and reasonable attorney’s fees.

5 (2) (A) *An employee is deemed to suffer injury for purposes of*
6 *this subdivision if the employer fails to provide a wage statement.*

7 (B) *An employee is deemed to suffer injury for purposes of this*
8 *subdivision if the employer fails to provide accurate and complete*
9 *information as required by any one or more of items (1) to (9),*
10 *inclusive, of subdivision (a) and the employee cannot promptly*
11 *and easily determine from the wage statement alone one or more*
12 *of the following:*

13 (i) *The amount of the gross wages or net wages paid to the*
14 *employee during the pay period or any of the other information*
15 *required to be provided on the itemized wage statement pursuant*
16 *to items (2) to (4), inclusive, (6), and (9) of subdivision (a).*

17 (ii) *Which deductions the employer made from gross wages to*
18 *determine the net wages paid to the employee during the pay*
19 *period. Nothing in this subdivision alters the ability of the employer*
20 *to aggregate deductions consistent with the requirements of item*
21 *(4) of subdivision (a).*

22 (iii) *The name and address of the employer and, if the employer*
23 *is a farm labor contractor, as defined in subdivision (b) of Section*
24 *1682, the name and address of the legal entity that secured the*
25 *services of the employer during the pay period.*

26 (iv) *The name of the employee and only the last four digits of*
27 *his or her social security number or an employee identification*
28 *number other than a social security number.*

29 (C) *For purposes of this paragraph, “promptly and easily*
30 *determine” means a reasonable person would be able to readily*
31 *ascertain the information without reference to other documents*
32 *or information.*

33 (3) *For purposes of this subdivision, a “knowing and intentional*
34 *failure” does not include an isolated and unintentional payroll*
35 *error due to a clerical or inadvertent mistake. In reviewing for*
36 *compliance with this section, the factfinder may consider as a*
37 *relevant factor whether the employer, prior to an alleged violation,*
38 *has adopted and is in compliance with a set of policies, procedures,*
39 *and practices that fully comply with this section.*

1 (f) A failure by an employer to permit a current or former
2 employee to inspect or copy records within the time set forth in
3 subdivision (c) entitles the current or former employee or the Labor
4 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
5 penalty from the employer.

6 (g) The listing by an employer of the name and address of the
7 legal entity that secured the services of the employer in the itemized
8 statement required by subdivision (a) shall not create any liability
9 on the part of that legal entity.

10 (h) An employee may also bring an action for injunctive relief
11 to ensure compliance with this section, and is entitled to an award
12 of costs and reasonable attorney's fees.

13 (i) This section does not apply to the state, to any city, county,
14 city and county, district, or to any other governmental entity, except
15 that if the state or a city, county, city and county, district, or other
16 governmental entity furnishes its employees with a check, draft,
17 or voucher paying the employee's wages, the state or a city, county,
18 city and county, district, or other governmental entity shall use no
19 more than the last four digits of the employee's social security
20 number or shall use an employee identification number other than
21 the social security number on the itemized statement provided with
22 the check, draft, or voucher.

23 *SEC. 1.5. Section 226 of the Labor Code is amended to read:*

24 226. (a) Every employer shall, semimonthly or at the time of
25 each payment of wages, furnish each of his or her employees,
26 either as a detachable part of the check, draft, or voucher paying
27 the employee's wages, or separately when wages are paid by
28 personal check or cash, an accurate itemized statement in writing
29 showing (1) gross wages earned, (2) total hours worked by the
30 employee, except for any employee whose compensation is solely
31 based on a salary and who is exempt from payment of overtime
32 under subdivision (a) of Section 515 or any applicable order of
33 the Industrial Welfare Commission, (3) the number of piece-rate
34 units earned and any applicable piece rate if the employee is paid
35 on a piece-rate basis, (4) all deductions, provided that all deductions
36 made on written orders of the employee may be aggregated and
37 shown as one item, (5) net wages earned, (6) the inclusive dates
38 of the period for which the employee is paid, (7) the name of the
39 employee and the last four digits of his or her social security
40 number or an employee identification number other than a social

1 security number, (8) the name and address of the legal entity that
2 is the employer and, if the employer is a farm labor contractor, as
3 defined in subdivision (b) of Section 1682, the name and address
4 of the legal entity that secured the services of the employer, and
5 (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by
7 the employee *and, beginning July 1, 2013, if the employer is a*
8 *temporary services employer as defined in Section 201.3, the rate*
9 *of pay for each temporary services assignment and the total hours*
10 *worked for each legal entity. The deductions made from payment*
11 *of wages shall be recorded in ink or other indelible form, properly*
12 *dated, showing the month, day, and year, and a copy of the*
13 *statement and the record of the deductions shall be kept on file by*
14 *the employer for at least three years at the place of employment*
15 *or at a central location within the State of California. For purposes*
16 *of this subdivision, "copy" includes a duplicate of the itemized*
17 *statement provided to an employee or a computer-generated record*
18 *that accurately shows all of the information required by this*
19 *subdivision.*

20 (b) An employer that is required by this code or any regulation
21 adopted pursuant to this code to keep the information required by
22 subdivision (a) shall afford current and former employees the right
23 to inspect or copy records pertaining to their employment, upon
24 reasonable request to the employer. The employer may take
25 reasonable steps to ensure the identity of a current or former
26 employee. If the employer provides copies of the records, the actual
27 cost of reproduction may be charged to the current or former
28 employee.

29 (c) An employer who receives a written or oral request to inspect
30 or copy records pursuant to subdivision (b) pertaining to a current
31 or former employee shall comply with the request as soon as
32 practicable, but no later than 21 calendar days from the date of the
33 request. A violation of this subdivision is an infraction.
34 Impossibility of performance, not caused by or a result of a
35 violation of law, shall be an affirmative defense for an employer
36 in any action alleging a violation of this subdivision. An employer
37 may designate the person to whom a request under this subdivision
38 will be made.

39 (d) This section does not apply to any employer of any person
40 employed by the owner or occupant of a residential dwelling whose

1 duties are incidental to the ownership, maintenance, or use of the
2 dwelling, including the care and supervision of children, or whose
3 duties are personal and not in the course of the trade, business,
4 profession, or occupation of the owner or occupant.

5 (e) An employee suffering injury as a result of a knowing and
6 intentional failure by an employer to comply with subdivision (a)
7 is entitled to recover the greater of all actual damages or fifty
8 dollars (\$50) for the initial pay period in which a violation occurs
9 and one hundred dollars (\$100) per employee for each violation
10 in a subsequent pay period, not exceeding an aggregate penalty of
11 four thousand dollars (\$4,000), and is entitled to an award of costs
12 and reasonable attorney’s fees.

13 (f) A failure by an employer to permit a current or former
14 employee to inspect or copy records within the time set forth in
15 subdivision (c) entitles the current or former employee or the Labor
16 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
17 penalty from the employer.

18 (g) The listing by an employer of the name and address of the
19 legal entity that secured the services of the employer in the itemized
20 statement required by subdivision (a) shall not create any liability
21 on the part of that legal entity.

22 (h) An employee may also bring an action for injunctive relief
23 to ensure compliance with this section, and is entitled to an award
24 of costs and reasonable attorney’s fees.

25 (i) This section does not apply to the state, to any city, county,
26 city and county, district, or to any other governmental entity, except
27 that if the state or a city, county, city and county, district, or other
28 governmental entity furnishes its employees with a check, draft,
29 or voucher paying the employee’s wages, the state or a city, county,
30 city and county, district, or other governmental entity shall use no
31 more than the last four digits of the employee’s social security
32 number or shall use an employee identification number other than
33 the social security number on the itemized statement provided with
34 the check, draft, or voucher.

35 *SEC. 1.7. Section 226 of the Labor Code is amended to read:*

36 226. (a) Every employer shall, semimonthly or at the time of
37 each payment of wages, furnish each of his or her employees,
38 either as a detachable part of the check, draft, or voucher paying
39 the employee’s wages, or separately when wages are paid by
40 personal check or cash, an accurate itemized statement in writing

1 showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely
3 based on a salary and who is exempt from payment of overtime
4 under subdivision (a) of Section 515 or any applicable order of
5 the Industrial Welfare Commission, (3) the number of piece-rate
6 units earned and any applicable piece rate if the employee is paid
7 on a piece-rate basis, (4) all deductions, provided that all deductions
8 made on written orders of the employee may be aggregated and
9 shown as one item, (5) net wages earned, (6) the inclusive dates
10 of the period for which the employee is paid, (7) the name of the
11 employee and the last four digits of his or her social security
12 number or an employee identification number other than a social
13 security number, (8) the name and address of the legal entity that
14 is the employer and, if the employer is a farm labor contractor, as
15 defined in subdivision (b) of Section 1682, the name and address
16 of the legal entity that secured the services of the employer, and
17 (9) all applicable hourly rates in effect during the pay period and
18 the corresponding number of hours worked at each hourly rate by
19 the employee *and, beginning July 1, 2013, if the employer is a*
20 *temporary services employer as defined in Section 201.3, the rate*
21 *of pay for each temporary services assignment and the total hours*
22 *worked for each legal entity. The deductions made from payment*
23 *of wages shall be recorded in ink or other indelible form, properly*
24 *dated, showing the month, day, and year, and a copy of the*
25 *statement and the record of the deductions shall be kept on file by*
26 *the employer for at least three years at the place of employment*
27 *or at a central location within the State of California. For purposes*
28 *of this subdivision, "copy" includes a duplicate of the itemized*
29 *statement provided to an employee or a computer-generated record*
30 *that accurately shows all of the information required by this*
31 *subdivision.*

32 (b) An employer that is required by this code or any regulation
33 adopted pursuant to this code to keep the information required by
34 subdivision (a) shall afford current and former employees the right
35 to inspect or copy records pertaining to their employment, upon
36 reasonable request to the employer. The employer may take
37 reasonable steps to ensure the identity of a current or former
38 employee. If the employer provides copies of the records, the actual
39 cost of reproduction may be charged to the current or former
40 employee.

1 (c) An employer who receives a written or oral request to inspect
2 or copy records pursuant to subdivision (b) pertaining to a current
3 or former employee shall comply with the request as soon as
4 practicable, but no later than 21 calendar days from the date of the
5 request. A violation of this subdivision is an infraction.
6 Impossibility of performance, not caused by or a result of a
7 violation of law, shall be an affirmative defense for an employer
8 in any action alleging a violation of this subdivision. An employer
9 may designate the person to whom a request under this subdivision
10 will be made.

11 (d) This section does not apply to any employer of any person
12 employed by the owner or occupant of a residential dwelling whose
13 duties are incidental to the ownership, maintenance, or use of the
14 dwelling, including the care and supervision of children, or whose
15 duties are personal and not in the course of the trade, business,
16 profession, or occupation of the owner or occupant.

17 (e) (1) An employee suffering injury as a result of a knowing
18 and intentional failure by an employer to comply with subdivision
19 (a) is entitled to recover the greater of all actual damages or fifty
20 dollars (\$50) for the initial pay period in which a violation occurs
21 and one hundred dollars (\$100) per employee for each violation
22 in a subsequent pay period, ~~not exceeding~~ *to exceed* an aggregate
23 penalty of four thousand dollars (\$4,000), and is entitled to an
24 award of costs and reasonable attorney's fees.

25 (2) (A) *An employee is deemed to suffer injury for purposes of*
26 *this subdivision if the employer fails to provide a wage statement.*

27 (B) *An employee is deemed to suffer injury for purposes of this*
28 *subdivision if the employer fails to provide accurate and complete*
29 *information as required by any one or more of items (1) to (9),*
30 *inclusive, of subdivision (a) and the employee cannot promptly*
31 *and easily determine from the wage statement alone one or more*
32 *of the following:*

33 (i) *The amount of the gross wages or net wages paid to the*
34 *employee during the pay period or any of the other information*
35 *required to be provided on the itemized wage statement pursuant*
36 *to items (2) to (4), inclusive, (6), and (9) of subdivision (a).*

37 (ii) *Which deductions the employer made from gross wages to*
38 *determine the net wages paid to the employee during the pay*
39 *period. Nothing in this subdivision alters the ability of the employer*

1 to aggregate deductions consistent with the requirements of item
2 (4) of subdivision (a).

3 (iii) The name and address of the employer and, if the employer
4 is a farm labor contractor, as defined in subdivision (b) of Section
5 1682, the name and address of the legal entity that secured the
6 services of the employer during the pay period.

7 (iv) The name of the employee and only the last four digits of
8 his or her social security number or an employee identification
9 number other than a social security number.

10 (C) For purposes of this paragraph, “promptly and easily
11 determine” means a reasonable person would be able to readily
12 ascertain the information without reference to other documents
13 or information.

14 (3) For purposes of this subdivision, a “knowing and intentional
15 failure” does not include an isolated and unintentional payroll
16 error due to a clerical or inadvertent mistake. In reviewing for
17 compliance with this section, the factfinder may consider as a
18 relevant factor whether the employer, prior to an alleged violation,
19 has adopted and is in compliance with a set of policies, procedures,
20 and practices that fully comply with this section.

21 (f) A failure by an employer to permit a current or former
22 employee to inspect or copy records within the time set forth in
23 subdivision (c) entitles the current or former employee or the Labor
24 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
25 penalty from the employer.

26 (g) The listing by an employer of the name and address of the
27 legal entity that secured the services of the employer in the itemized
28 statement required by subdivision (a) shall not create any liability
29 on the part of that legal entity.

30 (h) An employee may also bring an action for injunctive relief
31 to ensure compliance with this section, and is entitled to an award
32 of costs and reasonable attorney’s fees.

33 (i) This section does not apply to the state, to any city, county,
34 city and county, district, or to any other governmental entity, except
35 that if the state or a city, county, city and county, district, or other
36 governmental entity furnishes its employees with a check, draft,
37 or voucher paying the employee’s wages, the state or a city, county,
38 city and county, district, or other governmental entity shall use no
39 more than the last four digits of the employee’s social security
40 number or shall use an employee identification number other than

1 the social security number on the itemized statement provided with
2 the check, draft, or voucher.

3 SEC. 2. Section 1198.5 of the Labor Code is amended to read:

4 1198.5. (a) Every current and former employee, or his or her
5 representative, has the right to inspect and receive a copy of the
6 personnel records that the employer maintains relating to the
7 employee's performance or to any grievance concerning the
8 employee.

9 (b) (1) The employer shall make the contents of those personnel
10 records available for inspection to the current or former employee,
11 or his or her representative, at reasonable intervals and at
12 reasonable times, but not later than 30 calendar days from the date
13 the employer receives a written request, unless the current or former
14 employee, or his or her representative, and the employer agree in
15 writing to a date beyond 30 calendar days to inspect the records,
16 and the agreed-upon date does not exceed 35 calendar days from
17 the employer's receipt of the written request. Upon a written
18 request from a current or former employee, or his or her
19 representative, the employer shall also provide a copy of the
20 personnel records, at a charge not to exceed the actual cost of
21 reproduction, not later than 30 calendar days from the date the
22 employer receives the request, unless the current or former
23 employee, or his or her representative, and the employer agree in
24 writing to a date beyond 30 calendar days to produce a copy of
25 the records, as long as the agreed-upon date does not exceed 35
26 calendar days from the employer's receipt of the written request.
27 Except as provided in paragraph (2) of subdivision (c), the
28 employer is not required to make those personnel records or a copy
29 thereof available at a time when the employee is actually required
30 to render service to the employer, if the requester is the employee.

31 (2) (A) For purposes of this section, a request to inspect or
32 receive a copy of personnel records shall be made in either of the
33 following ways:

34 (i) Written and submitted by the current or former employee or
35 his or her representative.

36 (ii) Written and submitted by the current or former employee
37 or his or her representative by completing an employer-provided
38 form.

39 (B) An employer-provided form shall be made available to the
40 employee or his or her representative upon verbal request to the

1 employee's supervisor or, if known to the employee or his or her
2 representative at the time of the request, to the individual the
3 employer designates under this section to receive a verbal request
4 for the form.

5 (c) The employer shall do all of the following:

6 (1) With regard to all employees, maintain a copy of each
7 employee's personnel records for a period of not less than three
8 years after termination of employment.

9 (2) With regard to current employees, make a current employee's
10 personnel records available for inspection, and, if requested by the
11 employee or his or her representative, provide a copy thereof, at
12 the place where the employee reports to work, or at another location
13 agreeable to the employer and the requester. If the employee is
14 required to inspect or receive a copy at a location other than the
15 place where he or she reports to work, no loss of compensation to
16 the employee is permitted.

17 (3) (A) With regard to former employees, make a former
18 employee's personnel records available for inspection, and, if
19 requested by the employee or his or her representative, provide a
20 copy thereof, at the location where the employer stores the records,
21 unless the parties mutually agree in writing to a different location.
22 A former employee may receive a copy by mail if he or she
23 reimburses the employer for actual postal expenses.

24 (B) (i) Notwithstanding subparagraph (A), if a former employee
25 seeking to inspect his or her personnel records was terminated for
26 a violation of law, or an employment-related policy, involving
27 harassment or workplace violence, the employer may comply with
28 the request by doing one of the following:

29 (I) Making the personnel records available to the former
30 employee for inspection at a location other than the workplace that
31 is within a reasonable driving distance of the former employee's
32 residence.

33 (II) Providing a copy of the personnel records by mail.

34 (ii) Nothing in this subparagraph shall limit a former employee's
35 right to receive a copy of his or her personnel records.

36 (d) An employer is required to comply with only one request
37 per year by a former employee to inspect or receive a copy of his
38 or her personnel records.

39 (e) The employer may take reasonable steps to verify the identity
40 of a current or former employee or his or her authorized

1 representative. For purposes of this section, “representative” means
2 a person authorized in writing by the employee to inspect, or
3 receive a copy of, his or her personnel records.

4 (f) The employer may designate the person to whom a request
5 is made.

6 (g) Prior to making records specified in subdivision (a) available
7 for inspection or providing a copy of those records, the employer
8 may redact the name of any nonsupervisory employee contained
9 therein.

10 (h) The requirements of this section do not apply to:

11 (1) Records relating to the investigation of a possible criminal
12 offense.

13 (2) Letters of reference.

14 (3) Ratings, reports, or records that were:

15 (A) Obtained prior to the employee’s employment.

16 (B) Prepared by identifiable examination committee members.

17 (C) Obtained in connection with a promotional examination.

18 (4) Employees who are subject to the Public Safety Officers
19 Procedural Bill of Rights (Chapter 9.7 (commencing with Section
20 3300) of Division 4 of Title 1 of the Government Code).

21 (5) Employees of agencies subject to the Information Practices
22 Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4
23 of Division 3 of the Civil Code).

24 (i) If a public agency has established an independent employee
25 relations board or commission, an employee shall first seek relief
26 regarding any matter or dispute relating to this section from that
27 board or commission before pursuing any available judicial
28 remedy.

29 (j) In enacting this section, it is the intent of the Legislature to
30 establish minimum standards for the inspection and the receipt of
31 a copy of personnel records by employees. Nothing in this section
32 shall be construed to prevent the establishment of additional rules
33 for the inspection and the receipt of a copy of personnel records
34 that are established as the result of agreements between an
35 employer and a recognized employee organization.

36 (k) If an employer fails to permit a current or former employee,
37 or his or her representative, to inspect or copy personnel records
38 within the times specified in this section, or times agreed to by
39 mutual agreement as provided in this section, the current or former

1 employee or the Labor Commissioner may recover a penalty of
2 seven hundred fifty dollars (\$750) from the employer.

3 (l) A current or former employee may also bring an action for
4 injunctive relief to obtain compliance with this section, and may
5 recover costs and reasonable attorney’s fees in such an action.

6 (m) Notwithstanding Section 1199, a violation of this section
7 is an infraction. Impossibility of performance, not caused by or
8 resulting from a violation of law, may be asserted as an affirmative
9 defense by an employer in any action alleging a violation of this
10 section.

11 (n) If an employee or former employee files a lawsuit that relates
12 to a personnel matter against his or her employer or former
13 employer, the right of the employee, former employee, or his or
14 her representative to inspect or copy personnel records under this
15 section ceases during the pendency of the lawsuit in the court with
16 original jurisdiction.

17 (o) For purposes of this section, a lawsuit “relates to a personnel
18 matter” if a current or former employee’s personnel records are
19 relevant to the lawsuit.

20 (p) An employer is not required to comply with more than 50
21 requests under this section to inspect and receive a copy of
22 personnel records filed by a representative or representatives of
23 employees in one calendar month.

24 (q) This section does not apply to an employee covered by a
25 valid collective bargaining agreement if the agreement expressly
26 provides for all of the following:

27 (1) The wages, hours of work, and working conditions of
28 employees.

29 (2) A procedure for the inspection and copying of personnel
30 records.

31 (3) Premium wage rates for all overtime hours worked.

32 (4) A regular rate of pay of not less than 30 percent more than
33 the state minimum wage rate.

34 SEC. 3. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 *SEC. 4. (a) Section 1.3 of this bill incorporates amendments*
4 *to Section 226 of the Labor Code proposed by both this bill and*
5 *SB 1255. It shall only become operative if (1) both bills are enacted*
6 *and become effective on or before January 1, 2013, (2) each bill*
7 *amends Section 226 of the Labor Code, (3) AB 1744 is not enacted*
8 *or as enacted does not amend that section, and (4) this bill is*
9 *enacted after SB 1255, in which case Sections 1, 1.5 and 1.7 of*
10 *this bill shall not become operative.*

11 *(b) Section 1.5 of this bill incorporates amendments to Section*
12 *226 of the Labor Code proposed by both this bill and AB 1744. It*
13 *shall only become operative if (1) both bills are enacted and*
14 *become effective on or before January 1, 2013, (2) each bill*
15 *amends Section 226 of the Labor Code, (3) SB 1255 is not enacted*
16 *or as enacted does not amend that section, and (4) this bill is*
17 *enacted after AB 1744 in which case Sections 1, 1.3 and 1.7 of this*
18 *bill shall not become operative.*

19 *(c) Section 1.7 of this bill incorporates amendments to Section*
20 *226 of the Labor Code proposed by this bill, AB 1744, and SB*
21 *1255. It shall only become operative if (1) all three bills are*
22 *enacted and become effective on or before January 1, 2013, (2)*
23 *all three bills amend Section 226 of the Labor Code, and (3) this*
24 *bill is enacted after AB 1744 and SB 1255, in which case Sections*
25 *1, 1.3 and 1.5 of this bill shall not become operative.*

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