

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1792

Introduced by Assembly Member Gomez

February 18, 2014

An act to ~~amend Section 1088.5 of the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor~~ *add Section 13084 to the Government Code, and to add Section 2110.9 to, and to add Division 11 (commencing with Section 19000) to, the Unemployment Insurance Code, relating to public benefits.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1792, as amended, Gomez. ~~Unemployment contributions: Public benefits: reports on employers.~~

Existing law establishes various health programs under which low-income persons are provided health care services. These programs include the Medi-Cal program, which is administered by the State Department of Health Care Services.

This bill would require the Employment Development Department to collaborate with the State Department of Health Care Services, the State Department of Social Services, and the State Department of Education to identify and compile a list of employers of a beneficiary in this state who is enrolled in the above-described public assistance programs. The bill would define an employer as an individual or type of organization that employs for wages or salary 25 or more persons to work in this state. The bill would require the Employment Development Department to provide this list to the Department of Finance and would require the Department of Finance to collaborate with the Employment Development Department to determine the total

cost to the state of the benefits provided to each identified employer's employees under each public assistance program and the total cost to the state of the aggregated benefits provided to each identified employer's employees. The bill would require the Employment Development Department to prepare a report with this information and provide it to the Department of Finance.

The bill would also require the Department of Finance to, after collaborating with the Employment Development Department, annually transmit to the Legislature and post on the department's Internet Web site the report no later than April 15 of each year.

The bill would provide that an employer who discharges or discriminates or retaliates against an employee who enrolls in a public assistance program, as defined, or refuses to hire a beneficiary of a public assistance program would be in violation of specified provisions subject to criminal penalty. By creating a new crime, this bill would impose a state-mandated local program.

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.

~~Existing law requires each employer to file with the Employment Development Department specified information on new employees. Existing law authorizes the department to assess a penalty of \$24 for a failure to report the hiring of an employee, or \$490 if the failure to report is the result of conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report.~~

~~This bill would change these penalty amounts to \$23 and \$499, respectively. This bill would increase the amount of that penalty and thus, the moneys deposited into the Employment Development Department Contingent Fund, a continuously appropriated fund, thereby making an appropriation.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

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) In 2013, California had the highest number of working poor*
4 *families in the country. More than one-third of the state's working*
5 *families are low-income, making less than 200 percent of the*
6 *federal poverty line.*

7 *(2) When low wages and a lack of benefits leave workers unable*
8 *to make ends meet, they turn to public assistance programs for*
9 *health care, healthy food, and other basic necessities.*

10 *(3) Employers that pay low wages and offer no benefits shift*
11 *the burden of keeping workers out of poverty onto taxpayers.*

12 *(4) State public assistance programs are crucial to keeping*
13 *Californians out of deep poverty by providing income supports,*
14 *health care, and food.*

15 *(5) The increase in the numbers of the working poor stretches*
16 *the state safety net to the limit and burdens the state budget,*
17 *programs, and services.*

18 *(6) The Legislature continues to address the issues of a living*
19 *wage and the availability of affordable health coverage while*
20 *developing sound budget and programmatic priorities.*

21 *(7) To promote a deeper understanding of the causes and*
22 *sources of underemployment, poverty level wages, and the*
23 *economic impacts on Californians and the state budget, it is*
24 *appropriate for policymakers to possess a broader set of empirical*
25 *data with which to make informed decisions.*

26 *(b) Therefore, it is the intent of the Legislature to do all of the*
27 *following:*

28 *(1) Produce a report on employers that have employees enrolled*
29 *in public assistance programs and on the cost to the state of*
30 *providing those benefits.*

31 *(2) Use the report to analyze those employers that create the*
32 *greatest burden on the state by having the largest numbers of*
33 *workers enrolled in public assistance programs.*

34 *(3) Develop policies to decrease the number of working poor*
35 *in California by increasing the quality of jobs and employment*
36 *opportunities for Californians.*

37 *(4) Use the data contained within the report to promote sound*
38 *and reasonable policies to ensure that employers do not shift the*

1 responsibility for providing health care and basic necessities for
 2 their workers onto taxpayers through the use of the data contained
 3 within the report to develop reasonable and sound policies.

4 (5) Ensure that no worker is discriminated or retaliated against
 5 for the reason of being enrolled in a public benefit program.

6 SEC. 2. Section 13084 is added to the Government Code, to
 7 read:

8 13084. (a) The department shall, after collaborating with the
 9 Employment Development Department, annually transmit to the
 10 Legislature and post on the department's Internet Web site no later
 11 than April 15 of each year, the report described in Section 19001
 12 of the Unemployment Insurance Code. The report shall be
 13 submitted to the Legislature pursuant to Section 9795.

14 (b) The report shall remain available to the public on the
 15 department's Internet Web site for at least five years.

16 (c) Nothing in this section shall be construed to authorize an
 17 employer to discourage or prevent an employee from enrolling or
 18 continuing enrollment in a public benefit program while employed
 19 nor to discriminate against an applicant for employment or
 20 employee for applying to be or being enrolled in a public assistance
 21 program.

22 (d) The department shall be permitted access to and be provided
 23 data and information from other state agencies as required to
 24 implement this section, to the extent not prohibited by state and
 25 federal confidentiality statutes and regulations. The department
 26 may enter into interagency agreements or adopt regulations as
 27 are reasonably necessary to implement this section.

28 SEC. 3. Section 2110.9 is added to the Unemployment
 29 Insurance Code, to read:

30 2110.9. (a) For purpose of this section, the following
 31 definitions shall apply:

32 (1) "Beneficiary" shall have the same meaning as in Section
 33 19000.

34 (2) "Employer" shall have the same meaning as in Section
 35 19000.

36 (3) "Public assistance program" shall have the same meaning
 37 as in Section 19000.

38 (b) An employer who discharges or in any manner discriminates
 39 or retaliates against an employee who enrolls in a public assistance
 40 program or refuses to hire a beneficiary for reason of being

1 enrolled in a public assistance program, is in violation of this
2 chapter.

3 SEC. 4. Division 11 (commencing with Section 19000) is added
4 to the Unemployment Insurance Code, to read:

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DIVISION 11. EMPLOYERS WITH EMPLOYEES THAT
RECEIVE PUBLIC BENEFITS

7

8

9 19000. For purposes of this division, the following definitions
10 shall apply:

11 (a) "Beneficiary" means an individual who is all of the
12 following:

13 (1) Enrolled in a public assistance program, unless the
14 individual is enrolled by reason of disability or being over 65 years
15 of age.

16 (2) Employed by an employer.

17 (b) "Department" means the State Department of Health Care
18 Services, the State Department of Social Services, and the State
19 Department of Education.

20 (c) (1) Except as provided in paragraph (2) "employer" means
21 an individual or type of organization that employs for wages or
22 salary 25 or more persons to work in this state and includes all of
23 the members of a controlled group of corporations, as defined in
24 Section 1563(a) of the Internal Revenue Code, except that "more
25 than 50 percent" shall be substituted for "at least 80 percent"
26 each place it appears in Section 1563(a)(1) of the Internal Revenue
27 Code, and the determination shall be made without regard to
28 Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue
29 Code.

30 (2) "Employer" does not include a state, city, county, city and
31 county, district, or any other governmental employer.

32 (d) "Public assistance program" means the Medi-Cal program
33 (Chapter 7 (commencing with Section 14000) of Part 3 of Division
34 9 of the Welfare and Institutions Code), CalFresh (Chapter 10
35 (commencing with Section 18900) of Part 6 of Division 9 of the
36 Welfare and Institutions Code), CalWORKS (Chapter 2
37 (commencing with Section 11200) of Part 3 of Division 9 of the
38 Welfare and Institutions Code), and the Women, Infants, and
39 Children program (Article 2 (commencing with Section 123275))

1 of Chapter 1 of Part 2 of Division 106 of the Health and Safety
2 Code).

3 19001. (a) The Employment Development Department shall,
4 to the extent not prohibited by state and federal confidentiality
5 and privacy statutes and regulations, collaborate with a department
6 to identify and compile a list of employers of a beneficiary in the
7 state, that includes all of the following:

- 8 (1) The employer’s name.
- 9 (2) The employer’s address, as filed with the Employment
10 Development Department.
- 11 (3) The total number of each employer’s employees who are
12 beneficiaries.

13 (b) The Employment Development Department shall provide
14 the list described in subdivision (a) to the Department of Finance.
15 The Department of Finance, in collaboration with the Employment
16 Development Department, shall determine both of the following:

- 17 (1) The total cost to the state of the benefits provided to each
18 identified employer’s employees under each public assistance
19 program.
- 20 (2) The total cost to the state of the aggregated benefits provided
21 to each identified employer’s employees.

22 (c) The Employment Development Department shall, to the
23 extent not prohibited by state and federal confidentiality and
24 privacy statutes and regulations, prepare and provide to the
25 Department of Finance a report that includes the information
26 described in subdivisions (b) and (c).

27 (d) The list and the report shall not include the names or any
28 identifying information of any individual beneficiary under a public
29 assistance program and shall be subject to all state and federal
30 confidentiality and privacy laws and regulations.

31 SEC. 5. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 SECTION 1. ~~Section 1088.5 of the Unemployment Insurance~~
2 ~~Code is amended to read:~~

3 ~~1088.5. (a) In addition to information reported in accordance~~
4 ~~with Section 1088, effective July 1, 1998, each employer shall file,~~
5 ~~with the department, the information provided for in subdivision~~
6 ~~(b) on new employees.~~

7 ~~(b) Each employer shall report the hiring of any employee who~~
8 ~~works in this state and to whom the employer anticipates paying~~
9 ~~wages, and also shall report the hiring of any employee who~~
10 ~~previously worked for the employer but had been separated from~~
11 ~~that prior employment for at least 60 consecutive days.~~

12 ~~(c) (1) This section shall not apply to any department, agency,~~
13 ~~or instrumentality of the United States.~~

14 ~~(2) State agency employers shall not be required to report~~
15 ~~employees performing intelligence or counterintelligence functions,~~
16 ~~if the head of the agency has determined that reporting pursuant~~
17 ~~to this section would endanger the safety of the employee or~~
18 ~~compromise an ongoing investigation or intelligence mission.~~

19 ~~(d) (1) Employers shall submit a report as described in~~
20 ~~paragraph (4) within 20 days of hiring any employee whom the~~
21 ~~employer is required to report pursuant to this section.~~

22 ~~(2) Notwithstanding subdivision (a), employers transmitting~~
23 ~~reports magnetically or electronically shall submit the report by~~
24 ~~two monthly transmissions not less than 12 days and not more~~
25 ~~than 16 days apart.~~

26 ~~(3) For purposes of this section, an employer that has employees~~
27 ~~in two or more states and that transmits reports magnetically or~~
28 ~~electronically may designate one state in which the employer has~~
29 ~~employees to which the employer will transmit the report described~~
30 ~~in paragraph (4). Any employer that transmits reports pursuant to~~
31 ~~this paragraph shall notify the Secretary of Health and Human~~
32 ~~Services in writing as to which state the employer designates for~~
33 ~~the purpose of sending reports.~~

34 ~~(4) The report shall contain the following:~~

35 ~~(A) The name, address, and social security number of the~~
36 ~~employees.~~

37 ~~(B) The employer's name, address, state employer identification~~
38 ~~number (if one has been issued), and identifying number assigned~~
39 ~~to the employer under Section 6109 of the Internal Revenue Code~~
40 ~~of 1986.~~

- 1 ~~(C) The first date the employee worked.~~
- 2 ~~(5) Employers may report pursuant to this section by submitting~~
- 3 ~~a copy of the employee’s W-4 form, a form provided by the~~
- 4 ~~department, or any other hiring document transmitted by first-class~~
- 5 ~~mail, magnetically, or electronically.~~
- 6 ~~(e) For each failure to report the hiring of an employee, as~~
- 7 ~~required and within the time required by this section, unless the~~
- 8 ~~failure is due to good cause, the department may assess a penalty~~
- 9 ~~of twenty-three dollars (\$23), or four hundred ninety-nine dollars~~
- 10 ~~(\$499) if the failure is the result of conspiracy between the~~
- 11 ~~employer and employee not to supply the required report or to~~
- 12 ~~supply a false or incomplete report.~~
- 13 ~~(f) (1) On and after January 1, 2013, and before January 1,~~
- 14 ~~2019, information collected pursuant to this section may be used~~
- 15 ~~for the following purposes:~~
- 16 ~~(A) Administration of this code, including, but not limited to,~~
- 17 ~~providing employer or employee information to participating~~
- 18 ~~members of the Joint Enforcement Strike Force on the~~
- 19 ~~Underground Economy pursuant to Section 329 for the purposes~~
- 20 ~~of auditing, investigating, and prosecuting violations of tax and~~
- 21 ~~cash-pay reporting laws.~~
- 22 ~~(B) Locating individuals for purposes of establishing paternity~~
- 23 ~~and establishing, modifying, and enforcing child support~~
- 24 ~~obligations.~~
- 25 ~~(C) Administration of employment security and workers’~~
- 26 ~~compensation programs.~~
- 27 ~~(D) Providing employer or employee information to the~~
- 28 ~~Franchise Tax Board and the State Board of Equalization for the~~
- 29 ~~purpose of tax or fee enforcement.~~
- 30 ~~(E) Verification of eligibility of applicants for, or recipients of,~~
- 31 ~~the public assistance programs listed in Section 1320b-7(b) of Title~~
- 32 ~~42 of the United States Code.~~
- 33 ~~(F) Providing employer or employee information to the~~
- 34 ~~Contractors’ State License Board and the State Compensation~~
- 35 ~~Insurance Fund for the purpose of workers’ compensation payroll~~
- 36 ~~reporting.~~
- 37 ~~(G) Providing employer or employee information to the State~~
- 38 ~~Department of Health Care Services, the California Health Benefit~~
- 39 ~~Exchange, the Managed Risk Medical Insurance Board, and county~~
- 40 ~~departments and agencies for the purpose of:~~

1 (i) ~~Verifying or determining the eligibility of an applicant for,~~
2 ~~or a recipient of, state health subsidy programs, limited to the~~
3 ~~Medi-Cal program, provided pursuant to Chapter 7 (commencing~~
4 ~~with Section 14000) of Part 3 of Division 9 of the Welfare and~~
5 ~~Institutions Code, the Healthy Families Program, provided pursuant~~
6 ~~to Part 6.2 (commencing with Section 12693) of Division 2 of the~~
7 ~~Insurance Code, and the Access for Infants and Mothers Program,~~
8 ~~provided pursuant to Part 6.3 (commencing with Section 12695)~~
9 ~~of Division 2 of the Insurance Code, where the verification or~~
10 ~~determination is directly connected with, and limited to, the~~
11 ~~administration of the state health subsidy programs referenced in~~
12 ~~this clause.~~

13 (ii) ~~Verifying or determining the eligibility of an applicant for,~~
14 ~~or a recipient of, federal subsidies offered through the California~~
15 ~~Health Benefit Exchange, provided pursuant to Title 22~~
16 ~~(commencing with Section 100500) of the Government Code,~~
17 ~~including federal tax credits and cost-sharing assistance pursuant~~
18 ~~to the federal Patient Protection and Affordable Care Act, (Public~~
19 ~~Law 111-148), as amended by the federal Health Care and~~
20 ~~Education Reconciliation Act of 2010 (Public Law 111-152), where~~
21 ~~the verification or determination is directly connected with, and~~
22 ~~limited to, the administration of the California Health Benefit~~
23 ~~Exchange.~~

24 (iii) ~~Verifying or determining the eligibility of employees and~~
25 ~~employers for health coverage through the Small Business Health~~
26 ~~Options Program, provided pursuant to Section 100502 of the~~
27 ~~Government Code, where the verification or determination is~~
28 ~~directly connected with, and limited to, the administration of the~~
29 ~~Small Business Health Options Program.~~

30 (2) ~~On and after January 1, 2019, information collected pursuant~~
31 ~~to this section may be used for the following purposes:~~

32 (A) ~~Administration of this code.~~

33 (B) ~~Locating individuals for purposes of establishing paternity~~
34 ~~and establishing, modifying, and enforcing child support~~
35 ~~obligations.~~

36 (C) ~~Administration of employment security and workers'~~
37 ~~compensation programs.~~

38 (D) ~~Providing employer or employee information to the~~
39 ~~Franchise Tax Board and to the State Board of Equalization for~~
40 ~~the purposes of tax or fee enforcement.~~

1 ~~(E) Verification of eligibility of applicants for, or recipients of,~~
2 ~~the public assistance programs listed in Section 1320b-7(b) of Title~~
3 ~~42 of the United States Code.~~

4 ~~(F) Providing employer or employee information to the State~~
5 ~~Department of Health Care Services, the California Health Benefit~~
6 ~~Exchange, the Managed Risk Medical Insurance Board, and county~~
7 ~~departments and agencies for the purpose of:~~

8 ~~(i) Verifying or determining the eligibility of an applicant for,~~
9 ~~or a recipient of, state health subsidy programs, limited to the~~
10 ~~Medi-Cal program, provided pursuant to Chapter 7 (commencing~~
11 ~~with Section 14000) of Part 3 of Division 9 of the Welfare and~~
12 ~~Institutions Code, the Healthy Families Program, provided pursuant~~
13 ~~to Part 6.2 (commencing with Section 12693) of Division 2 of the~~
14 ~~Insurance Code, and the Access for Infants and Mothers Program,~~
15 ~~provided pursuant to Part 6.3 (commencing with Section 12695)~~
16 ~~of Division 2 of the Insurance Code, where the verification or~~
17 ~~determination is directly connected with, and limited to, the~~
18 ~~administration of the state health subsidy programs referenced in~~
19 ~~this clause.~~

20 ~~(ii) Verifying or determining the eligibility of an applicant for,~~
21 ~~or a recipient of, federal subsidies offered through the California~~
22 ~~Health Benefit Exchange, provided pursuant to Title 22~~
23 ~~(commencing with Section 100500) of the Government Code,~~
24 ~~including federal tax credits and cost-sharing assistance pursuant~~
25 ~~to the federal Patient Protection and Affordable Care Act, (Public~~
26 ~~Law 111-148), as amended by the federal Health Care and~~
27 ~~Education Reconciliation Act of 2010 (Public Law 111-152), where~~
28 ~~the verification or determination is directly connected with, and~~
29 ~~limited to, the administration of the California Health Benefit~~
30 ~~Exchange.~~

31 ~~(iii) Verifying or determining the eligibility of employees and~~
32 ~~employers for health coverage through the Small Business Health~~
33 ~~Options Program, provided pursuant to Section 100502 of the~~
34 ~~Government Code, where the verification or determination is~~
35 ~~directly connected with, and limited to, the administration of the~~
36 ~~Small Business Health Options Program.~~

37 ~~(g) For purposes of this section, “employer” includes a labor~~
38 ~~union hiring hall.~~

39 ~~(h) This section shall become operative on July 1, 1998.~~

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