

AMENDED IN ASSEMBLY JUNE 6, 2013

AMENDED IN SENATE MAY 1, 2013

SENATE BILL

No. 558

Introduced by Senator Lieu

February 22, 2013

An act to amend Section ~~1094~~ 1986.1 of the ~~Unemployment Insurance Code of Civil Procedure~~, relating to ~~unemployment insurance reporters~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 558, as amended, Lieu. ~~Unemployment insurance: Employment Development Department. Reporters' shield law.~~

The reporter's shield law contained in the California Constitution prohibits a publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other periodical publication, or by a press association or wire service, from being held in contempt for refusing to disclose the source of any information procured for publication while so connected or employed. The law also prohibits any of those persons from being held in contempt for refusing to disclose any unpublished information obtained or prepared in gathering, receiving, or processing information for communication to the public.

Existing statutory law prohibits any testimony or other evidence given by a journalist under subpoena in a civil or criminal proceeding from being construed as a waiver of the immunity rights provided by the reporter's shield law. Existing law requires that, except in exigent circumstances, a journalist who is subpoenaed in any civil or criminal proceeding be given at least 5 days' notice by the party issuing the subpoena that his or her appearance will be required, and requires a court that holds a journalist in contempt in a criminal proceeding to set forth specified findings regarding the information sought.

This bill, in addition, would require that, except in exigent circumstances, a body issuing a subpoena in any civil or criminal proceeding to a third party that seeks the records of a journalist to provide notice of the subpoena to the journalist and the publisher of the newspaper, magazine, or other publication or station operations manager of the broadcast station that employs or contracts with the journalist, as applicable, at least 5 days prior to issuing the subpoena. The bill would require the body issuing the subpoena to include in the notice, at a minimum, an explanation of why the requested records will be of material assistance to the party seeking them and why alternate sources of information are not sufficient to avoid the need for the subpoena.

~~Under existing law, information obtained by the Employment Development Department in the administration of unemployment insurance laws is confidential, subject to specified exceptions, including authorizing an employee or the employee's representative to receive the employee's wage information upon the employee's written request.~~

~~This bill would authorize an employee to make that request in a form other than writing if permitted by the Director of Employment Development.~~

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

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

1 SECTION 1. Section 1986.1 of the Code of Civil Procedure is
2 amended to read:

3 1986.1. (a) No testimony or other evidence given by a
4 journalist under subpoena in a civil or criminal proceeding may
5 be construed as a waiver of the immunity rights provided by
6 subdivision (b) of Section 2 of Article I of the California
7 Constitution.

8 (b) (1) Because important constitutional rights of a third-party
9 witness are adjudicated when rights under subdivision (b) of
10 Section 2 of Article I of the California Constitution are asserted,
11 except in exigent circumstances, a journalist who is subpoenaed
12 in any civil or criminal proceeding shall be given at least five days'
13 notice by the party issuing the subpoena that his or her appearance
14 will be required.

1 (2) *To protect against the inadvertent disclosure by a third party*
2 *of information protected by Section 2 of Article I of the California*
3 *Constitution, a body issuing a subpoena in any civil or criminal*
4 *proceeding to a third party that seeks the records of a journalist*
5 *shall, except in exigent circumstances, provide notice of the*
6 *subpoena to the journalist and the publisher of the newspaper,*
7 *magazine, or other publication or station operations manager of*
8 *the broadcast station that employs or contracts with the journalist,*
9 *as applicable, at least five days prior to issuing the subpoena. The*
10 *body issuing the subpoena shall include in the notice, at a*
11 *minimum, an explanation of why the requested records will be of*
12 *material assistance to the party seeking them and why alternate*
13 *sources of information are not sufficient to avoid the need for the*
14 *subpoena.*

15 (c) If a trial court holds a journalist in contempt of court in a
16 criminal proceeding notwithstanding subdivision (b) of Section 2
17 of Article I of the California Constitution, the court shall set forth
18 findings, either in writing or on the record, stating at a minimum,
19 why the information will be of material assistance to the party
20 seeking the evidence, and why alternate sources of the information
21 are not sufficient to satisfy the defendant’s right to a fair trial under
22 the Sixth Amendment to the United States Constitution and Section
23 15 of Article I of the California Constitution.

24 (d) As used in this section, “journalist” means the persons
25 specified in subdivision (b) of Section 2 of Article I of the
26 California Constitution.

27 ~~SECTION 1. Section 1094 of the Unemployment Insurance~~
28 ~~Code is amended to read:~~

29 ~~1094. (a) Except as otherwise specifically provided in this~~
30 ~~code, the information obtained in the administration of this code~~
31 ~~is confidential, not open to the public, and shall be for the exclusive~~
32 ~~use and information of the director in the discharge of his or her~~
33 ~~duties.~~

34 ~~(b) The information released to authorized entities pursuant to~~
35 ~~other provisions of the code shall not be admissible in evidence~~
36 ~~in any action or special proceeding, other than one arising out of~~
37 ~~the provisions of this code or one described in Section 1095.~~

38 ~~(c) The information may be tabulated and published in statistical~~
39 ~~form for use by federal, state, and local governmental departments~~
40 ~~and agencies, and the public, except that the name of the employing~~

1 unit or of any worker shall never be divulged in the course of the
2 tabulation or publication.

3 (d) ~~Wages, as defined by Section 13009, and amounts required~~
4 ~~to be deducted and withheld under Section 13020 shall not be~~
5 ~~disclosed except as provided in Article 2 (commencing with~~
6 ~~Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the~~
7 ~~Revenue and Taxation Code.~~

8 (e) ~~An employee or his or her representative may receive the~~
9 ~~employee's wage information upon written request by the~~
10 ~~employee. An employee may make that request in a form other~~
11 ~~than writing if permitted by the director. The information shall be~~
12 ~~provided without charge.~~

13 (f) ~~A person who knowingly accesses, uses, or discloses any~~
14 ~~confidential information without authorization is in violation of~~
15 ~~this section and is guilty of a misdemeanor.~~