

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 666

Introduced by Senator Steinberg

February 22, 2013

An act to ~~amend Section 53 of the Labor Code~~ *add Sections 494.6 and 6103.7 to the Business and Professions Code, and to amend Section 98.6 and 1105.5 of, and to add Section 244 to, the Labor Code*, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 666, as amended, Steinberg. ~~Employment.~~ *Employment: retaliation.*

Existing law establishes grounds for suspension or revocation of certain business and professional licenses.

This bill would subject those business licenses to suspension or revocation if a current, former, or prospective employee of the licensee attempts to exercise a right related to his or her employment or any terms, conditions, or benefits of that employment protected by state law and, in reaction, the licensee threatens to retaliate or retaliates based on the employee's citizenship or immigration status.

The State Bar Act establishes specific causes for the disbarment or suspension of a member of the State Bar.

This bill would make it a cause for suspension, disbarment, or other discipline for any member of the State Bar to report immigration status or threaten to report immigration status of a witness or party to a civil or administrative action or his or her family member, as defined, to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment.

Existing law establishes various rights and protections relating to employment and civil rights that may be enforced by civil action.

This bill would provide that it is not necessary to exhaust administrative remedies or procedures in order to bring a civil action enforcing designated rights. Under the bill, reporting or threatening to report an employee's, former employee's, or prospective employee's citizenship or immigration status, or the citizenship or immigration status of the employee's or former employee's family member, as defined, to a federal, state, or local agency because the employee or former employee exercises a designated right would constitute an adverse employment action for purposes of establishing a violation of the designated right. Because a violation of certain of those designated rights is a misdemeanor, this bill would impose a state-mandated local program by changing the definition of a crime.

Existing law prohibits an employer from discharging an employee or in any manner discriminating against any employee or applicant for employment because the employee or applicant has engaged in prescribed protected conduct relating to the enforcement of the employee's or applicant's rights. Existing law makes it a misdemeanor for an employer to take adverse employment action against employees who file bona fide complaints.

This bill would also prohibit an employer from retaliating or taking adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct. The bill would expand the protected conduct to include a written or oral complaint by an employee that he or she is owed unpaid wages. The bill would subject an employer that is a corporation or limited liability company to a civil penalty of up to \$10,000 per violation of these provisions.

Existing law prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. Existing law further prohibits an employer from retaliating against an employee for such a disclosure. Under existing law, a violation of these provisions by an employer is a crime.

This bill would additionally prohibit any person acting on behalf of the employer from making, adopting, or enforcing any rule, regulation,

or policy preventing an employee from disclosing information to a government or law enforcement agency, as provided, and would extend those prohibitions to preventing an employee from, or retaliating against an employee for, providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry. Because a violation of these provisions by an employer would be a 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 defines the phrase “head of the department” to refer to the Director of Industrial Relations in specified circumstances.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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

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

1 SECTION 1. Section 494.6 is added to the Business and
2 Professions Code, to read:

3 494.6. A business license regulated by this code is subject to
4 suspension or revocation if a current, former, or prospective
5 employee of the licensee attempts to exercise a right related to his
6 or her employment or any terms, conditions, or benefits of that
7 employment protected by state law and, in reaction, the licensee
8 threatens to retaliate or retaliates based on the employee’s
9 citizenship or immigration status.

10 SEC. 2. Section 6103.7 is added to the Business and Professions
11 Code, to read:

12 6103.7. It is cause for suspension, disbarment, or other
13 discipline for any member of the State Bar to report immigration
14 status or threaten to report immigration status of a witness or
15 party to a civil or administrative action or his or her family member
16 to a federal, state, or local agency because the witness or party
17 exercises or has exercised a right related to his or her employment,
18 broadly interpreted. As used in this section, “family member”

1 *means a spouse, parent, sibling, child, uncle, aunt, niece, nephew,*
2 *cousin, grandparent, or grandchild related by blood, adoption,*
3 *marriage, or domestic partnership.*

4 *SEC. 3. Section 98.6 of the Labor Code is amended to read:*

5 98.6. (a) No person shall discharge an employee or in any
6 manner discriminate, *retaliate, or take adverse action* against any
7 employee or applicant for employment because the employee or
8 applicant engaged in any conduct delineated in this chapter,
9 including the conduct described in subdivision (k) of Section 96,
10 and Chapter 5 (commencing with Section 1101) of Part 3 of
11 Division 2, or because the employee or applicant for employment
12 has filed a bona fide complaint or claim or instituted or caused to
13 be instituted any proceeding under or relating to his or her rights,
14 which are under the jurisdiction of the Labor Commissioner, *made*
15 *a written or oral complaint that he or she is owed unpaid wages,*
16 or because the employee has initiated any action or notice pursuant
17 to Section 2699, or has testified or is about to testify in any such
18 proceeding or because of the exercise by the employee or applicant
19 for employment on behalf of himself, herself, or others of any
20 rights afforded him or her.

21 (b) (1) Any employee who is discharged, threatened with
22 discharge, demoted, suspended, or in any other manner
23 discriminated against in the terms and conditions of his or her
24 employment because the employee engaged in any conduct
25 delineated in this chapter, including the conduct described in
26 subdivision (k) of Section 96, and Chapter 5 (commencing with
27 Section 1101) of Part 3 of Division 2, or because the employee
28 has made a bona fide complaint or claim to the division pursuant
29 to this part, or because the employee has initiated any action or
30 notice pursuant to Section 2699 shall be entitled to reinstatement
31 and reimbursement for lost wages and work benefits caused by
32 those acts of the employer. ~~Any employer who willfully refuses~~
33 ~~to hire, promote, or otherwise restore an employee or former~~
34 ~~employee who has been determined to be eligible for rehiring or~~
35 ~~promotion by a grievance procedure, arbitration, or hearing~~
36 ~~authorized by law, is guilty of a misdemeanor.~~

37 (2) *Any employer who willfully refuses to hire, promote, or*
38 *otherwise restore an employee or former employee who has been*
39 *determined to be eligible for rehiring or promotion by a grievance*

1 *procedure, arbitration, or hearing authorized by law, is guilty of*
2 *a misdemeanor.*

3 *(3) In addition to any other remedies available, an employer*
4 *that is a corporation or limited liability company is liable for a*
5 *civil penalty not exceeding ten thousand dollars (\$10,000) per*
6 *employee for each violation to this section.*

7 (c) (1) Any applicant for employment who is refused
8 employment, who is not selected for a training program leading
9 to employment, or who in any other manner is discriminated
10 against in the terms and conditions of any offer of employment
11 because the applicant engaged in any conduct delineated in this
12 chapter, including the conduct described in subdivision (k) of
13 Section 96, and Chapter 5 (commencing with Section 1101) of
14 Part 3 of Division 2, or because the applicant has made a bona fide
15 complaint or claim to the division pursuant to this part, or because
16 the employee has initiated any action or notice pursuant to Section
17 2699 shall be entitled to employment and reimbursement for lost
18 wages and work benefits caused by the acts of the prospective
19 employer.

20 (2) This subdivision shall not be construed to invalidate any
21 collective bargaining agreement that requires an applicant for a
22 position that is subject to the collective bargaining agreement to
23 sign a contract that protects either or both of the following as
24 specified in subparagraphs (A) and (B), nor shall this subdivision
25 be construed to invalidate any employer requirement of an
26 applicant for a position that is not subject to a collective bargaining
27 agreement to sign an employment contract that protects either or
28 both of the following:

29 (A) An employer against any conduct that is actually in direct
30 conflict with the essential enterprise-related interests of the
31 employer and where breach of that contract would actually
32 constitute a material and substantial disruption of the employer's
33 operation.

34 (B) A firefighter against any disease that is presumed to arise
35 in the course and scope of employment, by limiting his or her
36 consumption of tobacco products on and off the job.

37 (d) The provisions of this section creating new actions or
38 remedies that are effective on January 1, 2002, to employees or
39 applicants for employment do not apply to any state or local law
40 enforcement agency, any religious association or corporation

1 specified in subdivision (d) of Section 12926 of the Government
2 Code, except as provided in Section 12926.2 of the Government
3 Code, or any person described in Section 1070 of the Evidence
4 Code.

5 *SEC. 4. Section 244 is added to the Labor Code, to read:*

6 *244. (a) An individual is not required to exhaust administrative*
7 *remedies or procedures in order to bring a civil action under any*
8 *provision of this code, unless that section under which the action*
9 *is brought expressly requires exhaustion of an administrative*
10 *remedy.*

11 *(b) Reporting or threatening to report an employee's, former*
12 *employee's, or prospective employee's citizenship or immigration*
13 *status, or the citizenship or immigration status of a family member*
14 *of the employee, former employee, or prospective employee, to a*
15 *federal, state, or local agency because the employee, former*
16 *employee, or prospective employee exercises a right under the*
17 *provisions of this code, the Government Code, or the Civil Code*
18 *constitutes an adverse employment action for purposes of*
19 *establishing a violation of an employee or former employee's*
20 *rights. As used in this subdivision, "family member" means a*
21 *spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin,*
22 *grandparent, or grandchild related by blood, adoption, marriage,*
23 *or domestic partnership.*

24 *SEC. 5. Section 1102.5 of the Labor Code is amended to read:*

25 *1102.5. (a) An ~~employer may~~ employer, or any person acting*
26 *on behalf of the employer, shall not make, adopt, or enforce any*
27 *rule, regulation, or policy preventing an employee from disclosing*
28 *information to a government or law enforcement agency, or for*
29 *providing information to, or testifying before, any public body*
30 *conducting an investigation, hearing, or inquiry, where the*
31 *employee has reasonable cause to believe that the information*
32 *discloses a violation of state or federal statute, or a violation or*
33 *noncompliance with a state or federal rule or regulation.*

34 *(b) An ~~employer may~~ employer, or any person acting on behalf*
35 *of the employer, shall not retaliate against an employee for*
36 *disclosing information to a government or law enforcement agency,*
37 *or for providing information to, or testifying before, any public*
38 *body conducting an investigation, hearing, or inquiry, where the*
39 *employee has reasonable cause to believe that the information*

1 discloses a violation of state or federal statute, or a violation or
2 noncompliance with a state or federal rule or regulation.

3 (c) ~~An employer may~~ *employer, or any person acting on behalf*
4 *of the employer, shall not* retaliate against an employee for refusing
5 to participate in an activity that would result in a violation of state
6 or federal statute, or a violation or noncompliance with a state or
7 federal rule or regulation.

8 (d) ~~An employer may~~ *employer, or any person acting on behalf*
9 *of the employer, shall not* retaliate against an employee for having
10 exercised his or her rights under subdivision (a), (b), or (c) in any
11 former employment.

12 (e) A report made by an employee of a government agency to
13 his or her employer is a disclosure of information to a government
14 or law enforcement agency pursuant to subdivisions (a) and (b).

15 (f) In addition to other penalties, an employer that is a
16 corporation or limited liability company is liable for a civil penalty
17 not exceeding ten thousand dollars (\$10,000) for each violation
18 of this section.

19 (g) This section does not apply to rules, regulations, or policies
20 ~~which~~ *that* implement, or to actions by employers against
21 employees who violate, the confidentiality of the lawyer-client
22 privilege of Article 3 (commencing with Section 950) *of, or the*
23 *physician-patient privilege of Article 6 (commencing with Section*
24 *990) of, Chapter 4 of Division 8 of the Evidence Code, or trade*
25 *secret information.*

26 *SEC. 6. The provisions of this act are severable. If any*
27 *provision of this act or its application is held invalid, that invalidity*
28 *shall not affect other provisions or applications that can be given*
29 *effect without the invalid provision or application.*

30 *SEC. 7. No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *the only costs that may be incurred by a local agency or school*
33 *district will be incurred because this act creates a new crime or*
34 *infraction, eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section 17556 of*
36 *the Government Code, or changes the definition of a crime within*
37 *the meaning of Section 6 of Article XIII B of the California*
38 *Constitution.*

39 ~~SECTION 1. Section 53 of the Labor Code is amended to read:~~

1 ~~53. Whenever in Section 1001 of or in Part 1 (commencing~~
2 ~~with Section 11000) of Division 3 of Title 2 of, the Government~~
3 ~~Code “head of the department” or similar designation occurs, the~~
4 ~~phrase shall mean, for the purposes of this code, the director, except~~
5 ~~that in respect to matters which by the express provisions of this~~
6 ~~code are committed to or retained under the jurisdiction of the~~
7 ~~Division of Workers’ Compensation, the State Compensation~~
8 ~~Insurance Fund, the Occupational Safety and Health Standards~~
9 ~~Board, the Occupational Safety and Health Appeals Board, or the~~
10 ~~Industrial Welfare Commission the designation shall mean the~~
11 ~~Division of Workers’ Compensation, the Administrative Director~~
12 ~~of the Division of Workers’ Compensation, the Workers’~~
13 ~~Compensation Appeals Board, the State Compensation Insurance~~
14 ~~Fund, the Occupational Safety and Health Standards Board, the~~
15 ~~Occupational Safety and Health Appeals Board, or the Industrial~~
16 ~~Welfare Commission, as the case may be.~~