

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 11, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 666

**Introduced by Senator Steinberg
(Coauthors: Senators Beall, Evans, Hueso, Jackson, Monning, and
Padilla)**

February 22, 2013

An act to add Sections 494.6 and 6103.7 to the Business and Professions Code, and to amend Sections 98.6 and 1102.5 of, and to add Section 244 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 666, as amended, Steinberg. 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, with a specified exception, 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, former employee, or prospective employee exercises a designated right would constitute an adverse 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 any 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 entitles an employee to reinstatement and reimbursement for lost wages and benefits if the employee has been discharged, demoted, suspended, or in any way discriminated against because the employee engaged in protected conduct or because the employee made a bona fide complaint or claim or initiated any action or notice, as prescribed.

This bill would similarly grant these entitlements to an employee who is retaliated against or subjected to an adverse action, and would specify that enforcement of these provisions does not require exhaustion of administrative remedies.

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.

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 494.6 is added to the Business and
- 2 Professions Code, to read:
- 3 494.6. (a) A business license regulated by this code is subject
- 4 to 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

1 threatens to retaliate or retaliates based on the employee's
2 citizenship or immigration status.

3 (b) An employer shall not be subject to suspension or revocation
4 under this section for requiring a prospective or current employee
5 to submit, within three business days of the first day of work for
6 pay, an I-9 Employment Eligibility Verification form.

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

9 6103.7. It is cause for suspension, disbarment, or other
10 discipline for any member of the State Bar to report immigration
11 status or threaten to report immigration status of a witness or party
12 to a civil or administrative action or his or her family member to
13 a federal, state, or local agency because the witness or party
14 exercises or has exercised a right related to his or her employment,
15 broadly interpreted. As used in this section, "family member"
16 means a spouse, parent, sibling, child, uncle, aunt, niece, nephew,
17 cousin, grandparent, or grandchild related by blood, adoption,
18 marriage, or domestic partnership.

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

20 98.6. (a) ~~No~~A person ~~shall~~ *may not* discharge an employee or
21 in any manner discriminate, retaliate, or take *any* adverse action
22 against any employee or applicant for employment because the
23 employee or applicant engaged in any conduct delineated in this
24 chapter, including the conduct described in subdivision (k) of
25 Section 96, and Chapter 5 (commencing with Section 1101) of
26 Part 3 of Division 2, or because the employee or applicant for
27 employment has filed a bona fide complaint or claim or instituted
28 or caused to be instituted any proceeding under or relating to his
29 or her rights ~~that~~, *which* are under the jurisdiction of the Labor
30 Commissioner, made a written or oral complaint that he or she is
31 owed unpaid wages, or because the employee has initiated any
32 action or notice pursuant to Section 2699, or has testified or is
33 about to testify in ~~any such~~ a proceeding *pursuant to that section*,
34 or because of the exercise by the employee or applicant for
35 employment on behalf of himself, herself, or others of any rights
36 afforded him or her.

37 (b) (1) Any employee who is discharged, threatened with
38 discharge, demoted, suspended, *retaliated against, subjected to*
39 *an adverse action*, or in any other manner discriminated against
40 in the terms and conditions of his or her employment because the

1 employee engaged in any conduct delineated in this chapter,
2 including the conduct described in subdivision (k) of Section 96,
3 and Chapter 5 (commencing with Section 1101) of Part 3 of
4 Division 2, or because the employee has made a bona fide
5 complaint or claim to the division pursuant to this part, or because
6 the employee has initiated any action or notice pursuant to Section
7 2699 shall be entitled to reinstatement and reimbursement for lost
8 wages and work benefits caused by those acts of the employer.

9 (2) Any employer who willfully refuses to hire, promote, or
10 otherwise restore an employee or former employee who has been
11 determined to be eligible for rehiring or promotion by a grievance
12 procedure, arbitration, or hearing authorized by law, is guilty of a
13 misdemeanor.

14 (3) In addition to any other remedies available, an employer
15 ~~that is a corporation or limited liability company~~ who violates this
16 section is liable for a civil penalty not exceeding ten thousand
17 dollars (\$10,000) per employee for each violation to this section.

18 (4) *In the enforcement of this section, there is no requirement*
19 *that an individual exhaust administrative remedies or procedures.*

20 (c) (1) Any applicant for employment who is refused
21 employment, who is not selected for a training program leading
22 to employment, or who in any other manner is discriminated
23 against in the terms and conditions of any offer of employment
24 because the applicant engaged in any conduct delineated in this
25 chapter, including the conduct described in subdivision (k) of
26 Section 96, and Chapter 5 (commencing with Section 1101) of
27 Part 3 of Division 2, or because the applicant has made a bona fide
28 complaint or claim to the division pursuant to this part, or because
29 the employee has initiated any action or notice pursuant to Section
30 2699 shall be entitled to employment and reimbursement for lost
31 wages and work benefits caused by the acts of the prospective
32 employer.

33 (2) This subdivision shall not be construed to invalidate any
34 collective bargaining agreement that requires an applicant for a
35 position that is subject to the collective bargaining agreement to
36 sign a contract that protects either or both of the following as
37 specified in subparagraphs (A) and (B), nor shall this subdivision
38 be construed to invalidate any employer requirement of an
39 applicant for a position that is not subject to a collective bargaining

1 agreement to sign an employment contract that protects either or
2 both of the following:

3 (A) An employer against any conduct that is actually in direct
4 conflict with the essential enterprise-related interests of the
5 employer and where breach of that contract would actually
6 constitute a material and substantial disruption of the employer's
7 operation.

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

11 (d) The provisions of this section creating new actions or
12 remedies that are effective on January 1, 2002, to employees or
13 applicants for employment do not apply to any state or local law
14 enforcement agency, any religious association or corporation
15 specified in subdivision (d) of Section 12926 of the Government
16 Code, except as provided in Section 12926.2 of the Government
17 Code, or any person described in Section 1070 of the Evidence
18 Code.

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

20 244. (a) An individual is not required to exhaust administrative
21 remedies or procedures in order to bring a civil action under any
22 provision of this code, unless that section under which the action
23 is brought expressly requires exhaustion of an administrative
24 remedy.

25 (b) Reporting or threatening to report an employee's, former
26 employee's, or prospective employee's citizenship or immigration
27 status, or the citizenship or immigration status of a family member
28 of the employee, former employee, or prospective employee, to a
29 federal, state, or local agency because the employee, former
30 employee, or prospective employee exercises a right under the
31 provisions of this code, the Government Code, or the Civil Code
32 constitutes an adverse action for purposes of establishing a
33 violation of an employee's, former employee's, or prospective
34 employee's rights. As used in this subdivision, "family member"
35 means a spouse, parent, sibling, child, uncle, aunt, niece, nephew,
36 cousin, grandparent, or grandchild related by blood, adoption,
37 marriage, or domestic partnership.

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

39 1102.5. (a) An employer, or any person acting on behalf of
40 the employer, shall not make, adopt, or enforce any rule, regulation,

1 or policy preventing an employee from disclosing information to
2 a government or law enforcement agency, or for providing
3 information to, or testifying before, any public body conducting
4 an investigation, hearing, or inquiry, where the employee has
5 reasonable cause to believe that the information discloses a
6 violation of state or federal statute, or a violation or noncompliance
7 with a state or federal rule or regulation.

8 (b) An employer, or any person acting on behalf of the employer,
9 shall not retaliate against an employee for disclosing information
10 to a government or law enforcement agency, or for providing
11 information to, or testifying before, any public body conducting
12 an investigation, hearing, or inquiry, where the employee has
13 reasonable cause to believe that the information discloses a
14 violation of state or federal statute, or a violation or noncompliance
15 with a state or federal rule or regulation.

16 (c) An employer, or any person acting on behalf of the employer,
17 shall not retaliate against an employee for refusing to participate
18 in an activity that would result in a violation of state or federal
19 statute, or a violation or noncompliance with a state or federal rule
20 or regulation.

21 (d) An employer, or any person acting on behalf of the employer,
22 shall not retaliate against an employee for having exercised his or
23 her rights under subdivision (a), (b), or (c) in any former
24 employment.

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

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

32 (g) This section does not apply to rules, regulations, or policies
33 that implement, or to actions by employers against employees who
34 violate, the confidentiality of the lawyer-client privilege of Article
35 3 (commencing with Section 950) of, or the physician-patient
36 privilege of Article 6 (commencing with Section 990) of, Chapter
37 4 of Division 8 of the Evidence Code, or trade secret information.

38 SEC. 6. The provisions of this act are severable. If any
39 provision of this act or its application is held invalid, that invalidity

1 shall not affect other provisions or applications that can be given
2 effect without the invalid provision or application.

3 SEC. 7. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.