

AMENDED IN ASSEMBLY SEPTEMBER 4, 2013

AMENDED IN ASSEMBLY AUGUST 22, 2013

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 licensee has been determined by the Labor*

Commissioner or the court to have violated specified law and the court or Labor Commissioner has taken into consideration any harm such suspension or revocation would cause to employees of the licensee, as well as the good faith efforts of the licensee to resolve any alleged violations after receiving notice. The bill would subject a licensee of an agency within the Department of Consumer Affairs who has been found by the Labor Commissioner or the court to have violated specified law to disciplinary action by his or her respective licensing agency.

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 *suspected* immigration status or threaten to report *suspected* 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 *suspected* citizenship or immigration status, or the *suspected* 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 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.

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.

This bill would incorporate additional changes to Section 1102.5 of the Labor Code proposed by SB 496 that would become operative if this bill and SB 496 are enacted and this bill is enacted last.

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~~
8 ~~threatens to retaliate or retaliates based on the employee's~~
9 ~~citizenship or immigration status.~~

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

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

16 *494.6. (a) A business license regulated by this code may be*
17 *subject to suspension or revocation if the licensee has been*
18 *determined by the Labor Commissioner or the court to have*
19 *violated subdivision (b) of Section 244 of the Labor Code and the*
20 *court or Labor Commissioner has taken into consideration any*
21 *harm such suspension or revocation would cause to employees of*
22 *the licensee, as well as the good faith efforts of the licensee to*
23 *resolve any alleged violations after receiving notice.*

24 *(b) Notwithstanding subdivision (a), a licensee of an agency*
25 *within the Department of Consumer Affairs who has been found*
26 *by the Labor Commissioner or the court to have violated*
27 *subdivision (b) of Section 244 of the Labor Code may be subject*
28 *to disciplinary action by his or her respective licensing agency.*

29 *(c) An employer shall not be subject to suspension or revocation*
30 *under this section for requiring a prospective or current employee*
31 *to submit, within three business days of the first day of work for*
32 *pay, an I-9 Employment Eligibility Verification form.*

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

3 6103.7. It is cause for suspension, disbarment, or other
4 discipline for any member of the State Bar to report *suspected*
5 immigration status or threaten to report *suspected* immigration
6 status of a witness or party to a civil or administrative action or
7 his or her family member to a federal, state, or local agency because
8 the witness or party exercises or has exercised a right related to
9 his or her employment, broadly interpreted. As used in this section,
10 “family member” means a spouse, parent, sibling, child, uncle,
11 aunt, niece, nephew, cousin, grandparent, or grandchild related by
12 blood, adoption, marriage, or domestic partnership.

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

14 98.6. (a) A person shall not discharge an employee or in any
15 manner discriminate, retaliate, or take any adverse action against
16 any employee or applicant for employment because the employee
17 or applicant engaged in any conduct delineated in this chapter,
18 including the conduct described in subdivision (k) of Section 96,
19 and Chapter 5 (commencing with Section 1101) of Part 3 of
20 Division 2, or because the employee or applicant for employment
21 has filed a bona fide complaint or claim or instituted or caused to
22 be instituted any proceeding under or relating to his or her rights
23 that are under the jurisdiction of the Labor Commissioner, made
24 a written or oral complaint that he or she is owed unpaid wages,
25 or because the employee has initiated any action or notice pursuant
26 to Section 2699, or has testified or is about to testify in a
27 proceeding pursuant to that section, or because of the exercise by
28 the employee or applicant for employment on behalf of himself,
29 herself, or others of any rights afforded him or her.

30 (b) (1) Any employee who is discharged, threatened with
31 discharge, demoted, suspended, retaliated against, subjected to an
32 adverse action, or in any other manner discriminated against in
33 the terms and conditions of his or her employment because the
34 employee engaged in any conduct delineated in this chapter,
35 including the conduct described in subdivision (k) of Section 96,
36 and Chapter 5 (commencing with Section 1101) of Part 3 of
37 Division 2, or because the employee has made a bona fide
38 complaint or claim to the division pursuant to this part, or because
39 the employee has initiated any action or notice pursuant to Section

1 2699 shall be entitled to reinstatement and reimbursement for lost
2 wages and work benefits caused by those acts of the employer.

3 (2) Any employer who willfully refuses to hire, promote, or
4 otherwise restore an employee or former employee who has been
5 determined to be eligible for rehiring or promotion by a grievance
6 procedure, arbitration, or hearing authorized by law, is guilty of a
7 misdemeanor.

8 (3) In addition to any other remedies available, an employer
9 who violates this section is liable for a civil penalty not exceeding
10 ten thousand dollars (\$10,000) per employee for each violation of
11 this section.

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

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

34 (A) An employer against any conduct that is actually in direct
35 conflict with the essential enterprise-related interests of the
36 employer and where breach of that contract would actually
37 constitute a material and substantial disruption of the employer's
38 operation.

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

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

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

13 244. (a) An individual is not required to exhaust administrative
14 remedies or procedures in order to bring a civil action under any
15 provision of this code, unless that section under which the action
16 is brought expressly requires exhaustion of an administrative
17 remedy. This subdivision shall not be construed to affect the
18 requirements of Section 2699.3.

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

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

33 1102.5. (a) An employer, or any person acting on behalf of
34 the employer, shall not make, adopt, or enforce any rule, regulation,
35 or policy preventing an employee from disclosing information to
36 a government or law enforcement agency, or from providing
37 information to, or testifying before, any public body conducting
38 an investigation, hearing, or inquiry, where the employee has
39 reasonable cause to believe that the information discloses a

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

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

11 (c) An employer, or any person acting on behalf of the employer,
12 shall not retaliate against an employee for refusing to participate
13 in an activity that would result in a violation of state or federal
14 statute, or a violation of or noncompliance with a state or federal
15 rule or regulation.

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

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

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

27 (g) This section does not apply to rules, regulations, or policies
28 that implement, or to actions by employers against employees who
29 violate, the confidentiality of the lawyer-client privilege of Article
30 3 (commencing with Section 950) of, or the physician-patient
31 privilege of Article 6 (commencing with Section 990) of, Chapter
32 4 of Division 8 of the Evidence Code, or trade secret information.

33 *SEC. 5.5. Section 1102.5 of the Labor Code is amended to*
34 *read:*

35 1102.5. (a) ~~An employer may~~ *employer, or any person acting*
36 *on behalf of the employer, shall not make, adopt, or enforce any*
37 *rule, regulation, or policy preventing an employee from disclosing*
38 *information to a government or law enforcement agency, where*
39 *or to a person with authority over the employee or to another*
40 *employee who has authority to investigate, discover, or correct*

1 *the violation or noncompliance, or from providing information to,*
2 *or testifying before, any public body conducting an investigation,*
3 *hearing, or inquiry, if the employee has reasonable cause to believe*
4 *that the information discloses a violation of state or federal statute,*
5 *or a violation of or noncompliance with a ~~state~~ local, state, or*
6 *federal rule or ~~regulation~~. regulation, regardless of whether*
7 *disclosing the information is part of the employee's job duties.*

8 (b) ~~An employer may~~ *employer, or any person acting on behalf*
9 *of the employer, shall not retaliate against an employee for*
10 *disclosing ~~information~~ information, or because the employer*
11 *believes that the employee disclosed or may disclose information,*
12 *to a government or law enforcement agency, ~~where~~ or to a person*
13 *with authority over the employee or another employee who has*
14 *the authority to investigate, discover, or correct the violation or*
15 *noncompliance, or for providing information to, or testifying*
16 *before, any public body conducting an investigation, hearing, or*
17 *inquiry, if the employee has reasonable cause to believe that the*
18 *information discloses a violation of state or federal statute, or a*
19 *violation of or noncompliance with a ~~state~~ local, state, or federal*
20 *rule or ~~regulation~~. regulation, regardless of whether disclosing the*
21 *information is part of the employee's job duties.*

22 (c) ~~An employer may~~ *employer, or any person acting on behalf*
23 *of the employer, shall not retaliate against an employee for refusing*
24 *to participate in an activity that would result in a violation of state*
25 *or federal statute, or a violation of or noncompliance with a ~~state~~*
26 *local, state, or federal rule or regulation.*

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

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

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

38 (g) This section does not apply to rules, regulations, or policies
39 ~~which~~ *that* implement, or to actions by employers against
40 employees who violate, the confidentiality of the lawyer-client

1 privilege of Article 3 (commencing with Section ~~950~~, 950) of, the
2 physician-patient privilege of Article 6 (commencing with Section
3 990) ~~of~~ of, Chapter 4 of Division 8 of the Evidence Code, or trade
4 secret information.

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

9 *SEC. 7. Section 5.5 of this bill incorporates amendments to*
10 *Section 1102.5 of the Labor Code proposed by both this bill and*
11 *Senate Bill 496. It shall only become operative if (1) both bills are*
12 *enacted and become effective on or before January 1, 2014, (2)*
13 *each bill amends Section 1102.5 of the Labor Code, and (3) this*
14 *bill is enacted after Senate Bill 496, in which case Section 5 of this*
15 *bill shall not become operative.*

16 ~~SEC. 7.~~

17 SEC. 8. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.