

**ASSEMBLY BILL**

**No. 1245**

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**Introduced by Assembly Member Cooley**

February 27, 2015

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An act to amend Sections 1088, 1110, 1112, 1114, and 13021 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1245, as introduced, Cooley. Unemployment insurance: electronic reporting and funds transfers.

(1) Existing law provides for unemployment compensation benefits for eligible individuals in the state who are unemployed through no fault of their own. Existing law requires an employer, as defined, to file a report of contributions, a quarterly return, a report of wages paid, and an annual reconciliation return, as specified, to the Director of Employment Development and to make contributions for unemployment insurance premiums. Existing law provides that an electronic funds transfer of contributions satisfies the report of contributions filing requirements.

This bill would, beginning on January 1, 2016, and except as provided, require an employer with 10 or more employees to file all reports and returns electronically and remit all contributions for unemployment insurance premiums by electronic funds transfer. The bill would extend the application of these electronic filing and transfer requirements to all employers beginning on January 1, 2017. The bill would authorize the granting of a waiver from these requirements, as specified.

(2) Existing law imposes a 15% penalty on an employer who fails to timely pay its contributions and imposes a \$20 penalty for each unreported wage item.

This bill would extend those penalties to an employer, subject to the above-described electronic filing requirements, who fails to file the required reports electronically or contributions by electronic funds transfer.

(3) Existing law requires employers to withhold income taxes each calendar quarter, file a withholding report, a quarterly return, a report of wages, and pay over the taxes required to be withheld.

This bill, beginning on January 1, 2016, would require an employer who is subject to the above-described electronic filing requirements to remit the withheld taxes by electronic funds transfer. The bill would authorize a waiver from these requirements, as specified. The bill would require the Department of Employment Development to notify certain employers of these requirements, as specified.

The bill would also make related conforming changes.

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

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

1 SECTION 1. Section 1088 of the Unemployment Insurance  
2 Code is amended to read:

3 1088. (a) (1) Each employer shall file with the director within  
4 the time required by subdivision (a) or (d) of Section 1110 for  
5 payment of employer contributions, a report of contributions, a  
6 quarterly return, and a report of wages paid to his or her workers  
7 in the form and containing any information as the director  
8 prescribes. An electronic funds transfer of contributions pursuant  
9 to subdivision (f) of Section 1110 shall satisfy the requirement for  
10 a report of contributions. The quarterly return shall include the  
11 total amount of wages, employer contributions required under  
12 Sections 976 and 976.6, worker contributions required under  
13 Section 984, the amounts required to be withheld under Section  
14 13020, or withheld under Section 13028, and any other information  
15 as the director shall prescribe. The report of wages shall include  
16 individual amounts required to be withheld under Section 13020  
17 or withheld under Section 13028.

18 (2) (A) In order to enhance efforts to reduce tax fraud and to  
19 reduce the personal income tax reporting burden, effective January  
20 1, 1997, the report of wages shall also include the full first name  
21 of the employee and total wages, as defined in Section 13009, paid

1 to each employee. This paragraph shall apply to reports of wages  
2 for all periods ending on or before December 31, 1999.

3 (B) For all periods beginning on or after January 1, 2000, the  
4 report of wages shall also include total wages subject to personal  
5 income tax, as defined in Section 13009.5, paid to each employee.

6 (b) Each employer shall file with the director within the time  
7 required by subdivision (b) or (d) of Section 1110 for payment of  
8 worker contributions, a report of contributions containing the  
9 employer's business name, address, and account number, the total  
10 amount of worker contributions due, and any other information as  
11 the director shall prescribe. The director shall prescribe the form  
12 for the report of contributions. An electronic funds transfer of  
13 contributions pursuant to subdivision (f) of Section 1110 shall  
14 satisfy the requirement for a report of contributions.

15 (c) In addition to the report of contributions, quarterly return,  
16 and report of wages required by employers under subdivision (a),  
17 an individual who has elected coverage under subdivision (a) of  
18 Section 708 is also required to file a separate report of  
19 contributions, and quarterly return, subject to Part 2 (commencing  
20 with Section 2601).

21 (d) Any employer making an election under subdivision (d) of  
22 Section 1110 shall submit the report of wages described in  
23 subdivision (a), within the time required for submitting employer  
24 contributions under subdivision (a) of Section 1110.

25 (e) (1) In addition to the report of contributions, quarterly return,  
26 and report of wages described in subdivision (a), each employer  
27 shall file with the director an annual reconciliation return showing  
28 the total amount of wages, employer contributions required under  
29 Sections 976 and 976.6, worker contributions required under  
30 Section 984, the amounts required to be withheld under Section  
31 13020 or withheld under Section 13028, and any other information  
32 as the director shall prescribe. This annual reconciliation return  
33 shall be due on the first day of January following the close of the  
34 prior calendar year and shall become delinquent if not filed on or  
35 before the last day of that month.

36 (2) This subdivision shall not apply to individuals electing  
37 coverage under Section 708 or 708.5 or employers electing  
38 financing under Section 821.

1 (3) The requirement to file the annual reconciliation return for  
 2 the prior calendar year under this subdivision shall not apply to  
 3 the 2012 calendar year and thereafter.

4 (f) ~~For~~*(1) Except as provided in paragraph (2), for purposes*  
 5 *of making a report of wages under subdivision (a), employers who*  
 6 *are required under Section 6011 of the Internal Revenue Code and*  
 7 *authorized regulations thereunder to file magnetic media returns,*  
 8 *shall, within 90 days of becoming subject to this requirement, do*  
 9 *one of the following:*

10 ~~(1)~~  
 11 ~~(A) Submit a magnetic media format to the department for~~  
 12 ~~approval, and upon receiving approval from the department,~~  
 13 ~~submit~~*File any subsequent reports of wages on magnetic media.*  
 14 *electronically.*

15 ~~(2)~~  
 16 *(B) Establish to the satisfaction of the director that there is a*  
 17 *lack of automation, a severe economic hardship, a current*  
 18 *exemption from submitting magnetic media or electronic*  
 19 *information returns for federal purposes, or other good cause for*  
 20 *not complying with the provisions of this subdivision. Approved*  
 21 *waivers shall be valid for six months or longer, at the discretion*  
 22 *of the director.*

23 *(2) The requirement to file the report of wages pursuant to this*  
 24 *subdivision shall not apply to an employer who is required to file*  
 25 *electronically pursuant to subdivision (i).*

26 (g) The Franchise Tax Board shall be allowed access to the  
 27 information filed with the department pursuant to this section.

28 (h) The requirement in subdivision (a) to file a quarterly return  
 29 shall begin with the first calendar quarter of the 2011 calendar  
 30 year.

31 *(i) (1) Effective January 1, 2016, except as provided in*  
 32 *subdivision (f), an employer with 10 or more employees shall file*  
 33 *the quarterly return, report of wages paid, and annual*  
 34 *reconciliation return electronically.*

35 *(2) Effective January 1, 2017, except as provided in subdivision*  
 36 *(f), all employers shall file the quarterly return, report of wages*  
 37 *paid, and annual reconciliation return electronically.*

38 *(4) Notwithstanding paragraphs (1) and (2), an employer may*  
 39 *request a waiver from the electronic filing requirements of this*  
 40 *subdivision. The department may grant the waiver when the*

1 *employer has established to the satisfaction of the director that*  
2 *there is a lack of automation, a severe economic hardship, a*  
3 *current exemption from filing electronically for federal purposes,*  
4 *or for good cause. An approved waiver shall be valid for six months*  
5 *or longer, at the discretion of the director.*

6 SEC. 2. Section 1110 of the Unemployment Insurance Code  
7 is amended to read:

8 1110. (a) Employer contributions required under Sections 976  
9 and 976.6, the amount of benefits received by any individual  
10 pursuant to this part that is deducted from an award or settlement  
11 made by the employer under the provisions of Section 1382, and,  
12 except as provided by subdivision (b) of this section, worker  
13 contributions required under Section 984 are due and payable on  
14 the first day of the calendar month following the close of each  
15 calendar quarter and shall become delinquent if not paid on or  
16 before the last day of that month.

17 (b) Worker contributions required under Section 984 are due  
18 and payable at the same time and by the same method as amounts  
19 required to be withheld under Section 13020 are paid to the  
20 department pursuant to Section 13021, regardless of the amount  
21 of accumulated unpaid liability for worker contributions.

22 (c) Employer contributions submitted pursuant to Section 976.5  
23 shall be paid on or before the last working day of March of the  
24 calendar year to which the reduced contribution rate would be  
25 applicable. Any employer whose eligibility for an unemployment  
26 insurance contribution rate determination is redetermined to make  
27 that employer eligible to submit voluntary unemployment insurance  
28 contributions in accordance with Section 976.5, may submit a  
29 voluntary unemployment insurance contribution within 30 days  
30 of the date of notification of the redetermination.

31 (d) Except as provided in subdivision (e), any employer  
32 described in Sections 682 and 684 may elect to report and pay  
33 employer contributions required under Sections 976 and 976.6,  
34 and worker contributions required under Section 984, annually.  
35 All contributions are due and payable on the first day of January  
36 following the close of the prior calendar year and shall become  
37 delinquent if not paid on or before the last day of that month. An  
38 election under this subdivision shall be effective the first day of  
39 the calendar year in which it is approved by the department. An  
40 election under this subdivision ~~may~~ shall not be approved if the

1 employer has an outstanding return or report delinquency on the  
2 records of the department, or an unpaid amount owed to the  
3 department, that is not the subject of a timely petition for  
4 reassessment pending before the appeals board at the time the  
5 election is filed.

6 (e) ~~Any~~ An employer described in Sections 682 and 684 who  
7 pays more than twenty thousand dollars (\$20,000) in wages  
8 annually, shall not be entitled to the election allowed in subdivision  
9 (d). If at any time during the year the total wages paid by an  
10 employer electing to file under subdivision (d) exceeds twenty  
11 thousand dollars (\$20,000), the election shall be terminated at the  
12 close of that calendar quarter. In addition to the report of wages  
13 due for that quarter, the employer shall file a return and pay any  
14 contributions due for that portion of the year during which the  
15 election was in effect, and shall pay contributions in accordance  
16 with subdivisions (a), (b), and (c) for the remainder of that year.

17 (f) ~~Contributions—~~ Except as required in subdivision (g),  
18 contributions due pursuant to this section may be submitted by  
19 electronic funds transfer, ~~as defined in Section 13021.5.~~  
20 Contributions submitted by electronic funds transfer shall be  
21 deemed complete in accordance with paragraph (4) of subdivision  
22 (e) of Section 13021.

23 (g) (1) *Effective January 1, 2016, an employer with 10 or more*  
24 *employees shall remit the contributions and benefit amounts by*  
25 *electronic funds transfer.*

26 (2) *Beginning on January 1, 2017, all employers shall remit the*  
27 *contributions and benefit amounts by electronic funds transfer.*

28 (3) *Notwithstanding paragraphs (1) and (2), an employer may*  
29 *request a temporary waiver from the electronic funds transfer*  
30 *requirement of this subdivision. The department may grant the*  
31 *waiver when the employer has established to the satisfaction of*  
32 *the director that there is a lack of automation, a severe*  
33 *economic hardship, a current exemption from filing electronically*  
34 *for federal purposes, or for good cause. An approved waiver shall*  
35 *be valid for six months or longer, at the discretion of the director.*

36 (h) *For purposes of this section, “electronic funds transfer”*  
37 *shall have the same meaning as in Section 13021.5.*

38 SEC. 3. Section 1112 of the Unemployment Insurance Code  
39 is amended to read:

1 1112. (a) Any employer who without good cause fails to pay  
2 any contributions required of him or her or of his or her workers,  
3 except amounts assessed under Article 8 ~~of this chapter,~~  
4 (*commencing with Section 1126*), within the time required shall  
5 pay a penalty of 15 percent of the amount of those contributions.

6 (b) Any employer required to remit payments *electronically*  
7 *pursuant to paragraph (2) of subdivision (d) of Section 13021 or*  
8 *by electronic funds transfer pursuant to paragraph (1) of*  
9 *subdivision (d) of Section 13021*, who without good cause remits  
10 those amounts by means other than electronic funds transfer shall  
11 pay a penalty of 15 percent of the amount of those contributions.

12 (c) The changes made to this section by ~~the act adding this~~  
13 ~~subdivision Chapter 28 of the Statutes of 2014~~ shall apply on and  
14 after July 1, 2014.

15 SEC. 4. Section 1114 of the Unemployment Insurance Code  
16 is amended to read:

17 1114. (a) Any employer who, without good cause, fails to file  
18 within 15 days after service by the director of notice pursuant to  
19 Section 1206 of a specific written demand therefor, a report of  
20 wages of each of his or her workers required by this division, shall  
21 pay in addition to other amounts required, for each unreported  
22 wage item a penalty of twenty dollars (\$20).

23 (b) Any employer required by this division to file a report of  
24 wages of each of his or her workers on magnetic media *or other*  
25 *electronic means* as prescribed by subdivision (f) *or (g)* of Section  
26 1088, who, without good cause, instead files a report of wages ~~on~~  
27 ~~paper or in another form~~, *by means that are not electronic*, shall  
28 pay in addition to other amounts required, for each wage item a  
29 penalty of twenty dollars (\$20).

30 (c) The changes made to this section by ~~the act adding this~~  
31 ~~subdivision Chapter 28 of the Statutes of 2014~~ shall apply on and  
32 after July 1, 2014.

33 SEC. 5. Section 13021 of the Unemployment Insurance Code  
34 is amended to read:

35 13021. (a) Every employer required to withhold any tax under  
36 Section 13020 shall for each calendar quarter, whether or not wages  
37 or payments are paid in the quarter, file a withholding report, a  
38 quarterly return, as ~~prescribed~~ *described* in subdivision (a) of  
39 Section 1088, and a report of wages in a form prescribed by the  
40 department, and pay over the taxes so required to be withheld. The

1 report of wages shall include individual amounts required to be  
 2 withheld under Section 13020 or withheld under Section 13028.  
 3 Except as provided in subdivisions (c) and (d), the employer shall  
 4 file a withholding report, a quarterly return, as ~~prescribed~~ *described*  
 5 in subdivision (a) of Section 1088, and a report of wages, and remit  
 6 the total amount of income taxes withheld during the calendar  
 7 quarter on or before the last day of the month following the close  
 8 of the calendar quarter.

9 (b) Every employer electing to file a single annual return under  
 10 subdivision (d) of Section 1110 shall report and pay any taxes  
 11 withheld under Section 13020 on an annual basis within the time  
 12 specified in subdivision (d) of Section 1110.

13 (c) (1) Effective January 1, 1995, whenever an employer is  
 14 required, for federal income tax purposes, to remit the total amount  
 15 of withheld federal income tax in accordance with Section 6302  
 16 of the Internal Revenue Code and regulations thereunder, and the  
 17 accumulated amount of state income tax withheld is more than  
 18 five hundred dollars (\$500), the employer shall remit the total  
 19 amount of income tax withheld for state income tax purposes within  
 20 the number of business days as specified for withheld federal  
 21 income taxes by Section 6302 of the Internal Revenue Code, and  
 22 regulations thereunder.

23 (2) Effective January 1, 1996, the five hundred dollar (\$500)  
 24 amount referred to in paragraph (1) shall be adjusted annually as  
 25 follows, based on the annual average rate of interest earned on the  
 26 Pooled Money Investment Account as of June 30 in the prior fiscal  
 27 year:

28		
29	Average Rate of Interest	
30	Greater than or equal to 9 percent:	\$ 75
31	Less than 9 percent, but greater than or equal to	
32	7 percent:	250
33	Less than 7 percent, but greater than or equal to	
34	4 percent:	400
35	Less than 4 percent:	500
36		

37 ~~(d) (1) Notwithstanding subdivisions (a) and (c), for calendar~~  
 38 ~~years beginning prior to January 1, 1995, if in the 12-month period~~  
 39 ~~ending June 30 of the prior year the cumulative average payment~~  
 40 ~~made pursuant to this division or Section 1110, for eight-month~~

1 ~~periods, as defined under Section 6302 of the Internal Revenue~~  
2 ~~Code and regulations thereunder, was fifty thousand dollars~~  
3 ~~(\$50,000) or more, the employer shall remit the total amount of~~  
4 ~~income tax withheld within three banking days following the close~~  
5 ~~of each eight-month period, as described by Section 6302 of the~~  
6 ~~Internal Revenue Code and regulations thereunder. For purposes~~  
7 ~~of this subdivision, payment shall be made by electronic funds~~  
8 ~~transfer in accordance with Section 13021.5, for one calendar year~~  
9 ~~beginning on January 1. Payment is deemed complete on the date~~  
10 ~~the electronic funds transfer is initiated if settlement to the state's~~  
11 ~~demand account occurs on or before the banking day following~~  
12 ~~the date the transfer is initiated. If settlement to the state's demand~~  
13 ~~account does not occur on or before the banking day following the~~  
14 ~~date the transfer is initiated, payment is deemed complete on the~~  
15 ~~date settlement occurs. The department shall, on or before October~~  
16 ~~31 of the prior year, notify all employers required to make payment~~  
17 ~~by electronic funds transfer of these requirements.~~

18 (2)

19 (d) (1) Notwithstanding subdivisions (a) and (c), for calendar  
20 years beginning on or after January 1, 1995, if in the 12-month  
21 period ending June 30 of the prior year, the cumulative average  
22 payment made pursuant to this division or Section 1110 for any  
23 deposit periods, as described under Section 6302 of the Internal  
24 Revenue Code and regulations thereunder, was twenty thousand  
25 dollars (\$20,000) or more, the employer shall remit the total amount  
26 of income tax withheld within the number of business days as  
27 specified for federal income taxes by Section 6302 of the Internal  
28 Revenue Code and regulations thereunder. For purposes of this  
29 subdivision, payment shall be made by electronic funds transfer  
30 in accordance with Section 13021.5, for one calendar year  
31 beginning on January 1. Payment is deemed complete on the date  
32 the electronic funds transfer is initiated if settlement to the state's  
33 demand account occurs on or before the business day following  
34 the date the transfer is initiated. If settlement to the state's demand  
35 account does not occur on or before the business day following  
36 the date the transfer is initiated, payment is deemed complete on  
37 the date settlement occurs. The department shall, on or before  
38 October 31 of the prior year, notify all employers required by this  
39 paragraph to make payments by electronic funds transfer of these  
40 requirements.

1     ~~(3)~~

2     (2) *Effective January 1, 2016, paragraph (1) shall not apply to*  
3 *an employer who is subject to the electronic filing requirements*  
4 *of Section 1088. Effective January 1, 2016, an employer who is*  
5 *subject to the electronic filing requirements of Section 1088 shall*  
6 *remit the total amount of income tax withheld within the number*  
7 *of business days specified in Section 6302 of the Internal Revenue*  
8 *Code and the regulations adopted thereunder for filing federal*  
9 *income taxes. Payment shall be deemed complete on the date the*  
10 *electronic funds transfer is initiated if settlement to the state's*  
11 *demand account occurs on or before the business day following*  
12 *the date the transfer is initiated. If settlement to the state's demand*  
13 *account does not occur on or before the business day following*  
14 *the date the transfer is initiated, payment is deemed complete on*  
15 *the date settlement occurs. The department shall, on or before*  
16 *each October 31, beginning October 31, 2016, notify employers*  
17 *who will be subject to the requirements of this paragraph.*

18     (3) ~~Notwithstanding paragraph (2), paragraphs (1) and (2),~~  
19 ~~effective January 1, 1995, electronic funds transfer payments that~~  
20 ~~are subject to the one-day deposit rule, as described by Section~~  
21 ~~6302 of the Internal Revenue Code and regulations thereunder,~~  
22 ~~shall be deemed timely if the payment settles to the state's demand~~  
23 ~~account within three business days after the date the employer~~  
24 ~~meets the threshold for the one-day deposit rule.~~

25     (4) Any taxpayer required to remit payments pursuant to  
26 paragraphs (1) and (2) may request from the department a waiver  
27 of those requirements. The department may grant a waiver only if  
28 it determines that the particular ~~amounts~~ *amount* paid in excess of  
29 ~~fifty thousand dollars (\$50,000) or twenty thousand dollars~~  
30 ~~(\$20,000), as stated in paragraphs (1) and (2),~~  
31 ~~respectively, were~~ *was* the result of an unprecedented occurrence  
32 for that employer, and ~~were~~ *was* not representative of the  
33 employer's cumulative average payment in prior years.

34     (5) A state agency required to remit payments pursuant to  
35 paragraphs (1) and (2) may request a waiver of those requirements  
36 from the department. The department may grant a waiver if it  
37 determines that there will not be a negative impact on the interest  
38 earnings of the General Fund. If there is a negative impact to the  
39 General Fund, the department may grant a waiver if the requesting

1 state agency follows procedures designated by the department to  
2 mitigate the impact to the General Fund.

3 (e) An employer not required to make payment pursuant to  
4 subdivision (d) may elect to make payment by electronic funds  
5 transfer in accordance with Section 13021.5 under the following  
6 conditions:

7 (1) The election shall be made in a form, and shall contain  
8 information, as prescribed by the director, and shall be subject to  
9 approval by the department.

10 (2) If approved, the election shall be effective on the date  
11 specified in the notification to the employer of approval.

12 (3) The election shall be operative from the date specified in  
13 the notification of approval, and shall continue in effect until  
14 terminated by the employer or the department.

15 (4) Funds remitted by electronic funds transfer pursuant to this  
16 subdivision shall be deemed complete in accordance with  
17 subdivision (d) or as deemed appropriate by the director to  
18 encourage use of this payment method.

19 (f) Notwithstanding Section 1112, interest and penalties shall  
20 not be assessed against an employer that remits at least 95 percent  
21 of the amount required by subdivision (c) or (d) if the failure to  
22 remit the full amount is not willful and any remaining amount due  
23 is paid with the next payment. The director may allow any  
24 employer to submit the amounts due from multiple locations upon  
25 a showing that those submissions are necessary to comply with  
26 subdivision (c) or (d).

27 (g) The department may, if it believes that action is necessary,  
28 require any employer to make the report or return required by this  
29 section and pay to it the tax deducted and withheld at any time, or  
30 from time to time but no less frequently than provided for in  
31 subdivision (a).

32 (h) An employer required to withhold any tax and that is not  
33 required to make payment under subdivision (c) shall remit the  
34 total amount of income tax withheld during each month of each  
35 calendar quarter, on or before the 15th day of the subsequent month  
36 if the income tax withheld for any of the three months or,  
37 cumulatively for two or more months, is three hundred fifty dollars  
38 (\$350) or more.

39 (i) For purposes of subdivisions (a), (c), and (h), payment *that*  
40 *is not required to be made by electronic funds transfer* is deemed

1 complete when it is placed in a properly addressed envelope,  
2 bearing the correct postage, and it is deposited in the United States  
3 mail.

4 (j) (1) In addition to the withholding report, quarterly return,  
5 and report of wages described in subdivision (a), each employer  
6 shall file with the director an annual reconciliation return showing  
7 the amount required to be withheld under Section 13020, and any  
8 other information the director shall prescribe. This annual  
9 reconciliation return shall be due on the first day of January  
10 following the close of the prior calendar year and shall become  
11 delinquent if not filed on or before the last day of that month.

12 (2) The requirement to file the annual reconciliation return for  
13 the prior calendar year under this subdivision shall not apply to  
14 the 2012 calendar year and thereafter.

15 (k) The requirement in subdivision (a) to file a quarterly return  
16 shall begin with the first calendar quarter of the 2011 calendar  
17 year.

18 (l) The changes made to this section by ~~the act adding this~~  
19 ~~subdivision~~ *Chapter 783 of the Statutes of 2012* shall apply on and  
20 after January 1, 2013.