

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1978

Introduced by Assembly Member Gonzalez

February 16, 2016

An act to ~~amend Section 90.5 of~~ *add Part 4.2 (commencing with Section 1420) to Division 2 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Gonzalez. Employment: ~~Department of Industrial Relations: wage claims and retaliation complaints: property service workers.~~

Existing law establishes ~~within~~ the Department of Industrial Relations *in the Labor and Workforce Development Agency to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.* Existing law establishes within the department the Division of Labor Standards Enforcement, which is vested with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation. Existing law requires the Labor Commissioner, defined as the Chief of the Division of Labor Standards Enforcement, to establish and maintain a field enforcement unit in order to ensure that minimum labor standards are met. ~~Existing law requires the commissioner to report annually to the Legislature, not later than March 1, concerning the effectiveness of the field enforcement unit, as specified.~~

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees, including a requirement that every employer establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements.

This bill would require the Labor Commissioner to include in the commissioner's report to the Legislature, as described above, specified information on the status of wage claims and retaliation complaints, including the average amount of time it takes for a wage claim to receive a preliminary hearing and the current backlog of claims and complaints. establish specific standards and protections for property service workers, to be known as the Property Service Workers Protection Act, and define terms for its purposes.

The bill would require the department, no later than July 1, 2017, to develop worker and supervisor materials for a prescribed 4-hour training regarding sexual harassment, sexual violence, and human trafficking and to make those materials available to employers, covered workers, and the public through, among other means, posting on its Internet Web site. The bill would require the department by that date to establish requirements for employers who provide janitorial services to require that covered workers and supervisors, at least annually, receive prescribed in-person training on sexual harassment and sexual assault. The bill would require the department to establish standards and requirements for trainers and recordkeeping relating to training. The bill would require the department by that date to establish a toll-free hotline for reporting of complaints and incidents of workplace sexual harassment, sexual violence, and human trafficking and require workplace notice to employees of existing rights in this area.

The bill would require the Occupational Safety and Health Standards Board, by July 1, 2017, to adopt standards developed by the Division of Occupational Safety and Health that require an employer to adopt a workplace sexual violence and sexual harassment prevention plan as a part of its injury and illness prevention plan, to protect covered workers from sexual violence and harassment.

The bill would require the registration of employers conducting janitorial business, as prescribed, and establish specific authority for the Director of Industrial Relations to enforce and implement that requirement. The bill would set application and renewal fees. The bill would prohibit an employer, on or after January 1, 2018, from

conducting any janitorial business without a valid registration. The bill would require an employer to include specific information in the registration application, subscribed and sworn to under penalty of perjury, thereby imposing a state-mandated local program by expanding the scope of the crime of perjury. The bill would prohibit the granting of registration under specific circumstances, authorize the director to revoke, suspend, or place a registration on probation, as prescribed, and would void a registration in certain circumstances. The bill would require the director, on and after February 1, 2018, to maintain on the department's Internet Web site a regularly updated, searchable database of registered employers, and, on and after July 1, 2018, a searchable database regarding the compliance and enforcement activities of the department.

The bill would establish various compliance and enforcement provisions, including a requirement that the director establish a Property Services Compliance Unit to enforce the act. The bill would establish civil fines and provide for labor compliance agreements, stop order authority, audits, and investigations. The bill would impose a state-mandated local program by making it a crime to conduct any janitorial business without a valid registration, or to fail to observe a stop order. The bill would establish specific protections against discrimination and retaliation for engaging in conduct delineated in the bill, including civil and criminal penalties and a right to take civil action.

The bill would require the deposit of registration fees and specific civil fines in the State Janitorial Contractor Registration Fund, which the bill would create, and make the moneys in the fund available, upon appropriation, for the reasonable costs of administering the registration of janitorial contractors and the costs and obligations associated with the administration and enforcement of the bill by the department. The bill, to provide adequate cash flow for those purposes, would authorize the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, to approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Janitorial Contractor Registration Fund.

The bill would require the department, before July 1, 2017, to develop certain standards and procedures regarding violations of the bill.

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: ~~no~~yes.

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

1 SECTION 1. Part 4.2 (commencing with Section 1420) is added
2 to Division 2 of the Labor Code, to read:

3
4 PART 4.2. PROPERTY SERVICE WORKERS PROTECTION
5 ACT

6
7 CHAPTER 1. GENERAL
8

9 1420. (a) The Legislature finds and declares that in the
10 janitorial industry in this state:

11 (1) Workers are widely victimized by wage theft, sexual
12 harassment and assault, failure to provide workers' compensation
13 insurance, and other "low-road" practices perpetrated by
14 unscrupulous employers that fail to comply with existing labor
15 standards laws.

16 (2) Contractors are often undercapitalized, change names, and
17 abuse their corporate identity; making it difficult for victimized
18 workers to secure meaningful legal relief.

19 (3) While some "high-road" employers comply with labor
20 standards laws and invest in training and retaining a more skilled
21 workforce, these employers are undercut by low-road competitors
22 in a continual race to the bottom.

23 (4) It is in the public interest that employers compete primarily
24 on the basis of quality, efficiency, and innovation, and not through
25 a race to the bottom that perpetuates substandard working
26 conditions and lack of compliance with labor standards laws.

27 (5) Despite the state's efforts over the years to bring
28 underground economy practices in the janitorial industry under
29 control, these practices persist.

1 (6) Absent additional regulation of labor standards by the state
2 to prevent the undercutting of high-road employers, the current
3 situation is unlikely to change.

4 (7) Workers in janitorial occupations often work alone at night,
5 making them vulnerable to sexual violence and harassment while
6 on the job, a condition that is exacerbated by low pay, low job
7 mobility, and poor training. Adopting standards to protect workers
8 from sexual violence and sexual harassment should be an
9 obligation of all janitorial industry employers.

10 (b) It is the intent of the Legislature in enacting this part to:

11 (1) Direct the department to develop worker and supervisor
12 education materials regarding sexual harassment and sexual
13 violence that are tailored to the janitorial industry in the languages
14 and literacy levels appropriate to the janitorial workforce, and to
15 establish requirements for the frequency of that training for
16 supervisors and workers, and standards for trainers who are to
17 deliver training.

18 (2) Direct the Occupational Safety and Health Standards Board
19 to require janitorial industry employers to include the training as
20 part of their injury and illness prevention plans.

21 (3) Establish a system of janitorial contractor registration to
22 encourage labor standards compliance and to establish prompt
23 and effective sanctions for violating this part.

24 1421. This part shall be known, and may be cited, as the
25 Property Service Workers Protection Act.

26 1422. For purposes of this part:

27 (a) "Covered laws" means Chapter 10 (commencing with
28 Section 690.020) of Division 1 of Title 9 of Part 2 of the Code of
29 Civil Procedure, Article 1 (commencing with Section 12940) of
30 Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government
31 Code, and the Labor Code, including, but not limited to, Sections
32 96.8, 98, 238 to 238.5, inclusive, 558.1, and 2810, and Chapter
33 4.5 (commencing with Section 1060) of Part 3.

34 (b) "Covered worker" means a janitor, including any individual
35 working, whether as an employee, independent contractor, or a
36 franchisee, as a janitor, as that term is defined in the federal
37 Service Contract Act Directory of Occupations. If an individual's
38 work duties are predominantly those of a janitor as defined therein,
39 that person shall be deemed a janitor for purposes of this part.

1 (c) (1) “Employer” means any person or entity that employs
2 at least one employee and one or more covered workers and that
3 enters into contracts, subcontracts, or franchise arrangements to
4 provide janitorial services. The term “employer” includes the term
5 “covered successor employer.”

6 (2) “Covered successor employer” means an employer who
7 meets one or more of the following criteria:

8 (A) Uses substantially the same facilities, equipment,
9 supervisors, and workforce to offer substantially the same services
10 to substantially the same clients as a predecessor employer. An
11 employer that has operated with a valid registration for at least
12 the preceding three years shall not be considered a covered
13 successor employer for using substantially the same facilities,
14 equipment, supervisors, and workforce to substantially the same
15 clients, if all of the following apply:

16 (i) The individuals in the workforce were not referred or
17 supplied for employment by the predecessor employer to the
18 successor employer.

19 (ii) The successor employer has not had any interest in, or
20 connection with, the operation, ownership, management, or control
21 of the business of the predecessor employer within the preceding
22 three years.

23 (iii) The successor employer has not been determined to have
24 violated any of the covered laws.

25 (B) Shares in the ownership, management, control of the
26 workforce, or interrelations of business operations with the
27 predecessor employer.

28 (C) Is an immediate family member of any owner, partner,
29 officer, licensee, or director of the predecessor employer or of any
30 person who had a financial interest in the predecessor employer.

31 “Immediate family member” means a spouse, parent, sibling, son,
32 daughter, uncle, aunt, niece, nephew, grandparent, mother-in-law,
33 father-in-law, brother-in-law, sister-in-law, or cousin.

34 (d) “State Janitorial Contractor Registration Fund” or “fund”
35 means the State Janitorial Contractor Registration Fund
36 established in Chapter 5 (commencing with Section 1445).

37 (e) “Standards board” means the Occupational Safety and
38 Health Standards Board.

39 (f) “Supervisor” means any individual having the authority, in
40 the interest of the employer, to hire, transfer, suspend, lay off,

1 recall, promote, discharge, assign, reward, or discipline workers,
2 or the responsibility to direct them, or to adjust their grievances,
3 or effectively to recommend that action, if, in connection with the
4 foregoing, the exercise of that authority is not of a merely routine
5 or clerical nature, but requires the use of independent judgment.

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CHAPTER 2. PROTECTIONS AGAINST WORKPLACE SEXUAL
VIOLENCE AND HARASSMENT

10 1425. (a) The department, no later than July 1, 2017, shall do
11 all of the following:

12 (1) Develop worker and supervisor agendas, handouts,
13 facilitation guides, and other materials for a four-hour training
14 regarding sexual harassment, sexual violence, and human
15 trafficking that are appropriate for the janitorial industry and the
16 languages and literacy levels of covered workers.

17 (A) Training materials shall include information related to:
18 definitions of workplace sexual harassment, sexual assault, and
19 human trafficking; employers' legal obligations to prevent sexual
20 harassment and assault; potential legal and disciplinary
21 consequences for employers and perpetrators of workplace sexual
22 harassment and assault; community, mental health, and legal
23 resources locally available for survivors of workplace sexual
24 harassment or assault; legal protections available to immigrant
25 workers subjected to workplace sexual harassment or sexual
26 assault, including, but not limited to, the federal U nonimmigrant
27 status known as U visa, and protections for victims of human
28 trafficking; prevention, protection, and reporting strategies for
29 workplace sexual harassment, sexual assault, or human trafficking;
30 information on filing administrative complaints with the
31 appropriate state and federal agencies; antiretaliation and other
32 legal protections for those who have experienced sexual
33 harassment and sexual assault; information regarding the Injury
34 and Illness Protection Program of the Division of Occupational
35 Safety and Health, and other topics as the director deems necessary
36 for janitorial workers and supervisors.

37 (B) The department shall provide these materials in all
38 languages that are the language spoken at home of at least 500
39 janitors (ACS Occupation Code 4220) who reside in this state, as

1 *determined by the most recent American Community Survey of the*
2 *United States Census Bureau.*

3 *(C) The department shall update these materials on or before*
4 *July 1 of each year and make them available to employers, covered*
5 *workers, and the public through, among other means, posting on*
6 *its Internet Web site.*

7 *(2) Establish requirements that employers shall require all*
8 *covered workers and supervisors to, at least annually, receive*
9 *comprehensive, accurate and appropriate in-person training*
10 *lasting at least four hours regarding sexual harassment and sexual*
11 *assault that provides an opportunity for interactive questions and*
12 *answers. These mandatory trainings shall use the worker and*
13 *supervisor training materials in paragraph (1) of subdivision (a)*
14 *and shall be delivered in the primary language spoken by at least*
15 *25 percent of the employer's covered workers. Employers shall*
16 *provide these in-person trainings at no cost to all covered workers*
17 *and to all supervisors of covered workers on at least an annual*
18 *basis and within 30 days of hire. Employers shall pay employees*
19 *and supervisors at their regular rate of pay for participating in*
20 *these trainings or, if required by law, at their overtime rate of pay.*

21 *(3) Establish minimum qualification standards for trainers who*
22 *may deliver training, including but not limited to, a minimum of*
23 *five years of experience conducting adult education with the*
24 *demographics of the janitorial workforce. The collective bargaining*
25 *agent that represents the employer's covered workers or the*
26 *designee of the collective bargaining agent may deliver trainings.*

27 *(4) Establish requirements for employers to maintain accurate*
28 *records documenting the delivery of training by qualified trainers*
29 *which includes: sign-in sheets with the participants' and qualified*
30 *trainer's signatures; a listing of the names, addresses, and*
31 *telephone numbers of the participants and of the qualified trainers;*
32 *and a copy of the materials provided and used in the training.*

33 *(5) Establish a toll-free hotline for the reporting of complaints*
34 *and incidents of workplace sexual harassment, sexual assault, and*
35 *human trafficking to the Division of Occupational Safety and*
36 *Health, the Department of Fair Employment and Housing, and to*
37 *the National Human Trafficking Resource Center. The hotline*
38 *shall provide service in all the languages that meet the*
39 *requirements of subparagraph (B) of paragraph (1).*

1 (6) *Require employers to post and display prominently a notice,*
2 *of a size, form, and content as the director prescribes, in a*
3 *conspicuous place where it may be read by covered workers during*
4 *work hours, and in all places where notices to covered workers*
5 *are posted both physically and electronically. The notice shall*
6 *inform covered workers of their rights under the sexual harassment*
7 *and human trafficking laws, contain examples of illegal employer*
8 *conduct, provide the hotline number in paragraph (5) and provide*
9 *the contact information for local resources to assist those who*
10 *have experienced sexual harassment and human trafficking. Where*
11 *a significant portion of the employer's workforce of covered*
12 *workers is not proficient in English, the employer shall provide*
13 *the notice in the language the covered workers speak. The*
14 *department shall develop an approved notice in all languages that*
15 *meet the requirements of subparagraph (B) of paragraph (1) and*
16 *make that notice available on its Internet Web site.*

17 (7) *Appoint an advisory group of stakeholders to assist the*
18 *department in carrying out its responsibilities under this*
19 *subdivision. The advisory group shall include representatives from*
20 *a nonprofit organization that advocates for standards to protect*
21 *workers in the janitorial industry from workplace sexual*
22 *harassment and assault and from a labor organization that*
23 *represents covered workers.*

24 (8) *Adopt regulations as the department determines to be*
25 *necessary to carry out this subdivision.*

26 (b) *The standards board, by no later than July 1, 2017, shall*
27 *adopt standards developed by the Division of Occupational Safety*
28 *and Health that require an employer to adopt a workplace sexual*
29 *violence and sexual harassment prevention plan, as a part of its*
30 *injury and illness prevention plan, to protect covered workers from*
31 *sexual violence and harassment.*

32 (c) *The standards adopted pursuant to subdivision (b) shall*
33 *include all of the following:*

34 (1) *A requirement that the workplace sexual violence and sexual*
35 *harassment prevention plan shall be in written form for all*
36 *employers.*

37 (2) *A requirement that the workplace sexual violence and sexual*
38 *harassment prevention plan include specific means for janitors*
39 *who work during the nighttime or early morning hours to work in*
40 *pairs, or to have an equivalent form of protection.*

1 (3) *A requirement that the workplace sexual violence and sexual*
2 *harassment prevention plan include specific protections for janitors*
3 *against violence and sexual harassment from clients, coworkers,*
4 *and outsiders.*

5 (4) *A requirement that all workplace sexual violence and sexual*
6 *harassment prevention plans be developed in conjunction with*
7 *covered workers, including their recognized collective bargaining*
8 *agents, if any.*

9 (5) *A requirement that all workplace sexual violence and sexual*
10 *harassment prevention plans include the training of all covered*
11 *workers and supervisors of covered workers consistent with*
12 *subdivision (a).*

13 (6) *A requirement that employers maintain records of complaints*
14 *and incidents of workplace sexual violence and sexual harassment,*
15 *including the date, number of employees involved, nature of the*
16 *claim or incident, worksite location, investigation steps and results*
17 *of the employer's investigation.*

18 (7) *A requirement that employers screen supervisors for*
19 *convictions of any of the acts listed in subdivision (c) of Section*
20 *290 of the Penal Code, for being listed on the registered sex*
21 *offender database under the Sex Offender Registration Act*
22 *(Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1*
23 *of the Penal Code), and for any civil judgments for having*
24 *committed sexual harassment.*

25 (8) *A requirement for the reporting of complaints and incidents*
26 *of workplace sexual violence and sexual harassment to appropriate*
27 *agencies including, but not limited to, the Department of Fair*
28 *Employment and Housing, the Division of Occupational Safety*
29 *and Health, and the National Human Trafficking Resource Center.*

30 (d) *This section does not limit the authority of the standards*
31 *board to adopt standards to protect employees from workplace*
32 *violence or harassment. Nothing in this section shall be interpreted*
33 *to preclude the standards board from adopting standards that*
34 *require other employers to adopt plans to protect employees from*
35 *workplace violence or harassment. Nothing in this section shall*
36 *be interpreted to preclude the standards board from adopting*
37 *standards that require an employer subject to this section, or any*
38 *other employer, to adopt a workplace violence or harassment*
39 *prevention plan that includes elements or requirements additional*
40 *to, or broader in scope than, those described in this section.*

1 *CHAPTER 3. REGISTRATION OF JANITORIAL CONTRACTORS*

2
3 *1430. (a) The director shall have broad authority to enforce*
4 *and implement this part. This authority includes, but is not limited*
5 *to:*

6 *(1) Maintaining the janitorial contractor registry, list, and*
7 *Internet Web site.*

8 *(2) Negotiating, monitoring and enforcing labor compliance*
9 *agreements.*

10 *(3) Conducting random and nonrandom audits or investigations*
11 *of complaints, or both audits and investigations.*

12 *(4) Issuing, renewing, denying renewal of, suspending, revoking,*
13 *or placing on probation an employer's registration.*

14 *(5) Issuing civil fines and stop orders.*

15 *(6) Other powers as determined by the director that are*
16 *necessary to interpret, implement, and enforce this chapter.*

17 *(b) The director may establish through the adoption of*
18 *regulations any procedures it determines to be necessary to carry*
19 *out this part.*

20 *1431. (a) On and after January 1, 2018, no employer may*
21 *conduct any janitorial business without a valid registration under*
22 *this section, and all employees shall be registered with the*
23 *department pursuant to this section.*

24 *(b) To qualify for a certificate of registration or for a certificate*
25 *of registration renewal under this section, an employer shall, in*
26 *a manner prescribed by the director, do all of the following:*

27 *(1) Beginning July 1, 2017, register with the department and*
28 *pay an initial nonrefundable application fee of one thousand*
29 *dollars (\$1,000) and an annual renewal fee of one thousand dollars*
30 *(\$1,000) on or before July 1 of each year thereafter. The director*
31 *may adjust the initial registration and renewal fees no more than*
32 *annually to support the costs specified in Section 1445.*

33 *(2) Execute a written application, subscribed and sworn to by*
34 *the employer under penalty of perjury under the laws of this state*
35 *that contains all of the following:*

36 *(A) The name of the employer and, if applicable, its fictitious*
37 *business name.*

38 *(B) The form of the employer and, if a corporation, all of the*
39 *following:*

40 *(i) The date of incorporation.*

- 1 (ii) *The state in which incorporated.*
- 2 (C) *If a foreign corporation, the date the articles of*
- 3 *incorporation were filed with the California Secretary of State.*
- 4 (D) *Whether the corporation is in good standing with the*
- 5 *California Secretary of State.*
- 6 (E) *The federal employer identification number (FEIN) and the*
- 7 *state employer identification number (SEIN) of the employer.*
- 8 (F) *The employer's business address, telephone number, fax*
- 9 *number, and email address.*
- 10 (G) *The name and title of the manager, officer, or shareholder*
- 11 *who will serve as the qualifying individual to meet the examination*
- 12 *requirements in paragraph (4).*
- 13 (H) *The names, residential addresses, business addresses,*
- 14 *telephone numbers, email addresses and Social Security numbers,*
- 15 *federal employer identification number (FEIN) or the state*
- 16 *employer identification number (SEIN) of the following persons:*
- 17 (i) *All corporate officers, if the employer is a corporation.*
- 18 (ii) *All persons exercising management responsibility in the*
- 19 *employer's office, regardless of the form of the business entity.*
- 20 (iii) *The franchisor, if the employer is a franchise.*
- 21 (iv) *All shareholders holding at least 10 percent of the*
- 22 *outstanding voting shares of the employer, if the employer has*
- 23 *shareholders, and the actual percent owned by each of those*
- 24 *shareholders.*
- 25 (v) *All persons who have a financial interest of 10 percent or*
- 26 *more in the employer's business, regardless of the form of business*
- 27 *entity, and the actual percentage owned by each of those persons.*
- 28 (I) *The total number of covered workers who are employees of*
- 29 *the employer.*
- 30 (J) *The total number of covered workers who are independent*
- 31 *contractors of the employer.*
- 32 (K) *The employer's total annual payroll-related expenses over*
- 33 *the last 12 months.*
- 34 (L) *Whether the employer uses a professional employer*
- 35 *organization or leasing employer.*
- 36 (M) *Whether the employer has instituted an alternative work*
- 37 *week pursuant to Section 511.*
- 38 (N) *Name, address and telephone number of any recognized*
- 39 *collective bargaining agent representing the covered workers.*

1 (O) Whether the application is for a new or renewal registration
2 and, if the application is for a renewal, the prior registration
3 number.

4 (P) Whether the employer is also a covered successor employer,
5 and if so, the information in subparagraphs (A) to (C), inclusive,
6 (E), and (F) for the predecessor employer.

7 (Q) Certification that the information submitted to the director
8 under this subparagraph and paragraph (3) is complete.

9 (R) A written pledge under penalty of perjury under the laws of
10 this state that the employer shall:

11 (i) Comply with all applicable federal, state, and local laws and
12 regulations during the upcoming year, including, but not limited
13 to, laws regarding health and safety, labor and employment, wage
14 and hour, and licensing laws that affect workers.

15 (ii) Timely notify the director as required by paragraphs (1)
16 and (2) of subdivision (c).

17 (S) Such other information as the director requires for the
18 administration and enforcement of this chapter.

19 (3) Provide evidence, disclosures under penalty of perjury under
20 the laws of this state, or releases as are necessary to establish all
21 of the following:

22 (A) Workers' compensation coverage that complies with
23 Division 4 (commencing with Section 3200) and includes sufficient
24 coverage for any covered worker. Coverage may be evidenced by
25 a current and valid certificate of workers' compensation insurance
26 or certification of self-insurance required under Section 7125 of
27 the Business and Professions Code.

28 (B) The employer does not have any delinquent liability to a
29 worker or the state for any assessment of back wages or related
30 damages, interest, fines, or penalties pursuant to any final
31 judgment, order, or determination by a court or any federal, state,
32 or local administrative agency, including a confirmed arbitration
33 award. However, for purposes of this subparagraph, the employer
34 shall not be disqualified for any judgment, order, or determination
35 that is under appeal, provided that the employer has secured the
36 payment of any amount eventually found due through a bond or
37 other appropriate means.

38 (C) Any administrative merits determinations, arbitral awards
39 or decisions, civil judgments, or criminal judgments rendered
40 against the employer within the preceding three-year period for

1 *violating covered laws. A covered successor employer shall provide*
2 *this information both for itself and for its predecessor employer.*
3 *At minimum, the employer shall provide:*
4 *(i) The law violated.*
5 *(ii) The case number, inspection number, charge number, docket*
6 *number, or other unique identification number.*
7 *(iii) The date rendered.*
8 *(iv) The name of the court, arbitrator, agency, board, or*
9 *commission rendering the determination or decision.*
10 *(v) A copy of the administrative merits determination, arbitral*
11 *award or decision, or civil or criminal judgment document.*
12 *(D) A sexual violence and sexual harassment prevention plan*
13 *that meets the requirements of subdivision (b) of Section 1425.*
14 *(E) Within the last 12 months, the employer has screened all*
15 *supervisors for convictions of any of the acts listed in subdivision*
16 *(c) of Section 29 of the Penal Code, for being listed on the*
17 *registered sex offender database under the Sex Offender*
18 *Registration Act (Chapter 5.5 (commencing with Section 290) of*
19 *Title 9 of Part 1 of the Penal Code), and for any civil judgments*
20 *for having committed sexual harassment.*
21 *(F) Other information as the director requires for the*
22 *administration and enforcement of this chapter.*
23 *(4) Designate a qualifying individual as described in*
24 *subparagraph (G) of paragraph (2), to take a written examination*
25 *that demonstrates an essential degree of knowledge of the current*
26 *state laws and regulations that apply to employers as the director*
27 *deems necessary for the safety and protection of employers,*
28 *covered workers, and the public, including the identification and*
29 *prevention of sexual harassment in the workplace. To successfully*
30 *complete the examination, the qualifying individual shall correctly*
31 *answer at least 85 percent of the questions. The examination may*
32 *only be taken a maximum of three times per calendar year. The*
33 *examination shall include a demonstration of the current laws and*
34 *regulations regarding wages, hours, and working conditions,*
35 *workplace discrimination and sexual harassment, collective*
36 *bargaining, workers' compensation, health and safety, the*
37 *Displaced Janitor Opportunity Act (Chapter 4.5 (commencing*
38 *with Section 1060) of Part 3), Section 2810, and penalties and*
39 *enforcement of those laws.*

1 (c) After an employer is registered or has renewed its
2 registration, the employer shall:

3 (1) Notify the director within 30 calendar days of all
4 administrative merits determinations, arbitral awards or decisions,
5 and civil or criminal judgments rendered against the employer for
6 violating any covered laws.

7 (2) Provide the director within 30 calendar days updated
8 responses to the written registration or renewal application if any
9 change occurs that would change any response contained within
10 the completed written application.

11 1432. The employer shall:

12 (a) After July 1, 2017, maintain records of the sign-in sheets
13 and materials consistent with paragraph (4) of subdivision (a) of
14 Section 1425. These records shall be available for inspection by
15 the department and shall be maintained in a manner that meets
16 the requirements issued by the department under subdivision (a)
17 of Section 1425.

18 (b) Post and display prominently in a conspicuous place where
19 it may be read by covered workers during work hours, and in all
20 places where notices to covered workers are posted both physically
21 and electronically:

22 (1) By July 1, 2017, the notice in paragraph (6) of subdivision
23 (a) of Section 1425.

24 (2) By January 1, 2018, a copy of the employer's current
25 certificate of registration.

26 1433. (a) The director shall not grant registration or renewal
27 of registration:

28 (1) To any employer who has a record of serious, repeated,
29 willful, or pervasive violations of covered laws, including any
30 covered successor employer who either alone or in combination
31 with its predecessor employer has such a record, unless the
32 employer has remediated the violation by entering into and
33 fulfilling the terms of a labor compliance agreement as described
34 in Section 1436.

35 (2) To any employer who has failed to provide the director
36 evidence of workers' compensation coverage that meets the
37 requirements of subparagraph (A) of paragraph (3) of subdivision
38 (b) of Section 1431 or who lacks that coverage.

39 (3) To any employer who has failed to provide the director
40 evidence that it does not have any delinquent liability to a worker

- 1 *or to the state as described in subparagraph (B) of paragraph (3)*
- 2 *of subdivision (b) of Section 1431, or who has such liability.*
- 3 *(4) To any employer who has failed to provide the director*
- 4 *evidence of a sexual violence and sexual harassment prevention*
- 5 *plan that meets the requirements of subdivision (b) of Section 1425,*
- 6 *or who lacks such a plan.*
- 7 *(5) To any employer whose qualifying individual has not*
- 8 *achieved a passing score on the written examination in paragraph*
- 9 *(4) of subdivision (b) of Section 1431.*
- 10 *(6) To any employer who has not submitted the complete fees,*
- 11 *application, information, and evidence as required by subdivision*
- 12 *(b) of Section 1431.*
- 13 *(7) To any employer who willfully made false statements in its*
- 14 *application.*
- 15 *(b) The director may revoke, suspend, or place a registration*
- 16 *on probation if:*
- 17 *(1) The employer has violated or failed to comply with any*
- 18 *provision of this chapter.*
- 19 *(2) The employer has made any misrepresentations or false*
- 20 *statements in his or her registration or registration renewal*
- 21 *application, or in response to the director’s request for*
- 22 *information.*
- 23 *(3) The employer has failed to respond to the director’s request*
- 24 *for information within 10 days of such a request.*
- 25 *(4) The employer has failed to notify the director or to provide*
- 26 *the director with updated responses within 30 days as required by*
- 27 *paragraphs (1) or (2) of subdivision (c) of Section 1431.*
- 28 *(5) The employer has not complied with its labor compliance*
- 29 *agreement.*
- 30 *(6) The conditions under which the registration was issued have*
- 31 *changed or no longer exist.*
- 32 *(7) The employer has not complied with the posting and*
- 33 *recordkeeping requirements of Section 1432.*
- 34 *(8) An employer’s registration has been revoked within three*
- 35 *years from the date of application.*
- 36 *(c) When determining whether to suspend, revoke, or place a*
- 37 *registration on probation, the director shall take into consideration*
- 38 *as a mitigating factor whether the employer has entered into or*
- 39 *otherwise fulfilled the terms of a labor compliance agreement as*
- 40 *described in Section 1436.*

1 (d) An employer's registration is void when:

2 (1) The employer ceases conducting any janitorial business.

3 (2) The employer changes its form of legal entity.

4 (3) The employer transfers its registration.

5 (4) The director revokes an employer's registration.

6 (e) At least 30 days prior to the expiration of each employer's
7 registration, the director shall mail or email a renewal notice to
8 the last known mailing or email address of the employer. However,
9 omission of the director to provide the renewal notice in
10 accordance with this subdivision shall not excuse an employer
11 from making timely application for renewal of registration, shall
12 not be a defense in any action or proceeding involving failure to
13 renew registration, and shall not subject the director to any legal
14 liability.

15 (f) Fees received pursuant to this section shall be deposited in
16 the fund established in Chapter 5 (commencing with Section 1445)
17 and shall be used only for the purposes specified in that chapter.

18 1434. (a) On and after February 1, 2018, on the department's
19 Internet Web site, the director shall maintain a regularly updated,
20 searchable database of registered employers. The database will
21 have the capability to search all data, at minimum, for the past 10
22 years, and shall include all the following information:

23 (1) The name, address, telephone number, and registration
24 number of the employer.

25 (2) If the employer is a successor employer, the registration
26 number of any predecessor employers.

27 (3) The business addresses, telephone numbers, and email
28 addresses of the persons that the employer submitted under
29 subparagraph (H) of paragraph (2) of subdivision (b) of Section
30 1431, and, if the employer's application listed anyone in clauses
31 (iv) and (v), the percent financial interest owned by that person
32 or shareholder.

33 (4) The current status and effective dates of the employer's
34 registration.

35 (5) The identity of the employer's recognized collective
36 bargaining agent, if any.

37 (6) A listing of any past denials, revocations, or suspensions of
38 the employer's registration, including the effective dates of those
39 past denials, revocations, or suspensions, as well as the basis for
40 them

1 (7) A listing of any civil fines or stop orders issued against the
2 employer under this part, including the dates of those fines or stop
3 orders, and the basis for them.

4 (8) A listing of all labor compliance agreements the employer
5 has executed, and their effective dates.

6 (9) A copy of all labor compliance agreements the employer
7 has executed.

8 (10) Other information as deemed necessary by the director.

9 (b) On and after July 1, 2018, on the department’s Internet Web
10 site, the director shall maintain a searchable database regarding
11 its compliance and enforcement activities. The department shall
12 update this information on or before July 1 of every year. The
13 database shall have the capability to search all data, at minimum,
14 for the past 10 years and shall include all the following
15 information:

16 (1) The total number of employers with current, valid
17 registration that meets the requirements under Section 1431.

18 (2) The total number of employers whose registration was
19 revoked or suspended, or who have been placed on probation
20 within the last 12 months, categorized by the basis of that
21 revocation, suspension, or probation.

22 (3) The total number of employers who have entered into a labor
23 compliance agreement with the director within the last 12 months.

24 (4) The total amount of fines and the total number of employers
25 that the department has cited under Section 1437 within the last
26 12 months, categorized by the basis of those fines.

27 (5) The total number of employers who have been issued stop
28 orders under Section 1438 over the last 12 months, categorized
29 by the basis of those stop orders.

30 (6) The total number of audits initiated and completed by the
31 department under Section 1439, within the last 12 months.

32 (7) The total number of complaints investigated by the
33 department under Section 1440, within the last 12 months.

34 (8) Other information as deemed necessary by the director.

35

36 CHAPTER 4. ENFORCEMENT

37

38 1435. The director shall establish a Property Services
39 Compliance Unit to enforce this part, including, but not limited
40 to:

1 (a) *Maintaining the janitorial contractor registry, list, and*
2 *Internet Web site.*

3 (b) *Negotiating and enforcing labor compliance agreements.*

4 (c) *Conducting audits and investigating complaints.*

5 1436. *Whenever an employer has a record of serious, willful,*
6 *or pervasive violations of the laws or has violated one or more*
7 *provisions of this part, the director may seek to negotiate and enter*
8 *into a labor compliance agreement with the employer. The labor*
9 *compliance agreement addresses appropriate remedial measures,*
10 *compliance assistance, and any steps to resolve issues to increase*
11 *compliance with covered laws, the requirements of this part, or*
12 *other related matters. The employer shall comply with the terms*
13 *of the labor compliance agreement. Covered workers affected by*
14 *an employer's record of serious, willful, or pervasive violations*
15 *of the laws or who have initiated a complaint against an employer*
16 *for its violations of this part shall have an opportunity to*
17 *participate in the development and monitoring of such labor*
18 *compliance agreements. If the covered workers are represented*
19 *by a collective bargaining agent, their collective bargaining agent*
20 *shall have that opportunity as well. The director may seek to*
21 *engage a labor-management cooperation committee established*
22 *pursuant to the federal Labor Management Cooperation Act of*
23 *1978 (Section 175a of Title 29 of the United States Code) whose*
24 *members include a collective bargaining agent that represents*
25 *covered workers in the development and monitoring of any labor*
26 *compliance agreement.*

27 1437. (a) *An employer that meets any of the following*
28 *requirements is subject to the following civil fines, either*
29 *individually or in combination with one another:*

30 (1) *An employer that pursuant to this part, fails to register or*
31 *to renew its registration is subject to a civil fine of not more than*
32 *two hundred dollars (\$200) for each calendar day, or portion*
33 *thereof, that the employer conducts any janitorial business without*
34 *registering or renewing its registration.*

35 (2) *An employer that fails to submit correct information to the*
36 *department or that fails to provide information requested by the*
37 *department within 10 days of such a request, is subject to a civil*
38 *fine of not more than two hundred dollars (\$200) for each calendar*
39 *day, or portion thereof, that the employer conducts any janitorial*
40 *business without submitting the correct information to the*

1 department or providing the information requested by the
2 department.

3 (3) An employer that fails to comply with its labor compliance
4 agreement, is subject to a civil fine of not more than two hundred
5 dollars (\$200) for each calendar day, or portion thereof, that the
6 employer conducts any janitorial business without complying with
7 its labor compliance agreement.

8 (4) An employer that fails to notify the director within 30
9 calendar days as required in paragraph (1) of subdivision (c) of
10 Section 1431, is subject to a civil fine of not more than two hundred
11 dollars (\$200) for each calendar day, or portion thereof, that the
12 employer conducts any janitorial business without notifying the
13 director.

14 (5) An employer that fails to provide the director with updated
15 responses within 30 calendar days as required in paragraph (2)
16 of subdivision (c) of Section 1431, is subject to a civil fine of not
17 more than two hundred dollars (\$200) for each calendar day, or
18 portion thereof, that the employer conducts any janitorial business
19 without notifying the director.

20 (b) The amount of the civil fine or fines in subdivision (a) shall
21 be determined by the director based on consideration of the
22 following:

23 (1) Whether the failure of the employer was a good faith mistake,
24 and, if so, whether the error was promptly and voluntarily
25 corrected when brought to the attention of the employer.

26 (2) Whether the employer has a prior record of failing to comply
27 with the requirements in this chapter.

28 (3) Whether the employer has entered into and has currently
29 fulfilled the terms of a labor compliance agreement under Section
30 1436.

31 (4) For each individual violation, the fine may not be less than:

32 (A) One hundred dollars (\$100) for each calendar day, or
33 portion thereof, unless the failure of the employer was a good faith
34 mistake, and, if so, the error was promptly and voluntarily
35 corrected when brought to the attention of the employer.

36 (B) One hundred fifty dollars (\$150) for each calendar day, or
37 portion thereof, if the employer has been assessed fines or a stop
38 order within the previous three years for failing to meet the
39 requirements of this part, unless those fines were subsequently
40 withdrawn or overturned.

1 (C) Two hundred dollars (\$200) for each calendar day, or
2 portion thereof, if the department determines that the violation
3 was willful.

4 (c) An employer who violates the posting and recordkeeping
5 requirements of Section 1432 shall be subject to civil fines of up
6 to seven thousand dollars (\$7,000) per violation.

7 (d) The determination by the director as to the amount of the
8 fines shall be reviewable only for abuse of discretion.

9 (e) These civil fines may be assessed under a citation issued by
10 the Labor Commissioner and the procedures for issuing, contesting,
11 and enforcing judgments shall be the same as those set forth in
12 Section 1197.1.

13 1438. If an employer is conducting business without a valid
14 registration under Section 1431, the Labor Commissioner may
15 issue and serve on that employer a stop order prohibiting the use
16 of labor by that employer until the employer acquires a valid
17 registration, provided that the stop order would not compromise
18 or imperil public safety or the life, health, and care of vulnerable
19 individuals. The stop order shall also prohibit the employer from
20 continuing to provide services by conducting business using the
21 labor of another business, contractor, or subcontractor. The stop
22 order shall become effective immediately upon the service of the
23 order. Any worker affected by the work stoppage shall be paid by
24 the employer for such time lost, not exceeding 10 days, pending
25 compliance by the employer. The employer may protest the stop
26 order by making and filing with the Labor Commissioner a written
27 request for a hearing within 20 days after service of the stop order.
28 The hearing shall be held within five days from the date of filing
29 the request. The Labor Commissioner shall notify the employer of
30 the time and place of the hearing by mail. At the conclusion of the
31 hearing, the stop order shall be immediately affirmed or dismissed,
32 and within 24 hours thereafter, the Labor Commissioner shall
33 issue and serve on all parties to the hearing by registered or
34 certified mail a written notice of findings, accompanied by written
35 findings. A writ of mandate may be taken from the findings to the
36 appropriate superior court. The writ shall be taken within 45 days
37 after the mailing of the notice of findings accompanied by written
38 findings. The Labor Commissioner may file an action in superior
39 court for injunctive and other appropriate relief to enforce the

1 *stop order and shall be entitled to recovery of costs and attorney's*
2 *fees if any relief is obtained by the Labor Commissioner.*

3 *1439. (a) On its Internet Web site, the department shall*
4 *maintain and update annually a list of known janitorial employers*
5 *in California. The list shall be based on information provided to*
6 *the department pursuant to Section 1431, and on any other sources*
7 *of information available.*

8 *(b) In a manner prescribed by the director, the department shall*
9 *select employers as audit subjects for the purpose of determining*
10 *compliance with this part. The department shall select each*
11 *employer from the list of known janitorial employers at least once*
12 *every five years. Audit subjects may be selected in any order, and*
13 *routine audits may be scheduled in a manner to best minimize*
14 *travel expenses and use audit personnel efficiently.*

15 *(c) The department may select audit subjects using random and*
16 *nonrandom selection methods. At least half of the audit subjects*
17 *shall be selected at random from the department's listing of known*
18 *janitorial employers. The final selection of audit subjects shall be*
19 *within the discretion of the department.*

20 *(d) The department may investigate information or complaints*
21 *in addition to conducting an audit.*

22 *1440. The department shall conduct a reasonable and timely*
23 *investigation upon receiving a complaint regarding a potential*
24 *violation of the requirements of this part from a covered worker,*
25 *a collective bargaining agent that represents covered workers, or*
26 *a labor management cooperation committee established pursuant*
27 *to the federal Labor Management Cooperation Act of 1978 (Section*
28 *175a of Title 29 of the United States Code) whose members include*
29 *a collective bargaining agent that represents covered workers.*
30 *The department shall make a written determination regarding the*
31 *disposition of each complaint within 30 days, which can be*
32 *extended by good cause by the director.*

33 *1441. (a) Any employer that conducts any janitorial business*
34 *after its registration has been suspended, revoked, or denied*
35 *reissuance is guilty of an offense punishable by a fine of not less*
36 *than ten thousand dollars (\$10,000), or by imprisonment for not*
37 *less than six months and no more than one year, or both.*

38 *(b) Any employer, owner, director, officer, or managing agent*
39 *of the employer who fails to observe a stop order issued and served*
40 *upon him or her pursuant to Section 1438 is guilty of a*

1 *misdemeanor punishable by imprisonment in county jail not*
2 *exceeding 60 days or by a fine not exceeding ten thousand dollars*
3 *(\$10,000), or both. For the purposes of this section, the term*
4 *“managing agent” has the same meaning as in subdivision (b) of*
5 *Section 3294 of the Civil Code.*

6 *1442. After January 1, 2018, any person or entity that hires*
7 *an employer that does not have a current, valid registration under*
8 *Section 1431 on the date the person or entity enters into or renews*
9 *a contract or subcontract for janitorial services with the employer,*
10 *shall share with that employer all civil legal responsibility and*
11 *civil liability for all violations of Article 1 (commencing with*
12 *Section 12940) of Chapter 6 of Part 2.8 of Division 3 of Title 2 of*
13 *the Government Code.*

14 *1443. (a) A person or entity shall not discharge an individual*
15 *or in any manner discriminate, retaliate, or take an adverse action*
16 *against any individual because the individual engaged in any*
17 *conduct delineated in this part.*

18 *(b) Any individual who is discharged, threatened with discharge,*
19 *demoted, suspended, retaliated against, subject to an adverse*
20 *action, or in any other manner discriminated against in the terms*
21 *or conditions of his or her work because the individual engaged*
22 *in any conduct delineated in this part, shall be entitled to*
23 *reinstatement and reimbursement for lost wages and work benefits.*

24 *(c) Any person or entity who willfully refuses to hire, promote,*
25 *or otherwise restore an individual, including a current or former*
26 *worker, who has been determined to be eligible for rehiring or*
27 *promotion by a grievance procedure, arbitration, or hearing*
28 *authorized by law, is guilty of a misdemeanor.*

29 *(d) Any applicant for work who is refused work, or who in any*
30 *other manner is discriminated against in the terms and conditions*
31 *of any offer of work because the applicant engaged in any conduct*
32 *delineated in this part, shall be entitled to work and reimbursement*
33 *for lost wages and work benefits.*

34 *(e) Any worker aggrieved by any violation of this section may*
35 *bring a civil action for injunctive relief or damages, or both,*
36 *against a registered or nonregistered employer who violates this*
37 *section, and, upon prevailing, shall recover reasonable attorney’s*
38 *fees and costs, including expert witness fees.*

39 *(f) In addition to other remedies available, a person or entity*
40 *who violates this section is liable for a civil penalty not exceeding*

1 *ten thousand dollars (\$10,000) per individual for each violation*
2 *of this section, to be awarded to the individual or individuals who*
3 *suffered this violation.*

4

5 *CHAPTER 5. STATE JANITORIAL CONTRACTOR REGISTRATION*
6 *FUND*

7

8 *1445. (a) The State Janitorial Contractor Registration Fund*
9 *is hereby created as a special fund in the State Treasury to be*
10 *available upon appropriation of the Legislature for the purposes*
11 *established in subdivision (b). All registration fees collected*
12 *pursuant to Section 1431, all civil fines collected pursuant to*
13 *Section 1437, and any other moneys as are designated by statute*
14 *or order shall be deposited in the fund.*

15 *(b) Moneys in the fund shall be used only for the following*
16 *purposes:*

17 *(1) The reasonable costs of administering the registration of*
18 *janitorial contractors pursuant to Section 1431.*

19 *(2) The costs and obligations associated with the administration*
20 *and enforcement of this part by the department.*

21 *(c) The annual employer registration renewal fee specified in*
22 *subdivision (b) of Section 1431, and any adjusted application*
23 *renewal fee, shall be set in amounts that are sufficient to support*
24 *the annual appropriation approved by the Legislature for the fund*
25 *and not result in a year-end fund balance greater than 25 percent*
26 *of the appropriation. Any year-end balance in the fund greater*
27 *than 25 percent of the appropriation shall be applied as a credit*
28 *when determining any fee adjustments for the subsequent fiscal*
29 *year.*

30 *(d) To provide adequate cash flow for the purposes specified*
31 *in subdivision (b), the Director of Finance, with the concurrence*
32 *of the Secretary of the Labor and Workforce Development Agency,*
33 *may approve a short-term loan each fiscal year from the Labor*
34 *and Workforce Development Fund to the State Janitorial*
35 *Contractor Registration Fund.*

36 *(1) The maximum amount of the annual loan allowable may be*
37 *up to, but shall not exceed, 50 percent of the appropriation*
38 *authority of the fund in the same year in which the loan was made.*

39 *(2) For the purposes of this section, a "short-term loan" is a*
40 *transfer that is made subject to both of the following conditions:*

1 (A) Any amount loaned is to be repaid in full during the same
2 fiscal year in which the loan was made, except that repayment may
3 be delayed until a date not more than 30 days after the date of
4 enactment of the annual Budget Act for the subsequent fiscal year.

5 (B) Loans shall be repaid whenever the funds are needed to
6 meet cash expenditure needs in the loaning fund or account.

7
8 CHAPTER 6. STANDARDS AND PROCEDURES
9

10 1447. Before July 1, 2017, the director shall develop all the
11 following standards and procedures:

12 (a) For the determination whether administrative merits
13 determinations, arbitral awards or decisions, or civil or criminal
14 judgments of covered laws are for serious, repeated, willful, or
15 pervasive violations. Those standards shall:

16 (1) Where available, incorporate existing statutory standards
17 for assessing whether a violation is serious, repeated, or willful.

18 (2) Where no statutory standards exist, develop standards that
19 take into account the following for determining whether a violation
20 is:

21 (A) “Serious”— the number of workers affected, the degree of
22 risk posed or actual harm done by the violation to the health,
23 safety, or well-being of a worker, the amount of damages incurred
24 or fines or penalties assessed with regard to the violation, and
25 other considerations as the director finds appropriate.

26 (B) “Repeated”— whether the entity has had one or more
27 additional violations of the same or a substantially similar
28 requirement in the past five years.

29 (C) “Willful”— whether the entity knew of, showed reckless
30 disregard for, or acted with plain indifference to whether its
31 conduct was prohibited by covered laws.

32 (D) “Pervasive”— the number of violations of a requirement
33 or the aggregate number of violations of requirements in relation
34 to the size of the entity.

35 (b) For a covered worker, a collective bargaining agent
36 representing covered workers, or a labor management cooperation
37 committee established pursuant to the federal Labor Management
38 Cooperation Act of 1978 (29 U.S.C. Sec. 175a), the membership
39 of which includes a collective bargaining agent that represents
40 covered workers, to file a complaint regarding an employer’s

1 failure to comply with the requirements of this part, and for the
2 department to investigate and issue a written determination
3 regarding each complaint within 30 days, which period may be
4 extended for good cause.

5 (c) For the suspension, revocation, or placement into
6 probationary status of an employer’s registration.

7 (d) For the department to negotiate and for the director to enter
8 into labor compliance agreements with employers as described in
9 Section 1436.

10 (e) For the director to conduct random and nonrandom audits
11 or investigations, or both audits and investigations.

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SECTION 1. ~~Section 90.5 of the Labor Code is amended to~~
22 ~~read:~~

23 ~~90.5. (a) It is the policy of this state to vigorously enforce~~
24 ~~minimum labor standards in order to ensure employees are not~~
25 ~~required or permitted to work under substandard unlawful~~
26 ~~conditions or for employers that have not secured the payment of~~
27 ~~compensation, and to protect employers who comply with the law~~
28 ~~from those who attempt to gain a competitive advantage at the~~
29 ~~expense of their workers by failing to comply with minimum labor~~
30 ~~standards.~~

31 ~~(b) In order to ensure that minimum labor standards are~~
32 ~~adequately enforced, the Labor Commissioner shall establish and~~
33 ~~maintain a field enforcement unit, which shall be administratively~~
34 ~~and physically separate from offices of the division that accept~~
35 ~~and determine individual employee complaints. The unit shall have~~
36 ~~offices in Los Angeles, San Francisco, San Jose, San Diego,~~
37 ~~Sacramento, and any other locations that the Labor Commissioner~~
38 ~~deems appropriate. The unit shall have primary responsibility for~~
39 ~~administering and enforcing those statutes and regulations most~~
40 ~~effectively enforced through field investigations, including Sections~~

1 226, 1021, 1021.5, 1193.5, 1193.6, 1194.5, 1197, 1198, 1771,
2 1776, 1777.5, 2651, 2673, 2675, and 3700, in accordance with the
3 plan adopted by the Labor Commissioner pursuant to subdivision
4 (e). Nothing in this section shall be construed to limit the authority
5 of this unit in enforcing any statute or regulation in the course of
6 its investigations.

7 (e) The Labor Commissioner shall adopt an enforcement plan
8 for the field enforcement unit. The plan shall identify priorities for
9 investigations to be undertaken by the unit that ensure the available
10 resources will be concentrated in industries, occupations, and areas
11 in which employees are relatively low paid and unskilled, and
12 those in which there has been a history of violations of the statutes
13 cited in subdivision (b), and those with high rates of noncompliance
14 with Section 3700.

15 (d) The Labor Commissioner shall annually report to the
16 Legislature, not later than March 1, concerning the following:

17 (1) The effectiveness of the field enforcement unit. This part of
18 the report shall include, but not be limited to, all of the following:

19 (A) The enforcement plan adopted by the Labor Commissioner
20 pursuant to subdivision (e), and the rationale for the priorities
21 identified in the plan.

22 (B) The number of establishments investigated by the unit, and
23 the number of types of violations found.

24 (C) The amount of wages found to be unlawfully withheld from
25 workers, and the amount of unpaid wages recovered for workers.

26 (D) The amount of penalties and unpaid wages transferred to
27 the General Fund as a result of the efforts of the unit.

28 (2) The status of wage claims and retaliation complaints. This
29 part of the report shall include, but not be limited to, all of the
30 following:

31 (A) The average amount of time it takes for a wage claim to
32 receive a preliminary hearing.

33 (B) The number of determinations issued, the number of
34 investigative hearings held, the number of complaints dismissed,
35 and the number of complaints found valid, grouped by the year in
36 which the complaints were filed.

37 (C) An update on the division's current backlog of wage claims
38 and retaliation complaints.

- 1 ~~(e) The report required by subdivision (d) shall be provided in~~
- 2 ~~compliance with Section 9795 of the Government Code.~~

O