

**Assembly Bill No. 170**

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Passed the Assembly August 11, 1997

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*Chief Clerk of the Assembly*

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Passed the Senate July 28, 1997

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Section 926.17 of, and to amend and add Section 926.15 of, the Government Code, relating to claims against the state.

## LEGISLATIVE COUNSEL'S DIGEST

AB 170, Papan. Claims against the state.

Existing law provides that a state agency that fails to make any payment for goods and services to certain entities pursuant to a contract shall be subject to an interest penalty fee, according to specified criteria.

This bill would specify that these provisions may not be waived, altered, or limited by the state agency with respect to a contract entered into on or after January 1, 1998, or the person or business contracting on or after that date with the state agency. This bill would provide that these provisions are not to be construed to require a person or business contracting with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

This bill would require that in order to avoid late payment penalties state agencies shall pay promptly submitted, undisputed invoices within 45 days and would specify procedures and exclusions relating to that requirement. The provisions described in this paragraph would become operative only if SB 1132 of the 1997–98 Regular Session is enacted.

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

SECTION 1. Section 926.15 is added to the Government Code, to read:

926.15. (a) This section shall be known and cited as the California Prompt Payment Act. It is the intent of the Legislature that this section requires state agencies to pay properly submitted, undisputed, invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties.



(1) A state agency that acquires property or services pursuant to a contract with a business, including any approved change order or contract amendment, shall make payment to the person or business on the date required by the contract or be subject to a late payment penalty.

(2) Except in the event of an emergency as provided in subdivision (k), effective January 1, 1998, the late payment penalties provided for in this section may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract, or by any person or business contracting with a state agency to provide property or services. Nothing in this section shall be construed to require any person or business that has contracted with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

(b) Unless the context otherwise requires, the following definitions shall govern the construction of this section.

(1) "Claim schedule" means a schedule of invoices prepared and submitted by a state agency to the Controller for payment to the named claimant.

(2) "Invoice" means a bill or claim that requests payment on a contract under which a state agency acquires property or services.

(3) "Medi-Cal program" means the program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(4) "Nonprofit public benefit corporation" means a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code, that has registered with the Department of General Services as a small business.

(5) "Reasonable cause" means a determination by a state agency that any of the following conditions are present:

(A) There is a discrepancy between the invoice, or claimed amount, and the provisions of the contract.

(B) There is a discrepancy between the invoice, or claimed amount, and either the contractor's actual



delivery of property or services to the state or the state's acceptance of those deliveries.

(C) Additional evidence supporting the validity of the invoice, or claimed amount, is required to be provided to the state agency by the contractor.

(D) The invoice has been improperly executed, or needs to be corrected by the contractor.

(6) "Required payment approval date" means the date on which payment is due as specified in a contract or, if a specific date is not established by the contract, 30 calendar days following the date upon which an undisputed invoice is "received by a state agency."

(7) "Received by a state agency" means the date an invoice is delivered to the state location or party specified in the contract or, if a state location or party is not specified in the contract, wherever otherwise specified by the state agency.

(8) "Revolving fund" means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.

(9) "Small business" means a business certified as a "small business" in accordance with subdivision (c) of Section 14837.

(10) "Small business" and "nonprofit organization" mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:

(A) The principal office is located in California.

(B) The officers, if any, are domiciled in California.

(C) If a small business, it is independently owned and operated.

(D) The business or organization is not dominant in its field of operation.

(E) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars (\$3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this section.



(c) Except where payment is made directly by a state agency pursuant to subdivision (f), any undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a contractor for reasonable cause, provided that the state agency so notifies the contractor within 15 working days from receipt of the invoice, or delivery of the property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this section.

(d) Except as otherwise provided in this section, to avoid late payment penalties, the maximum timeframe from state agency receipt of an undisputed invoice to issuance of a warrant for payment is 45 calendar days, including not more than 30 calendar days from the state agency to submit a correct claim schedule to the Controller, and not more than 15 calendar days for the Controller to issue the warrant.

(e) This section shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Services due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.



(f) State agencies shall pay applicable penalties, without requiring that the contractor submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date. The penalty shall cease to accrue on the date the state agency submits the claim schedule to the Controller for payment, and shall be paid for out of the state agency's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the required payment date. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000).

For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties, for failure to submit a correct claim schedule to the Controller by the required payment approval date, by paying the contractor directly, from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

(g) The Controller shall pay contractors within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the contractor without requiring that the contractor submit an invoice for such amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the



contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000). For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the Controller.

(h) State agencies shall avoid seeking any additional appropriation to pay penalties which accrue as a result of the agency's failure to make timely payments as required by this section. Any state agency which requests that the Legislature make a deficiency appropriation for the agency shall identify what portion, if any, of the requested amount is necessitated because of any penalties imposed by this section.

(i) On an annual basis, within 90 calendar days following the end of each fiscal year, state agencies shall provide the Director of General Services with a report on late payment penalties that were paid by the state agency in accordance with the provisions of this section during the preceding fiscal year.

At a minimum, the report shall identify the total number and dollar amount of late payment penalties paid. State agencies may, at their own initiative, provide the director with other relevant performance measures. The director shall prepare a report listing the number and total dollar amount of all late payment penalties paid by each state agency during the preceding fiscal year, together with other relevant performance measures, and shall make such information available to the public.



(j) State agencies shall encourage contractors to promptly pay their subcontractors and suppliers, especially those that are small businesses. In furtherance of this policy, state agencies shall utilize expedited payment processes to enable faster payment by prime contractors to their subcontractors and suppliers, and shall promptly respond to any subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

(k) (1) Except in the case of a contract with a certified small business, a nonprofit organization or a nonprofit public benefit corporation, if an invoice from a business under a contract with the Department of Forestry and Fire Protection would become subject to late payment penalties during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, then the required payment approval date shall be extended by 30 calendar days.

(2) No nonprofit public benefit corporation shall be eligible for a late payment penalty if a state agency fails to make timely payment because no Budget Act has been enacted.

(3) If the Director of Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this section due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in subdivision (g) shall be suspended except as they apply to a contractor which is either a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program. The suspension shall remain in effect until the Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

(l) Section 926.10 shall not apply to any contract covered by this section.

SEC. 2. Section 926.15 of the Government Code is amended to read:



926.15. (a) Any state agency which, without reasonable cause, fails to make any payment within 30 days of the required payment date to a small business or a nonprofit organization awarded a contract with the agency to supply property or services, for an undisputed claim which was properly executed by the claimant and submitted to the agency, shall pay a penalty of 0.25 percent of the amount due, per day, from the 31st day after the required payment date. In the event that the contracting state agency properly executes the claim and forwards the claim to the Controller, and the Controller fails to make payment within 30 days after receipt of a properly executed claim, the Controller shall pay a penalty of 0.25 percent of the amount due, per day, from the 31st day after the Controller's receipt of the claim. A nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000).

(b) In applying this section to claims submitted to the state, or to its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims "reasonable cause" shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims which require review by the fiscal intermediary or department due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

(c) Unless otherwise specified, for the purposes of this section, "reasonable cause" shall include review of a claim which is improperly executed by the claimant or for which additional evidence of the validity of the claim is required. If it is determined by the state agency that a



claim was improperly executed or that additional evidence of the validity of the claim is required, the small business or nonprofit organization shall be notified within 15 working days of receipt by the state agency that the claim needs correction or that additional evidence of validity is required. The required payment date for claims requiring correction or additional information establishing validity shall be 30 days from the date the corrected claim is received by the state agency.

(d) For the purposes of this section, “required payment date” means any of the following:

(1) The date on which payment is due under the terms of the contract.

(2) If a specific date is not established by contract, the date upon which an invoice is received, if the invoice specifies payment is due upon receipt.

(3) If a specific date is not established by contract or invoice, 30 days after receipt of a proper invoice for the amount of the payment due.

(e) For the purposes of this section, the terms “small business” and “nonprofit organization” shall be defined by regulations of the Department of General Services which implement this section.

(f) Any penalty required to be paid by a state agency pursuant to this section shall be paid by the Controller out of the state agency’s budget.

(g) Any state agency which requests that the Legislature make a deficiency appropriation for the agency shall identify what part of the requested amount is necessitated because of any penalties imposed by this section.

(h) Accrual of the penalty provided by subdivision (a) shall cease for a state agency on the date a properly executed claims schedule for the claim is submitted to the Controller, and for the Controller on the date the claim is paid. For purposes of this section, the terms “small business” and “nonprofit organization,” in referring to providers under the Medi-Cal program, mean a business or organization:

(1) Where the principal office is located in California.



(2) Where the officers, if any, are domiciled in California.

(3) Which, if a small business, is independently owned and operated.

(4) Which is not dominant in its field of operation.

(5) Which, together with any affiliates, has gross receipts from business operations which do not exceed three million dollars (\$3,000,000) per year, except that the State Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this section.

(i) No nonprofit public benefit corporation shall be eligible for a late payment penalty if the state agency has failed to make timely payment because no Budget Act has been enacted. For the purposes of this section, “nonprofit public benefit corporation” means a corporation as defined by subdivision (b) of Section 5046 of the Corporations Code which has registered with the Department of General Services as a small business.

(j) The late payment penalties provided for in this section may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract entered into on or after January 1, 1998, or by any person or business contracting on or after that date with a state agency to provide property or services. Nothing in this section shall be construed to require any person or business that has contracted with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

SEC. 3. Section 926.17 of the Government Code is amended to read:

926.17. (a) (1) A state agency that acquires property or services pursuant to a contract, including any approved change order, with a business shall pay for each complete delivered item of property or service on the date required by contract between the business and agency or be subject to an interest penalty fee. If no date for payment is specified by contract, the state agency shall pay the contractor directly, if authorized to do so, within 50 calendar days after the postmark date of the



invoice. If the state agency is not authorized to pay the contractor directly, the state agency shall forward the invoice for payment to the Controller within 35 calendar days after the postmark date of the invoice. The Controller shall pay the contractor within 15 calendar days of receipt of the invoice from the state agency.

(2) If, due to insufficient funds, a state agency is unable to meet the payment deadlines provided for in paragraph (1) under a contract for goods or services needed due to a natural disaster, including, but not limited to, fires, floods, or earthquakes, payment under the contract shall not be due until 30 calendar days after the agency has received sufficient funds to pay the contractor.

(3) If, by applying paragraphs (1) and (2), a payment under a contract with the Department of Forestry and Fire Protection would become due during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, the payment shall not be due until 30 calendar days after the date upon which it would otherwise have been due.

(4) The acquisition of property includes the rental of real or personal property.

(b) (1) An interest penalty fee shall accrue and be charged on payments overdue under subdivision (a) at a rate of 1 percent above the rate accrued on June 30th of the prior year by the Pooled Money Investment Account, but not to exceed 15 percent.

The interest penalty fee shall begin on the day after payment is due if the payment due date is specified by contract. If no payment date is specified by contract and the state agency is authorized to pay the contractor directly, the interest penalty fee shall begin to accrue on the 51st calendar day after the postmark date of the invoice and shall be paid for out of the contracting state agency's funds.

If no payment date is specified by contract and the state agency is not authorized to pay the contractor directly and the state agency has not forwarded the invoice to the Controller's office for payment by the 35th calendar day after the postmark date of the invoice, an interest penalty



fee shall begin to accrue on the 36th calendar day after the postmark date of the invoice and shall be paid for out of the contracting state agency's funds. The state agency's liability ends on the date a properly submitted invoice is received by the Controller.

After the invoice is forwarded to the Controller's office from the contracting state agency, an interest penalty fee shall begin to accrue on the 16th calendar day after receipt of a properly submitted invoice by the Controller's office and shall be paid for out of the Controller's funds. The interest penalty fee ceases to accrue on the date full payment is made.

(2) A state agency shall not seek additional appropriations to pay interest that accrues as a result of an agency's failure to make payments as required by subdivision (a).

(3) When a state agency is required by this section to pay a penalty, it shall be presumed that the fault is that of the head of the state agency and, in such cases, the head of the state agency shall submit to the Legislature a written report on the actions taken to correct the problem.

(c) A court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section where it is found that the state agency has violated this section. The costs and fees shall be paid by the state agency at fault and shall not become a personal economic liability of any public officer or employee thereof.

(d) If the state agency's failure to make payment as required by subdivision (a) is the result of a dispute between the agency and the business over the amount due or over compliance with the contract, the 35 and 50 calendar days specified in subdivision (a) shall begin on the date the dispute is settled either by mutual agreement between the contracting parties or by receipt of a corrected invoice. A state agency may dispute an invoice if the state agency so notifies the contractor within 15 calendar days of receipt of the invoice.



(e) For the purposes of this section, “invoice” means a document seeking payment on a contract and that contains a detailed list of goods shipped or services rendered, with an accounting of all costs.

(f) This section shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, as established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(g) Section 926.10 shall not apply to any contract covered by this section.

(h) This section shall not apply to any contract covered by Section 926.15.

(i) A state agency shall not make interest penalty fee payments of less than five dollars (\$5).

(j) The provisions of subdivision (a) or (b) may not be waived, altered, or limited by the state agency acquiring property or services pursuant to a contract entered into on or after January 1, 1998, or by any person or business contracting on or after that date with a state agency to provide property or services.

(k) Nothing in this section shall be construed to require any person or business that has contracted with a state agency to have to submit a claim or invoice for payment of an interest penalty fee.

SEC. 4. Section 1 of this act shall become operative only if Senate Bill 1132 of the 1997–98 Regular Session is enacted, in which case Section 2 of this act shall not become operative. If Senate Bill 1132 is not enacted then Section 1 of this act shall not become operative.

SEC. 5. Section 2 of this act shall become operative only if Senate Bill 1132 of the 1997–98 Regular Session is not enacted, in which case Section 1 of this act shall not become operative. If Senate Bill 1132 is enacted, then Section 2 of this act shall not become operative.



Approved \_\_\_\_\_, 1997

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*Governor*

