

Assembly Bill No. 1652

Passed the Assembly September 10, 1999

Chief Clerk of the Assembly

Passed the Senate September 9, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 98.2, 203.2, 226, 240, 1174, and 1174.5 of, and to add Sections 226.7, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1652, Steinberg. Labor: violations.

Existing law provides that, for an employer in the building and construction industry who pays an employee wages or fringe benefits with an instrument drawn on insufficient funds, those wages or fringe benefits continue as a penalty until they are paid or an action is commenced.

This bill would apply this provision to all employers and would provide that an aggrieved employee may seek recovery of the penalty by filing a complaint with the Labor Commissioner or bringing a civil action.

The bill would require an employer who seeks review pursuant to certain provisions to post an undertaking in the amount of the order, decision, or award. The bill would require the Labor Commissioner to make reasonable collection efforts, as specified.

Existing law requires employers to provide specified information to each employee when paid, including gross wages earned, total hours worked, and all deductions. Any employee suffering injury as a result of a knowing or intentional failure to comply with this provision is entitled to actual damages or \$50 for the initial pay period violation and \$100 per employee for each violation in the subsequent pay period.

This bill, in addition, would require the employer to provide information concerning the number of piecework units earned if the employee is paid on a piecework basis, and would provide that any aggrieved employee is entitled to damages or \$50 for the initial pay period violation and \$100 per employee for each violation in the subsequent pay period, and that the employee may



recover by filing a complaint with the Labor Commissioner or by bringing a civil action.

This bill would prohibit any employer from requiring any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

Existing law requires employers to keep specified payroll records. An employer who willfully fails to maintain these records is subject to a civil penalty of \$500.

This bill would revise those payroll records requirements and provide that a willful failure to keep those records is subject to a civil penalty of \$50 per employee per payroll period, as specified.

Existing law authorizes the Labor Commissioner to require an employer who has not satisfied a judgment for the nonpayment of wages to deposit a specified bond.

This bill would condition that bond upon the payment by the employer of any judgment for wages, interest, penalties, or demands within the jurisdiction of the commissioner. The bill would also require the commissioner, whenever he or she makes an award against an employer, to require the employer to post a specified notice at the place of employment. Failure or refusal to post this notice would subject the employer to a civil penalty of \$500 for each instance.

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

SECTION 1. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the municipal or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable.



(b) Whenever an employer seeks review pursuant to this section, the employer shall post an undertaking in the amount of the order, decision, or award. The undertaking shall be obtained from a licensed surety or by deposit of the amount of the order, decision, or award in the reviewing court. The undertaking shall be on condition that if the order, decision, or award, or any part of it, is affirmed or the appeal is withdrawn or dismissed, the employer shall pay the amount that is affirmed. If the employer fails to pay that amount within 10 days, a portion of the undertaking equal to the affirmed amount shall be forfeited to the employee, plus any costs, interest, or other sum ordered by the reviewing court.

(c) If the party seeking review by filing an appeal to the municipal or superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the municipal or superior court, in accordance with the appropriate rules of jurisdiction, of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered shall have the same force and effect as, and shall be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) (1) In order to ensure judgments are satisfied, in the case of any judgment entered pursuant to subdivision



(e), the Labor Commissioner shall, acting on behalf of the judgment creditor, make reasonable collection efforts as provided by law, unless the judgment creditor requests, in writing, that the Labor Commissioner take no action. The Labor Commissioner or the judgment creditor may serve upon the judgment debtor personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (b) of Section 117.19 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

(2) The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(3) For the purposes of this subdivision, “reasonable collection efforts” include, but are not limited to, the following:

(A) Recording an abstract of judgment in any county in which the judgment debtor has an interest in real property.

(B) Filing a notice of judgment lien on personal property with the Secretary of State.

(C) Utilizing a sheriff’s keeper where the judgment debtor is a retailer or otherwise collects cash, checks, or credit charges from the public.

(D) Requiring the posting of a bond pursuant to Section 240.

(E) Recovering from any available bond issued for the purpose of guaranteeing payment of wages and benefits.

(F) Requesting payment from the separate accounts established for employees pursuant to subdivision (d) of Section 1684 or Section 2675.5.



(G) Submitting a request to the Controller for offsetting pursuant to Section 12419.11 of the Government Code.

(g) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award which has become final upon good cause appearing therefore and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(h) When a judgment is satisfied in fact, otherwise than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(i) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(j) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the judgment that is rendered pursuant to this section.

(k) The court shall have jurisdiction over the issues raised in the trial de novo to the same extent it would in any other original proceeding filed in that court, including the adjudication of contractual, statutory, or equitable claims arising from the same facts or circumstances.

SEC. 2. Section 203.1 of the Labor Code is amended to read:

203.1. If an employer pays an employee in the regular course of employment or in accordance with Sections 201 and 202 any wages or fringe benefits, or both, by check, draft, or voucher, which is subsequently refused payment because the employer or maker has no account with the bank, institution or person on which drawn or insufficient



funds to his or her account at the time of presentation, so long as the check, draft, or voucher is presented within 30 days of receipt by the employee, those wages or fringe benefits, or both, shall continue as a penalty from their due date at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days, provided, however, that the said penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the said violation of this section was unintentional. Any aggrieved employee may seek recovery of the penalty provided for in this section by filing a complaint pursuant to subdivision (a) of Section 98 or by bringing a civil action.

SEC. 3. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing all of the following:

- (1) Gross wages earned.
- (2) Total hours worked by each employee.
- (3) The number of piecework units earned and any applicable piece rate if paid on a piecework basis.
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item.
- (5) Net wages earned.
- (6) The inclusive dates of the period for which the employee is paid.
- (7) The name of the employee and his or her social security number.
- (8) The name and address of the legal entity which is the employer.

The deductions made from cash payments of wages shall be recorded in ink or other indelible form, properly



dated, showing the month, day, and year, and a copy of the statement, or a record of the deductions, shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

An employer who is required by this code or any regulation adopted pursuant to this code to keep the information required by this section shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

This section shall not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(b) Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover all actual damages or fifty dollars (\$50) for the initial pay period violation and one hundred dollars (\$100) per employee for each violation in the subsequent pay period, whichever is greater, up to five thousand dollars (\$5,000), plus costs and reasonable attorney's fees. Any aggrieved employee may seek recovery of the damages or the penalty provided by this section by filing a complaint pursuant to subdivision (a) of Section 98 or by bringing a civil action.

(c) This section shall not apply to the state, or any city, county, city and county, district, or any other governmental entity.

SEC. 4. Section 226.7 is added to the Labor Code, to read:



226.7. (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) An employer who violates this section shall be subject to both of the following:

(1) A civil penalty of fifty dollars (\$50) per employee per violation.

(2) Payment to the aggrieved employee of an amount equal to twice his or her average hourly rate for the full length of the meal or rest period in which he or she was required to perform any work. An employee paid on a piecework basis shall be entitled to an amount equal to twice the amount of piecework units earned during such periods, but in no event shall the amount be less than the applicable state minimum wage for the full length of the time period in which any work was performed.

(c) Any employee aggrieved by violation of this section may do either of the following:

(1) Seek recovery of payments authorized by this section through a complaint filed pursuant to subdivision (a) of Section 98.

(2) Bring a civil action.

(d) The provisions of this section may be superseded by a collective bargaining agreement.

SEC. 5. Section 240 of the Labor Code is amended to read:

240. (a) If an employer has been convicted of a violation of any provision of this article, or if any judgment against an employer for nonpayment of wages remains unsatisfied for a period of 10 days after the time to appeal has expired, and no appeal is then pending, the Labor Commissioner may require the employer to deposit a bond in a sum that the Labor Commissioner may deem sufficient and adequate in the circumstances, to be approved by the Labor Commissioner. The bond shall be payable to the Labor Commissioner and shall be conditioned that the employer shall, for a definite future period, not exceeding six months, pay the employees in accordance with the provisions of this article, and shall be further conditioned upon the payment by the employer



of any judgment for wages, interest, penalties, or other demands within the jurisdiction of the Labor Commissioner that remain outstanding or may be recovered against the employer pursuant to the provisions of this article.

(b) If within 10 days after demand for the bond, which may be made by mail, the employer fails to deposit the bond, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against the employer in a court of competent jurisdiction to compel the employer to furnish the bond or to cease doing business until the employer has done so. The employer has the burden of proving either that the bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond, and that the bond is reasonably necessary or proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with the provisions of this article or any other labor law, the court may enjoin the employer, whether an individual, partnership, corporation, company, trust, or association, and any other person or persons that may have been or may be concerned with or in any way participating in the failure to pay the wages resulting in the conviction or in the judgment, from doing business until the requirement is met, and make other and further orders appropriate to compel compliance with the requirement.

SEC. 6. Section 245 is added to the Labor Code, to read:

245. Whenever the Labor Commissioner makes an award against an employer pursuant to this chapter, upon finding that the employer has engaged in a pattern and practice of violating wage and hour laws, the Labor Commissioner shall also make an order requiring the employer to post a notice at the place of employment where the affected employees are or were employed containing a description of the nature of the violation, a declaration by the employer stating that it will not engage in those unlawful acts in the future, and the address and telephone number of the Labor Commissioner. The



notice, on a form approved by the Labor Commissioner, shall be posted conspicuously for a period of not less than 60 days. The notice shall bear the seal of the State of California and of the Labor Commissioner and the signature of the employer or a representative or agent of the employer. The cost of producing and posting the notice shall be borne by the employer. The failure or refusal of an employer to post the notice in accordance with this subdivision shall subject the employer to a civil penalty, to be assessed and collected by the Labor Commissioner, in the amount of five hundred dollars (\$500) for each instance in which the employer fails or refused to post a notice as required by this subdivision and the employer shall be required to properly post the notice.

SEC. 7. Section 1174 of the Labor Code is amended to read:

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, the number of piece rate units earned and any applicable piece rate if paid on a piece rate basis by, and the wages paid to, employees employed at the respective plants or establishments, which shall be kept in



accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

SEC. 8. Section 1174.5 of the Labor Code is amended to read:

1174.5. (a) Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 or the wage orders of the Industrial Welfare Commission, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of fifty dollars (\$50) per employee per payroll for the initial pay period for which records are not maintained and one hundred dollars (\$100) per employee per payroll for each violation in the subsequent pay period, up to a period of three years.



Approved _____, 1999

Governor

