

AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 796

Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices.

(b) Although innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code.

(c) Staffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future.

(d) It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act.

SEC. 2. Part 13 (commencing with Section 2698) is added to Division 2 of the Labor Code, to read:

PART 13. THE LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004

2698. This part shall be known and may be cited as the Labor Code Private Attorneys General Act of 2004.

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action.

(b) For all provisions of this code except those for which a civil penalty has already been established, there is established a civil penalty for a violation of these provisions, as follows:

~~(1) If no criminal penalty amount has been established for a violation of the provision, the civil penalty is one hundred dollars (\$100) per employee per pay period for the initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation. If the person does not employ one or more~~

(1) If the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

~~(2) If a criminal penalty has been established for a violation of the provision, the civil penalty is the amount of the criminal penalty, or~~

(2) If the person employs one or more employees, the civil penalty is one hundred dollars (\$100) per employee per pay period for the initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation, whichever is greater. If the person does not employ one or more employees, the civil penalty shall be the amount of the criminal penalty or five hundred dollars (\$500), whichever is greater.

(c) An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or others. Any employee who prevails, in whole or in part, in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

(d) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the code and initiates proceedings to collect applicable penalties.

(e) Civil penalties recovered by aggrieved employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the Labor and Workforce Development Agency for education of employers and employees about their rights and responsibilities

- 1 under this code, available for expenditure upon appropriation by
- 2 the Legislature, and 25 percent to the aggrieved employees.

O

