

AMENDED IN SENATE APRIL 15, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 989

Introduced by Senator Hollingsworth

February 8, 2010

An act to amend ~~Section~~ *Sections 2699 and 2699.3* of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 989, as amended, Hollingsworth. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are distributed 75% to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except that if the person does not employ one or more persons, 100% of the penalties are distributed to the agency by continuous appropriation.

This bill would require that an employee requesting court approval of the settlement of a civil action brought under the act first serve notice of the request to the agency. ~~This bill would further require that a court award reasonable attorney's fees and costs to the agency in any proceeding brought by the agency to recover its statutory share of the civil penalties awarded to the employee.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

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

1 SECTION 1. Section 2699 of the Labor Code is amended to
2 read:

3 2699. (a) Notwithstanding any other provision of law, any
4 provision of this code that provides for a civil penalty to be
5 assessed and collected by the Labor and Workforce Development
6 Agency or any of its departments, divisions, commissions, boards,
7 agencies, or employees, for a violation of this code, may, as an
8 alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself or herself and other
10 current or former employees pursuant to the procedures specified
11 in Section 2699.3.

12 (b) For purposes of this part, “person” has the same meaning
13 as defined in Section 18.

14 (c) For purposes of this part, “aggrieved employee” means any
15 person who was employed by the alleged violator and against
16 whom one or more of the alleged violations was committed.

17 (d) For purposes of this part, “cure” means that the employer
18 abates each violation alleged by any aggrieved employee, the
19 employer is in compliance with the underlying statutes as specified
20 in the notice required by this part, and any aggrieved employee is
21 made whole.

22 (e) (1) For purposes of this part, whenever the Labor and
23 Workforce Development Agency, or any of its departments,
24 divisions, commissions, boards, agencies, or employees, has
25 discretion to assess a civil penalty, a court is authorized to exercise
26 the same discretion, subject to the same limitations and conditions,
27 to assess a civil penalty.

28 (2) In any action by an aggrieved employee seeking recovery
29 of a civil penalty available under subdivision (a) or (f), a court
30 may award a lesser amount than the maximum civil penalty amount
31 specified by this part if, based on the facts and circumstances of
32 the particular case, to do otherwise would result in an award that
33 is unjust, arbitrary and oppressive, or confiscatory.

1 (f) For all provisions of this code except those for which a civil
2 penalty is specifically provided, there is established a civil penalty
3 for a violation of these provisions, as follows:

4 (1) If, at the time of the alleged violation, the person does not
5 employ one or more employees, the civil penalty is five hundred
6 dollars (\$500).

7 (2) If, at the time of the alleged violation, the person employs
8 one or more employees, the civil penalty is one hundred dollars
9 (\$100) for each aggrieved employee per pay period for the initial
10 violation and two hundred dollars (\$200) for each aggrieved
11 employee per pay period for each subsequent violation.

12 (3) If the alleged violation is a failure to act by the Labor and
13 Workplace Development Agency, or any of its departments,
14 divisions, commissions, boards, agencies, or employees, there shall
15 be no civil penalty.

16 (g) (1) Except as provided in paragraph (2), an aggrieved
17 employee may recover the civil penalty described in subdivision
18 (f) in a civil action pursuant to the procedures specified in Section
19 2699.3 filed on behalf of himself or herself and other current or
20 former employees against whom one or more of the alleged
21 violations was committed. Any employee who prevails in any
22 action shall be entitled to an award of reasonable attorney's fees
23 and costs. Nothing in this part shall operate to limit an employee's
24 right to pursue or recover other remedies available under state or
25 federal law, either separately or concurrently with an action taken
26 under this part.

27 (2) No action shall be brought under this part for any violation
28 of a posting, notice, agency reporting, or filing requirement of this
29 code, except where the filing or reporting requirement involves
30 mandatory payroll or workplace injury reporting.

31 (h) No action may be brought under this section by an aggrieved
32 employee if the agency or any of its departments, divisions,
33 commissions, boards, agencies, or employees, on the same facts
34 and theories, cites a person within the timeframes set forth in
35 Section 2699.3 for a violation of the same section or sections of
36 the Labor Code under which the aggrieved employee is attempting
37 to recover a civil penalty on behalf of himself or herself or others
38 or initiates a proceeding pursuant to Section 98.3.

39 (i) Except as provided in subdivision (j), civil penalties
40 recovered by aggrieved employees shall be distributed as follows:

1 75 percent to the Labor and Workforce Development Agency for
2 enforcement of labor laws and education of employers and
3 employees about their rights and responsibilities under this code,
4 to be continuously appropriated to supplement and not supplant
5 the funding to the agency for those purposes; and 25 percent to
6 the aggrieved employees. ~~The court shall award reasonable~~
7 ~~attorney's fees and costs to the Labor and Workforce Development~~
8 ~~Agency in any proceeding successfully brought by the agency to~~
9 ~~recover its share of civil penalties under this act. No attorney's~~
10 ~~fees or costs shall be awarded against the agency when it is not a~~
11 ~~prevailing party.~~

12 (j) Civil penalties recovered under paragraph (1) of subdivision
13 (f) shall be distributed to the Labor and Workforce Development
14 Agency for enforcement of labor laws and education of employers
15 and employees about their rights and responsibilities under this
16 code, to be continuously appropriated to supplement and not
17 supplant the funding to the agency for those purposes.

18 (k) Nothing contained in this part is intended to alter or
19 otherwise affect the exclusive remedy provided by the workers'
20 compensation provisions of this code for liability against an
21 employer for the compensation for any injury to or death of an
22 employee arising out of and in the course of employment.

23 (l) The superior court shall review and approve any penalties
24 sought as part of a proposed settlement agreement pursuant to this
25 part. Parties seeking court approval of a settlement pursuant to this
26 subdivision shall serve notice of the request for court approval
27 upon the Labor and Workforce Development Agency not fewer
28 than 20 calendar days prior to filing the request for approval in the
29 superior court.

30 (m) This section shall not apply to the recovery of administrative
31 and civil penalties in connection with the workers' compensation
32 law as contained in Division 1 (commencing with Section 50) and
33 Division 4 (commencing with Section 3200), including, but not
34 limited to, Sections 129.5 and 132a.

35 (n) The agency or any of its departments, divisions,
36 commissions, boards, or agencies may promulgate regulations to
37 implement the provisions of this part.

38 *SEC. 2. Section 2699.3 of the Labor Code is amended to read:*

39 2699.3. (a) A civil action by an aggrieved employee pursuant
40 to subdivision (a) or (f) of Section 2699 alleging a violation of any

1 provision listed in Section 2699.5 shall commence only after the
2 following requirements have been met:

3 (1) The aggrieved employee or representative shall give written
4 notice by certified mail to the Labor and Workforce Development
5 Agency and the employer of the specific provisions of this code
6 alleged to have been violated, including the facts and theories to
7 support the alleged violation.

8 (2) (A) The agency shall notify the employer and the aggrieved
9 employee or representative by certified mail that it does not intend
10 to investigate the alleged violation within 30 calendar days of the
11 postmark date of the notice received pursuant to paragraph (1).
12 Upon receipt of that notice or if no notice is provided within 33
13 calendar days of the postmark date of the notice given pursuant to
14 paragraph (1), the aggrieved employee may commence a civil
15 action pursuant to Section 2699.

16 (B) If the agency intends to investigate the alleged violation, it
17 shall notify the employer and the aggrieved employee or
18 representative by certified mail of its decision within 33 calendar
19 days of the postmark date of the notice received pursuant to
20 paragraph (1). Within 120 calendar days of that decision, the
21 agency may investigate the alleged violation and issue any
22 appropriate citation. If the agency determines that no citation will
23 be issued, it shall notify the employer and aggrieved employee of
24 that decision within five business days thereof by certified mail.
25 Upon receipt of that notice or if no citation is issued by the agency
26 within the 158-day period prescribed by subparagraph (A) and this
27 subparagraph or if the agency fails to provide timely or any
28 notification, the aggrieved employee may commence a civil action
29 pursuant to Section 2699.

30 (C) Notwithstanding any other provision of law, a plaintiff may
31 as a matter of right amend an existing complaint to add a cause of
32 action arising under this part at any time within 60 days of the time
33 periods specified in this part.

34 (b) A civil action by an aggrieved employee pursuant to
35 subdivision (a) or (f) of Section 2699 alleging a violation of any
36 provision of Division 5 (commencing with Section 6300) other
37 than those listed in Section 2699.5 shall commence only after the
38 following requirements have been met:

39 (1) The aggrieved employee or representative shall give notice
40 by certified mail to the Division of Occupational Safety and Health

1 and the employer, with a copy to the Labor and Workforce
2 Development Agency, of the specific provisions of Division 5
3 (commencing with Section 6300) alleged to have been violated,
4 including the facts and theories to support the alleged violation.

5 (2) (A) The division shall inspect or investigate the alleged
6 violation pursuant to the procedures specified in Division 5
7 (commencing with Section 6300).

8 (i) If the division issues a citation, the employee may not
9 commence an action pursuant to Section 2699. The division shall
10 notify the aggrieved employee and employer in writing within 14
11 calendar days of certifying that the employer has corrected the
12 violation.

13 (ii) If by the end of the period for inspection or investigation
14 provided for in Section 6317, the division fails to issue a citation
15 and the aggrieved employee disputes that decision, the employee
16 may challenge that decision in the superior court. In such an action,
17 the superior court shall follow precedents of the Occupational
18 Safety and Health Appeals Board. If the court finds that the division
19 should have issued a citation and orders the division to issue a
20 citation, then the aggrieved employee may not commence a civil
21 action pursuant to Section 2699.

22 (iii) A complaint in superior court alleging a violation of
23 Division 5 (commencing with Section 6300) other than those listed
24 in Section 2699.5 shall include therewith a copy of the notice of
25 violation provided to the division and employer pursuant to
26 paragraph (1).

27 (iv) The superior court shall not dismiss the action for
28 nonmaterial differences in facts or theories between those contained
29 in the notice of violation provided to the division and employer
30 pursuant to paragraph (1) and the complaint filed with the court.

31 (B) If the division fails to inspect or investigate the alleged
32 violation as provided by Section 6309, the provisions of subdivision
33 (c) shall apply to the determination of the alleged violation.

34 (3) (A) Nothing in this subdivision shall be construed to alter
35 the authority of the division to permit long-term abatement periods
36 or to enter into memoranda of understanding or joint agreements
37 with employers in the case of long-term abatement issues.

38 (B) Nothing in this subdivision shall be construed to authorize
39 an employee to file a notice or to commence a civil action pursuant
40 to Section 2699 during the period that an employer has voluntarily

1 entered into consultation with the division to ameliorate a condition
2 in that particular worksite.

3 (C) An employer who has been provided notice pursuant to this
4 section may not then enter into consultation with the division in
5 order to avoid an action under this section.

6 (4) The superior court shall review and approve any proposed
7 settlement of alleged violations of the provisions of Division 5
8 (commencing with Section 6300) to ensure that the settlement
9 provisions are at least as effective as the protections or remedies
10 provided by state and federal law or regulation for the alleged
11 violation. The provisions of the settlement relating to health and
12 safety laws shall be submitted to the division ~~at the same time that~~
13 ~~they are not fewer than 20 calendar days prior to being~~ submitted
14 to the court. This requirement shall be construed to authorize and
15 permit the division to comment on those settlement provisions,
16 and the court shall grant the division's commentary the appropriate
17 weight.

18 (c) A civil action by an aggrieved employee pursuant to
19 subdivision (a) or (f) of Section 2699 alleging a violation of any
20 provision other than those listed in Section 2699.5 or Division 5
21 (commencing with Section 6300) shall commence only after the
22 following requirements have been met:

23 (1) The aggrieved employee or representative shall give written
24 notice by certified mail to the Labor and Workforce Development
25 Agency and the employer of the specific provisions of this code
26 alleged to have been violated, including the facts and theories to
27 support the alleged violation.

28 (2) (A) The employer may cure the alleged violation within 33
29 calendar days of the postmark date of the notice. The employer
30 shall give written notice by certified mail within that period of
31 time to the aggrieved employee or representative and the agency
32 if the alleged violation is cured, including a description of actions
33 taken, and no civil action pursuant to Section 2699 may commence.
34 If the alleged violation is not cured within the 33-day period, the
35 employee may commence a civil action pursuant to Section 2699.

36 (B) No employer may avail himself or herself of the notice and
37 cure provisions of this subdivision more than three times in a
38 12-month period for the same violation or violations contained in
39 the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

~~SEC. 2.~~

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the existing economic conditions in California by spurring new job creation, it is necessary for this act to take effect immediately.