

S246911

In the
Supreme Court
of the
State of California

SUPREME COURT
FILED

JUN 26 2018

Jorge Navarrete Clerk

Deputy

JUSTIN KIM,

Plaintiff and Appellant,

v.

REINS INTERNATIONAL CALIFORNIA,

Defendant and Respondent.

APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT CASE NO. B278642
SUPERIOR COURT OF LOS ANGELES COUNTY, NO. BC539194,
HON. KENNETH FREEMAN

MOTION FOR JUDICIAL NOTICE

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TABLE OF CONTENTS

MOTION FOR JUDICIAL NOTICE.....	3
MEMORANDUM OF POINTS AND AUTHORITIES	5
DECLARATION OF ARI J. STILLER.....	7
Exhibit A:	
All versions of Senate Bill 796 (Dunn-2003).....	9
Exhibit B:	
Senate Committee on Labor and Industrial Relations, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.), Apr. 9, 2003	46
Exhibit C:	
Senate Judiciary Committee, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.) as amended, Apr. 29, 2003	52
Exhibit D:	
Senate Third Reading Analysis of Sen. Bill No. 796 (2003–2004 Reg. Sess.)	61
Exhibit E:	
Assembly Committee on Labor and Employment, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.).....	68
Exhibit F:	
Assembly Committee on Judiciary, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.)	75
DECLARATION OF ANNA MARIA BERECZKY-ANDERSON	83
[PROPOSED] ORDER GRANTING MOTION FOR JUDICIAL NOTICE.....	86
PROOF OF SERVICE	87

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452, 453, and 459, and California Rules of Court 8.520(g) and 8.252(a), petitioner Justin Kim requests that the Court take judicial notice of the following exhibits. Each exhibit is a true and correct copy of a document obtained by Kim's counsel from Legislative Intent Service, Inc. ("LIS"), a company specializing in researching the history and intent of legislation.

The exhibits each relate to the legislative history of Senate Bill 796 of 2003, later codified as the Labor Code Private Attorneys General Act of 2004 or "PAGA." The Court's interpretation of this statute is central to the issue on appeal of whether Kim's dismissal of his individual Labor Code claims disqualifies him as an "aggrieved employee" under PAGA's section 2699(c).

The accompanying declaration of attorney Anna Maria Bereckzy-Anderson authenticates each of the documents of which Kim requests judicial notice. For the court's convenience, Kim has not included all 1,325 pages of documents attached to Ms. Bereckzy-Anderson's declaration, but requests notice only of the documents from her declaration that counsel believes will assist the Court in deciding this matter, as follows:

Exhibit A: All versions of Senate Bill 796 (Dunn-2003). Marked as Exhibit 1 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 1a.

Exhibit B: Senate Committee on Labor and Industrial Relations, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.), Apr. 9, 2003. Marked as Exhibit 3 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 3.

Exhibit C: Senate Judiciary Committee, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.) as amended, Apr. 29, 2003. Marked as Exhibit 5 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 5.

Exhibit D: Senate Third Reading Analysis of Sen. Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 8 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 8.

Exhibit E: Assembly Committee on Labor and Employment, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 12 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 12.

Exhibit F: Assembly Committee on Judiciary, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 14 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 14.

June 25, 2018

KINGSLEY & KINGSLEY, APC

By: 

ARI J. STELLER, ESQ.

Attorneys for Plaintiffs-Appellants

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner Justin Kim requests that the Court take judicial notice of documents relevant to the legislative history of Senate Bill 796 (2003), which was enacted and codified as the Labor Code Private Attorneys General Act of 2004 (“PAGA”) at Labor Code section 2698, *et seq.*

Kim’s appeal requires the Court to review PAGA’s “aggrieved employee” standing provision. (Lab. Code § 2699(c).) Kim argues that his dismissal of individual claims has no impact on whether he qualifies as an “aggrieved employee” under this provision, and that PAGA’s legislative history supports this argument. (Stiller Decl. ¶ 3.) In making arguments about PAGA’s legislative history, Kim refers to the materials of which he requests judicial notice. (See Cal. Rules of Court, rule 8.252(a)(2)(A), (D).)

It is well-established that, “[i]n an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927) Neither party requested notice of the attached materials in the trial court, but they are subject to judicial notice by this Court under Evidence Code sections 451(a) as “public statutory law of this state,” 452(a) as “statutory law of any state of the United States,” 452(b) as “legislative enactments issued by or under the authority of . . . any public entity in the United States,” and 452(c) as “[o]fficial acts of the legislative . . . departments of . . . any state of the United States.” (See Cal. Rules of Court, rule 8.252(a)(2)(B), (C).)

For these reasons, Kim hereby requests judicial notice of Exhibits “A” through “F.”

June 25, 2018

KINGSLEY & KINGSLEY, APC

By: _____



ARI J. STILLER, ESQ.

ERIC B. KINGSLEY, ESQ.

Attorneys for Plaintiffs-Appellants

DECLARATION OF ARI J. STILLER

I, Ari J. Stiller, hereby declare as follows:

1. I am an attorney admitted before all courts of the State of California. I am an associate in the law firm of Kingsley & Kingsley and counsel of record for Petitioner Justin Kim in this action. I make this declaration from my own personal knowledge, and, if called upon, I could and would testify competently to the following.

2. I submit this declaration in support of Kim's Motion for Judicial Notice.

3. Kim's opening brief argues that his dismissal of individual claims has no impact on whether he qualifies as an "aggrieved employee" under PAGA's standing provision (Labor Code § 2699(c)), and that PAGA's legislative history supports this argument.

4. I obtained the documents regarding PAGA's legislative history attached hereto as Exhibits "A" through "F" from Legislative Intent Service, Inc. ("LIS"). Each document was provided as an attachment to the Declaration of Anna Maria Bereczky-Anderson accompanying this motion.

5. The file that I obtained from LIS contains 1,325 pages of legislative history materials. However, for the court's convenience, Kim requests judicial notice only of the following documents that I believe will assist the Court in deciding this matter. Each of these documents was included in the file that I obtained from LIS. True and correct copies of the following documents from the LIS file are attached hereto:

Exhibit A: All versions of Senate Bill 796 (Dunn-2003). Marked as Exhibit 1 to Declaration of Anna Maria Bereczky-Anderson, beginning at page LIS - 1a.

Exhibit B: Senate Committee on Labor and Industrial Relations, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.), Apr. 9, 2003. Marked as Exhibit 3 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 3.

Exhibit C: Senate Judiciary Committee, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.) as amended, Apr. 29, 2003. Marked as Exhibit 5 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 5.

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Exhibit E: Assembly Committee on Labor and Employment, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 12 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS – 12.

Exhibit F: Assembly Committee on Judiciary, Analysis of Senate Bill No. 796 (2003–2004 Reg. Sess.). Marked as Exhibit 14 to Declaration of Anna Maria Bereckzy-Anderson, beginning at page LIS - 14.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 21, 2018, in Encino, California.



ARI J. STILLER

EXHIBIT A

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 introduced, 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:

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



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

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

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

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

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

23
24 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
25 GENERAL ACT OF 2004
26

27 2698. This part shall be known and may be cited as the Labor
28 Code Private Attorneys General Act of 2004.

29 2699. (a) Notwithstanding any other provision of law, any
30 provision of this code that provides for a civil penalty to be
31 assessed and collected by the Labor and Workforce Development
32 Agency or any of its departments, divisions, commissions, boards,
33 agencies, or employees, for a violation of this code, may, as an
34 alternative, be recovered through a civil action.

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

38 (1) If no criminal penalty amount has been established for a
39 violation of the provision, the civil penalty is one hundred dollars
40 (\$100) per employee per pay period for the initial violation and



1 two hundred dollars (\$200) per employee per pay period for each
2 subsequent violation. If the person does not employ one or more
3 employees, the civil penalty is five hundred dollars (\$500).

4 (2) If a criminal penalty has been established for a violation of
5 the provision, the civil penalty is the amount of the criminal
6 penalty, or one hundred dollars (\$100) per employee per pay
7 period for the initial violation and two hundred dollars (\$200) per
8 employee per pay period for each subsequent violation, whichever
9 is greater. If the person does not employ one or more employees,
10 the civil penalty shall be the amount of the criminal penalty or five
11 hundred dollars (\$500), whichever is greater.

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

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

25 (e) Civil penalties recovered by aggrieved employees shall be
26 distributed as follows: 50 percent to the General Fund, 25 percent
27 to the Labor and Workforce Development Agency for education
28 of employers and employees about their rights and responsibilities
29 under this code, available for expenditure upon appropriation by
30 the Legislature, and 25 percent to the aggrieved employees.

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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.

LEGISLATIVE INTENT SERVICE (800) 666-1917



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

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

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

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

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

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

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

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development
34 Agency or any of its departments, divisions, commissions, boards,
35 agencies, or employees, for a violation of this code, may, as an
36 alternative, be recovered through a civil action.



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

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

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

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

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

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

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

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

LEGISLATIVE INTENT SERVICE (800) 666-1917



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

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LEGISLATIVE INTENT SERVICE (800) 666-1917

AMENDED IN SENATE APRIL 22, 2003
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, *except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency.* 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.

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LEGISLATIVE INTENT SERVICE



LIS - 1c

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

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

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

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

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

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

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

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development
34 Agency or any of its departments, divisions, commissions, boards,
35 agencies, or employees, for a violation of this code, may, as an
36 alternative, be recovered through a civil action.

37 (b) For purposes of this part, "person" has the same meaning
38 as defined in Section 18.



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

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

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

10 ~~(e)~~

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

19 ~~(d)~~

20 (e) No action may be maintained under this section by an
21 aggrieved employee if the agency or any of its departments,
22 divisions, commissions, boards, agencies, or employees, on the
23 same facts and theories, cites a person for a violation of the ~~code~~
24 *same section or sections of the Labor Code under which the*
25 *aggrieved employee is attempting to recover a civil penalty on*
26 *behalf of himself or herself or others* and initiates proceedings to
27 collect applicable penalties.

28 ~~(e) Civil~~

29 (f) *Except as provided in subdivision (g), civil penalties*
30 *recovered by aggrieved employees shall be distributed as follows:*
31 *50 percent to the General Fund, 25 percent to the Labor and*
32 *Workforce Development Agency for education of employers and*
33 *employees about their rights and responsibilities under this code,*
34 *available for expenditure upon appropriation by the Legislature,*
35 *and 25 percent to the aggrieved employees.*

36 (g) *Civil penalties recovered under paragraph (1) of*
37 *subdivision (b) shall be distributed as follows: 50 percent to the*
38 *General Fund and 50 percent to the Labor and Workforce*

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 796

— 4 —

- 1 *Development Agency available for expenditure upon*
- 2 *appropriation by the Legislature.*

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LEGISLATIVE INTENT SERVICE (800) 666-1917

AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
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, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. 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.

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LIS - 1d

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

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

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

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

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

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

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

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

25
26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development
34 Agency or any of its departments, divisions, commissions, boards,
35 agencies, or employees, for a violation of this code, may, as an



1 alternative, be recovered through a civil action brought by an
2 aggrieved employee on behalf of himself or herself or other current
3 or former employees.

4 (b) For purposes of this part, "person" has the same meaning
5 as defined in Section 18.

6 (c) For purposes of this part, "aggrieved employee" means any
7 person who was employed by the alleged violator within the period
8 of time covered by the applicable statute of limitations and against
9 whom one or more of the alleged violations was committed.

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

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

15 (2) If the person employs one or more employees, the civil
16 penalty is one hundred dollars (\$100) per for each aggrieved
17 employee per pay period for the initial violation and two hundred
18 dollars (\$200) per for each aggrieved employee per pay period for
19 each subsequent violation.

20 (d) An aggrieved employee may recover the civil penalty
21 described in subdivision (b) in a civil action filed on behalf of
22 himself or herself or others and other current or former employees
23 for whom evidence of a violation was developed during the trial or
24 during settlement of the action. Any employee who prevails, in
25 whole or in part, in any action shall be entitled to an award of
26 reasonable attorney's fees and costs. Nothing in this section shall
27 operate to limit an employee's right to pursue other remedies
28 available under state or federal law, either separately or
29 concurrently with an action taken under this section.

30 (e) No action may be maintained under this section by an
31 aggrieved employee if the agency or any of its departments,
32 divisions, commissions, boards, agencies, or employees, on the
33 same facts and theories, cites a person for a violation of the same
34 section or sections of the Labor Code under which the aggrieved
35 employee is attempting to recover a civil penalty on behalf of
36 himself or herself or others and initiates proceedings to collect
37 applicable penalties.

38 (f) Except as provided in subdivision (g), civil penalties
39 recovered by aggrieved employees shall be distributed as follows:
40 50 percent to the General Fund, 25 percent to the Labor and

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1 Workforce Development Agency for education of employers and
2 employees about their rights and responsibilities under this code,
3 available for expenditure upon appropriation by the Legislature,
4 and 25 percent to the aggrieved employees.

5 (g) Civil penalties recovered under paragraph (1) of
6 subdivision (b) shall be distributed as follows: 50 percent to the
7 General Fund and 50 percent to the Labor and Workforce
8 Development Agency available for expenditure upon
9 appropriation by the Legislature.

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AMENDED IN SENATE MAY 12, 2003
AMENDED IN SENATE MAY 1, 2003
AMENDED IN SENATE APRIL 22, 2003
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, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of

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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:

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

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

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

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

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

23 SEC. 2. Part 13 (commencing with Section 2698) is added to
24 Division 2 of the Labor Code, to read:
25

26 PART 13. THE LABOR CODE PRIVATE ATTORNEYS
27 GENERAL ACT OF 2004
28

29 2698. This part shall be known and may be cited as the Labor
30 Code Private Attorneys General Act of 2004.

31 2699. (a) Notwithstanding any other provision of law, any
32 provision of this code that provides for a civil penalty to be
33 assessed and collected by the Labor and Workforce Development



1 Agency or any of its departments, divisions, commissions, boards,
2 agencies, or employees, for a violation of this code, may, as an
3 alternative, be recovered through a civil action brought by an
4 aggrieved employee on behalf of himself or herself or other
5 current or former employees.

6 (b) For purposes of this part, "person" has the same meaning
7 as defined in Section 18.

8 (c) For purposes of this part, "aggrieved employee" means any
9 person who was employed by the alleged violator within the period
10 of time covered by the applicable statute of limitations and against
11 whom one or more of the alleged violations was committed.

12 ~~(e)~~

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

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

18 (2) If the person employs one or more employees, the civil
19 penalty is one hundred dollars (\$100) for each aggrieved employee
20 per pay period for the initial violation and two hundred dollars
21 (\$200) for each aggrieved employee per pay period for each
22 subsequent violation.

23 ~~(d)~~

24 (e) An aggrieved employee may recover the civil penalty
25 described in subdivision (b) in a civil action filed on behalf of
26 himself or herself and other current or former employees for whom
27 evidence of a violation was developed during the trial or during
28 settlement of the action. Any employee who prevails in any action
29 shall be entitled to an award of reasonable attorney's fees and
30 costs. Nothing in this section shall operate to limit an employee's
31 right to pursue other remedies available under state or federal law,
32 either separately or concurrently with an action taken under this
33 section.

34 ~~(e)~~

35 (f) No action may be maintained under this section by an
36 aggrieved employee if the agency or any of its departments,
37 divisions, commissions, boards, agencies, or employees, on the
38 same facts and theories, cites a person for a violation of the same
39 section or sections of the Labor Code under which the aggrieved
40 employee is attempting to recover a civil penalty on behalf of

