

AMENDED IN SENATE MARCH 10, 2021

SENATE BILL

No. 700

Introduced by Senator Durazo

February 19, 2021

An act to ~~amend Section 15003 of~~ *add Section 330 to* the Unemployment Insurance Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, Durazo. ~~Green Collar Jobs Council: status report.~~ *Employment Development Department.*

Existing law creates, in the Labor and Workforce Development Agency, the Employment Development Department, which is vested with the duties, purposes, responsibilities, and jurisdiction with respect to job creation activities.

This bill would require the department to be bound by specified California Unemployment Insurance Appeals Board decisions for all purposes related to unemployment insurance, including the determination of benefits or obligations for employees and employers and apply the appeals board's reasoning and interpretation in all appropriate cases.

~~Existing law establishes the California Workforce Development Board and sets forth its powers and duties, including that the board establish a special committee known as the Green Collar Jobs Council, comprised of specified members.~~

~~Existing law requires the board to report annually to the Legislature on the status of activities of the council, the grants awarded, and its development and implementation of a green workforce strategic initiative.~~

~~This bill would recast the reporting provisions to instead require that the annual report be made to the Assembly, the Senate, and the Governor's office.~~

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) Some employers regularly avoid obligations such as payment*
- 4 *of payroll taxes and payment of premiums for workers'*
- 5 *compensation, social security, unemployment insurance, and*
- 6 *disability insurance by misclassifying workers as independent*
- 7 *contractors or by relying on other contingent work arrangements*
- 8 *to unlawfully shift liability to their own misclassified employees*
- 9 *or to corporate entities whose main purpose is to serve as a liability*
- 10 *shield for the employer. This often takes the form of an employer*
- 11 *directing an employee to enlist additional employees in performing*
- 12 *the employer's work, or a company contracting with another*
- 13 *insolvent entity whose sole purpose is providing employees to the*
- 14 *company in question.*
- 15 *(b) This subterfuge hurts the state by depriving it of the revenue*
- 16 *that enables the state to administer and fund its various social*
- 17 *safety net programs, and by making it difficult for the state to*
- 18 *recover unpaid taxes and premiums from the bona fide employers*
- 19 *who control the employees in question.*
- 20 *(c) To address this by correctly placing employer obligations*
- 21 *on the responsible employer, existing state law prevents employers*
- 22 *from shifting liability for one of their employees to a second*
- 23 *employee even if the employer did not directly hire and does not*
- 24 *directly pay the employee in question. Further, existing state law*
- 25 *prevents employers from shifting liability to sham entities by*
- 26 *establishing explicit requirements for what constitutes a "leasing*
- 27 *employer" or "temporary services employer."*
- 28 *(d) Despite this, when processing multiple claims for drayage*
- 29 *drivers that applied for unemployment insurance compensation*
- 30 *benefits during the coronavirus (COVID-19) pandemic, the*
- 31 *Employment Development Department (EDD) failed to find an*
- 32 *employment relationship between the company and the workers*

1 *who provide services for that company under that company's*
2 *control. Instead, the EDD has erroneously placed the burden for*
3 *failing to provide wage data or pay unemployment insurance taxes*
4 *on other individuals employed by that company or on sham*
5 *corporate entities that do not satisfy the requirements to be*
6 *considered a leasing employer or a temporary services employer.*

7 *(e) At least two of these erroneous EDD determinations have*
8 *been overturned by the California Unemployment Insurance*
9 *Appeals Board, which has correctly interpreted the law to place*
10 *responsibility on the company in question, upholding decisions by*
11 *administrative law judges that have correctly applied the law. Yet,*
12 *the EDD continues to maintain its anomalous determinations,*
13 *requiring workers to pursue lengthy and burdensome appeals.*
14 *This is in conflict with existing law, and the extended appeals*
15 *divert resources from the agency, expose misclassified workers to*
16 *unjustified liability, and allow companies that break the law to*
17 *continue to evade justice.*

18 *(f) It is the intent of the Legislature to clarify that existing law*
19 *prohibiting an employing entity from shifting liability to its own*
20 *employees or to sham corporate entities that do not qualify as*
21 *statutory employers also applies to the schemes employers in the*
22 *drayage industry are utilizing to escape their statutory liability.*
23 *This clarification is intended to ensure that the EDD makes the*
24 *correct determinations with regard to employer liability rather*
25 *than expending resources supporting an incorrect reading of the*
26 *law.*

27 *SEC. 2. Section 330 is added to the Unemployment Insurance*
28 *Code, to read:*

29 *330. Notwithstanding Section 11425.60 of the Government*
30 *Code and Section 409, for all purposes under this code, including*
31 *the determination of benefits or obligations for employees and*
32 *employers, the department shall be bound by the appeals board's*
33 *decisions in Ruben Aldrete Ruiz v. Employment Development*
34 *Department, Case No. AO-445635, issued on January 22, 2021,*
35 *and in Francisco J. Banales v. Employment Development*
36 *Department, Case No. AO-445581, issued on December 17, 2020.*
37 *These decisions correctly interpret current law, and the department*
38 *shall apply the appeals board's reasoning and interpretation in*
39 *all appropriate cases.*

1 SECTION 1. ~~Section 15003 of the Unemployment Insurance~~
2 ~~Code is amended to read:~~

3 15003. (a) ~~On or before April 1, 2011, and annually each April~~
4 ~~1 thereafter, the California Workforce Development Board shall~~
5 ~~report to the Assembly, the Senate, and the Governor's office on~~
6 ~~the status of GCJC activities, grants awarded, and its development~~
7 ~~and implementation of a green workforce strategic initiative.~~

8 (b) ~~The GCJC shall also consult with the appropriate state and~~
9 ~~local agencies to identify opportunities to coordinate the award of~~
10 ~~grant and green workforce training funds received by the state~~
11 ~~under the federal American Recovery and Reinvestment Act of~~
12 ~~2009 (Public Law 111-5) or any other funding sources.~~