

Assembly Bill No. 594

Passed the Assembly September 13, 2023

Chief Clerk of the Assembly

Passed the Senate September 12, 2023

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2023, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 218 and 226.8 of, to add Chapter 8 (commencing with Section 180) to Division 1 of, and to repeal Section 181 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 594, Maienschein. Labor Code: alternative enforcement.

(1) Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency, administered by the Director of Industrial Relations, and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. Existing law establishes within the department, among other entities, the Division of Labor Standards Enforcement, the Division of Workers’ Compensation, and the Division of Occupational Safety and Health, with enforcement duties and powers, as prescribed.

Existing law authorizes the Division of Labor Standards Enforcement, the head of which is the Labor Commissioner, to enforce the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board, or commission. Existing law relating to payment of wages for general occupations provides that nothing in those provisions limits the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations or to enforce those provisions independently and without specific direction of the Division of Labor Standards Enforcement.

This bill, until January 1, 2029, would authorize a public prosecutor, as defined, to prosecute an action, either civil or criminal, for a violation of specified provisions of the Labor Code or to enforce those provisions independently. The bill would require moneys recovered by public prosecutors under the Labor Code to be applied first to payments due to affected workers. The bill would also require all civil penalties recovered pursuant to those provisions to be paid to the General Fund of the state, unless

otherwise specified. The bill, except as specified, would limit the action of a public prosecutor under the bill to redressing violations occurring within the public prosecutor's geographic jurisdiction. The bill would authorize a public prosecutor, in addition to any other remedies available, to seek injunctive relief to prevent continued violations.

This bill would provide that, in any action initiated by a public prosecutor or the Labor Commissioner to enforce the Labor Code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the code. The bill would further provide that any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice shall not stay the trial court proceedings, notwithstanding specified law.

(2) Existing law prohibits any person or employer from engaging in willful misclassification, as defined, of an individual as an independent contractor instead of an employee and in specified acts relating to the misclassified individual's compensation. Existing law, if the Labor and Workforce Development Agency or a court makes one of several prescribed determinations regarding the violation of those prohibitions, subjects the violator to specified civil penalties. Existing law also authorizes the Labor Commissioner to determine such a violation through investigation and informal hearing and, on making that determination, to issue a citation to assess those civil penalties pursuant to prescribed procedures for issuing, contesting, and enforcing judgments.

This bill would authorize the Labor Commissioner or a public prosecutor, as defined, to enforce these willful misclassification provisions through specified methods, including by investigating an alleged violation, ordering temporary relief, issuance of a citation, and filing a civil action. The bill would also permit specified employees, the Labor Commissioner, or a public prosecutor to alternatively recover certain penalties as damages payable to the employee.

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

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

(a) Wage theft is widespread in California, and is particularly egregious in low-wage industries, disproportionately impacting the most vulnerable workers.

(b) Wage theft can take many forms, ranging from pay practices like group piece rate, to standard misclassification and cash pay, to requiring workers to clock out before working overtime hours or to falsify timesheets.

(c) Existing resources are insufficient to protect workers or to incentivize legal compliance by employers.

(d) Wage theft and practices like misclassification do not only harm workers, they also create unfair competition for responsible employers who follow the law.

(e) The State of California and localities are also harmed when labor laws are not enforced because more workers fall into poverty, the safety net is eroded, workers increasingly rely upon public resources, and payroll taxes are not paid.

(f) It is essential that we maximize the tools available to public enforcement agencies to give workers access to justice, hold companies that break the law accountable, and secure our public safety net.

SEC. 2. Chapter 8 (commencing with Section 180) is added to Division 1 of the Labor Code, to read:

CHAPTER 8. ALTERNATIVE ENFORCEMENT

180. As used in this chapter, “public prosecutor” means the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor.

181. (a) In addition to any other remedies available, a public prosecutor may prosecute an action, either civil or criminal, for a violation of Division 2 (commencing with Section 200), but excluding Part 3.5 (commencing with Section 1140) and Part 13 (commencing with Section 2698), or Division 3 (commencing with Section 2700), but excluding Chapter 4 (commencing with Section 3070), or to enforce those provisions of this code independently. Moneys recovered by public prosecutors under this

code shall be applied first to payments, such as wages, damages, and other penalties, due to affected workers. All civil penalties recovered by a public prosecutor pursuant to this chapter shall be paid to the General Fund of this state, unless otherwise specified by this code. An action of a public prosecutor under this chapter shall be limited to redressing violations occurring within the public prosecutor's geographic jurisdiction, unless the public prosecutor has statewide authority or has enforcement authority pursuant to Section 17204 of the Business and Professions Code. Nothing in this section shall divest the division of its authority to enforce this code and all labor laws of the state for the purposes of Section 95. Nothing in this chapter shall be read to limit or restrict a public prosecutor's existing authority pursuant to Section 17204 of the Business and Professions Code.

(b) In addition to any other remedies available, a public prosecutor may seek injunctive relief to prevent continued violations of Division 2 (commencing with Section 200), but excluding Part 3.5 (commencing with Section 1140) and Part 13 (commencing with Section 2698), or Division 3 (commencing with Section 2700), but excluding Chapter 4 (commencing with Section 3070).

(c) The court may award a prevailing plaintiff in that action its reasonable attorney's fees and costs, including expert witness fees and costs to the extent the Labor Commissioner would be entitled to such fees in an action under Section 98.3.

(d) (1) A public prosecutor shall provide a 14-day notice to the Division of Labor Standards Enforcement prior to prosecuting an action under this section. A public prosecutor's failure to provide this notice shall not constitute a defense to the action.

(2) The Division of Labor Standards Enforcement shall have the right to intervene in any court proceedings brought pursuant to this section by a public prosecutor unless the public prosecutor has statewide authority or has enforcement authority pursuant to Section 17204 of the Business and Professions Code, in which case intervention in a proceeding brought pursuant to this section shall be permissive.

(e) This section shall remain in effect only until January 1, 2029, and as of that date is repealed. This subdivision shall not apply to any action initiated in court by a public prosecutor prior to January 1, 2029.

182. In any action initiated by a public prosecutor or the Labor Commissioner to enforce this code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the code. Any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor or the Labor Commissioner shall not stay the trial court proceedings, notwithstanding Section 916 of the Code of Civil Procedure. An individual agreement does not include a collective bargaining agreement.

SEC. 3. Section 218 of the Labor Code is amended to read:

218. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due them under this article.

SEC. 4. Section 226.8 of the Labor Code is amended to read:

226.8. (a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and

not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

(d) (1) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer that is a licensed contractor pursuant to the Contractors' State License Law has violated subdivision (a), the agency, in addition to any other remedy that has been ordered, shall transmit a certified copy of the order to the Contractors' State License Board.

(2) The registrar of the Contractors' State License Board shall initiate disciplinary action against a licensee within 30 days of receiving a certified copy of an agency or court order that resulted in disbarment pursuant to paragraph (1).

(e) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its internet website, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an internet website, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:

(1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.

(2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.

(3) That any employee who believes that they are being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:

(1) An officer shall sign the notice.

(2) It shall post the notice for one year commencing with the date of the final decision and order.

(g) (1) In accordance with the procedures set forth in Sections 98, 98.1, 98.2, 98.3, 98.7, 98.74, or 1197.1, the Labor Commissioner may enforce this section and issue a determination that a person or employer has violated subdivision (a). This enforcement of this section may include investigating an alleged violation of subdivision (a), ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a investigation or hearing, issuance of a citation against an employer who violates subdivision (a), and filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as appropriate. A public prosecutor, as defined in subdivision (a) of Section 181, may also enforce this section by seeking the damages described in paragraph (2).

(2) In any enforcement pursuant to this subdivision, for each employee subject to Sections 98 to 98.2, inclusive, the Labor Commissioner under Section 98.3, 98.7, 98.74, or 1197.1, or a public prosecutor, as defined in subdivision (a) of Section 181, may alternatively recover the penalties set forth in subdivisions (b) and (c) as damages payable to the employee. An employee is entitled to either recover the damages as provided for in this section or to enforce a civil penalty, as set forth in subdivision (a) of Section 2699, but not both, for the same violation. Except as specified in this section, the remedy provided by this section is cumulative and does not limit the availability of any other remedy available to the employee.

(h) Any administrative or civil penalty, damages, or disciplinary action pursuant to this section shall remain in effect against any successor corporation, owner, or business entity that satisfies both of the following:

(1) Has one or more of the same principals or officers as the person or employer subject to the penalty or action.

(2) Is engaged in the same or a similar business as the person or employer subject to the penalty or action.

(i) For purposes of this section, the following definitions apply:

(1) “Determination” means an order, decision, award, or citation issued by an agency or a court of competent jurisdiction for which the time to appeal has expired and for which no appeal is pending.

(2) “Labor and Workforce Development Agency” means the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies.

(3) “Officer” means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, or any other officer of the corporation who performs a policymaking function. If the employer is a partnership, “officer” means a partner. If the employer is a sole proprietor, “officer” means the owner.

(4) “Willful misclassification” means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.

(j) Nothing in this section is intended to limit any rights or remedies otherwise available at law.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Approved _____, 2023

Governor