



San Mateo County Chamber of Commerce Alliance

July 2014 Legislative Report

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Legislative Report

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Legislative Report

AB 1897 (Hernandez – D) Labor Contracting: Client Liability

Summary

1. AB 1897 would require a client employer to share with a labor contractor all civil legal responsibility and civil liability for: (1) payment of wages to workers provided by a labor contractor (2) failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings as required by the Unemployment Insurance Code and (3) failure to secure valid workers' compensation coverage.

Background

2. In 1999, the Legislature enacted AB 633 (Steinberg, Ch. 554, Stats. 1999), which makes all garment manufacturers liable for the guaranteed wages, including civil penalties, of the entity with whom they have contracted to make garments, and was enacted to address the large and growing underground economy of employers who were chronic violators of wage and hour, safety, and tax laws.
3. At that time, garment employers paid workers with cash under the table or with checks that bounced, failed to pay employment taxes, worked their employees long hours without rest breaks, and avoided paying wage judgments. In addition to cheating workers out of wages, it was estimated that California's underground economy supplanted an estimated \$60 billion in legal business transactions, and the state's loss of income taxes alone increased from \$2 billion in 1986 to \$3 billion in 1993.
4. Similarly, SB 179 (Alarcon, Ch. 908, Stats. 2003) required any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.
5. AB 1855 (Torres, Ch. 813, Stats. 2012) extended that sufficient funds requirement on a labor contract to warehouse workers.
6. More recently, a recent study reported that businesses are outsourcing work through multi-layered contracting, use of staffing or temp firms, franchising, misclassifying employees as independent contractors, and other means. (C. Ruckelshaus, R. Smith, S. Leberstein, E. Cho, Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work (May 2014) p. 1.)
7. That study found that "the ambiguous legal status of many workers in contracted jobs is one of the central factors driving lower wages and poor working conditions in our economy today.
 - a. Median hourly wages for workers in janitorial, fast food, home care, and food service, all sectors characterized by extensive contracting and franchising, are \$10 or less
 - b. Once outsourced, workers' wages suffer as compared to their non-contracted peers, ranging from a 7 percent dip in janitorial wages, to 30 percent in port trucking, to 40 percent in agriculture food service workers' wages fell by \$6 an hour
 - c. These same sectors see routine incidences of wage theft, with 25 percent of workers reporting minimum wage violations, and more than 70 percent of workers not paid overtime and
 - d. Construction, agriculture, warehouse, fast food, and home care workers suffer increased job accidents compared with workers in other sectors." (Id.)
8. Further, that study reported that "conscientious employers are harmed, too, as they are unable to compete with lower-bidding companies reaping the benefits of rock-bottom labor costs. Local economies and the public lose out when paychecks shrink, taxpayer-funded benefits subsidize the low wages, and employers skirt payroll and other workplace insurance payments." (Id. at pp. 1-2.)
9. AB 1897 would:

- a. Prohibit a client employer from shifting any legal duties to the labor contractor related to workplace health and safety.
 - b. Clarify that these provisions are in addition to, and supplemental of, any other liability or requirement established by statute or common law.
 - c. Not prohibit a client employer from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a labor contractor for liability created by acts of a labor contractor, and vice versa.
 - d. Require, upon request by a state enforcement agency or department, a client employer or a labor contractor to promptly provide to the agency or department any information required to verify compliance with applicable state laws.
 - e. Authorize the Labor Commissioner, the Division of Occupational Safety and Health, and the Employment Development Department to adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of this bill.
 - f. Make a waiver of these provisions contrary to public policy, void, and unenforceable.
 - g. Clarify that it should not be interpreted to impose individual liability on a homeowner or the owner of a home based business for labor and services received at the home or to impose liability on a client employer for the use of a bona fide independent contractor.
 - h. Define "client employer" to mean a business entity that obtains or is provided workers to perform labor or services within its usual course of business from a labor contractor, but would not include business entities with a workforce of less than 25 workers or the state or any political subdivision of the state.
 - i. Define "labor contractor" to mean an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor or services within the client employer's usual course of business, but would not include: (1) a bona fide nonprofit, community-based organization that provides services to low-wage workers (2) a bona fide labor organization or apprenticeship program or (3) motion picture payroll services company.
 - j. Define "wages" to include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation, and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.
 - k. Exclude from the definition of "worker" an employee who is exempt from the payment of an overtime rate of compensation for executive, administrative, and professional employees pursuant to wage orders by the Industrial Welfare Commission.
 - l. Define "usual course of business" to mean the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.
10. The California Chamber of Commerce has labeled AB 1897 as a “job killer” piece of legislation for 2014.
11. Ab 1897 will be heard in the Senate Appropriations Committee on 08/04/2014 10:00 am, John L. Burton Hearing Room (4203)

Arguments in Support

- 12. The author of AB 1897 states labor contractors are increasingly recruiting immigrant workers. In fact, ProPublica has documented the rise of "temp towns," which are dominated by staffing agencies that prey on undocumented immigrants. Even the staffing agencies may have layers of subcontractors who charge workers to find work and provide transportation.
- 13. Not only does the use of a contractor make it harder to hold the company accountable for the treatment of workers, but it also interferes with the right to organize. Contract laborers work for the labor contractor, so at one site, there can be multiple employers. That results in split bargaining units, multiple elections, and a constantly divided workforce.
- 14. Current law is simply insufficient to protect workers' rights in the shadows of the subcontracted economy. Under existing law, a company can only be held responsible if a worker can prove joint employer status. This process is costly, slow, and

difficult to navigate for most workers. It requires litigation, rather than providing a simple and straightforward rule. It is also easily manipulated by companies that have the labor contractor provide supervision on site to shield them from liability.

Arguments in Opposition

15. Opponents of this legislative proposal argue that AB 1897 would hold an innocent business liable for the employment obligations of another employer, and creating a new standard for joint liability, when the innocent business has no requisite control over the employee, completely ignores the long-standing common law analysis.
16. Further, opponents contend that AB 1897 will create significant litigation to include any third party that uses contractors as part of its usual course of business, which may take years to resolve given the severe burdens on the courts. Opponents assert that existing law already places wage payment requirements on temporary staffing agencies, and several industries, including farm labor, garment, construction, security guards, janitorial, and warehouse workers.

Supporting

Air Conditioning & Refrigeration Contractors Association
Air Conditioning Sheet Metal Association
Alameda County Labor Council, AFL-CIO
American Federation of State, County and Municipal Employees, AFL-CIO
Asian American Alliance for Justice - Asian Law Caucus
Asian Americans Advancing Justice - Los Angeles
Asian Americans for Community Involvement
Asian Pacific Islander Justice Coalition of Silicon Valley
California Alliance for Retired Americans
California Conference of Machinists
California Conference of the Amalgamated Transit Union
California Employment Lawyers Association
California Faculty Association
California Immigrant Policy Center
California Legislative Conference of the Plumbing, Heating & Piping Industry
California Nurses Association
California Professional Firefighters
California Rural Legal Assistance Foundation
California School Employees Association
California State Association of Electrical Workers
California State Council of Service Employees
California State Pipe Trades Council
California Teachers Association
Centro Legal de la Raza
Chinese Progressive Association
CLEAN Carwash Campaign
Community Action Board of Santa Cruz County
Consumer Attorneys of California
Employee Rights Center Engineers & Scientists, IFPTE Local 20
Equal Rights Advocates
Garment Workers Center
Interfaith Council on Economics and Justice
International Longshore and Warehouse Union, Coast Division
International Longshore and Warehouse Union, Southern California District Council

Jockeys Guild Katherine & George Alexander Community Law Center
Koreatown Immigrant Workers Alliance
Legal Aid Society-Employment Law Center
Latinos United for a New America
Los Angeles County Federation of Labor, AFL-CIO
Maintenance Cooperation Trust Fund
Merced-Mariposa Central Labor Council, AFL-CIO Monterey Bay Central Labor Council, AFL-CIO
Napa Solano Central Labor Council, AFL-CIO
National Association of Social Workers, California Chapter
National Electrical Contractors Association, California Chapters
National Employment Law Project
National Lawyers' Guild Labor & Employment Committee
National Staffing Workers Alliance
North Bay Labor Council, AFL-CIO
Northern California Carpenters Regional Council
Northern California District Council, ILWU
Professional & Technical Engineers, IFPTE Local 21
San Mateo Central Labor Council, AFL-CIO SEIU Local 1000
South Bay Labor Council, AFL-CIO
State Building and Construction Trades Council of California
Sunrise Floor Systems LLC
Teamsters Joint Council No. 7
Teamsters Joint Council No. 42
Teamsters Local 63, 137, 150, 315, 350, 386, 396, 431, 517, 542, 856, 890, 986
UNITE HERE!
United Auto Workers, Local 5810
United Food & Commercial Workers Union, Western States Council
United Farm Workers of America
United Nurses Associations of California/Union of Health Care Professionals
Utility Workers Union of America, Local 132
Warehouse Workers United
Western States Council of Sheet Metal Workers
Working Partnerships USA

Opposing

Agricultural Council of California
Air Conditioning Trade Association
Associated Builders and Contractors - San Diego Chapter
Associated Builders and Contractors of California
Associated General Contractors
Association of California Healthcare Districts
Building Owners and Managers Association of California
California Ambulance Association
California Apartment Association
California Asian Chamber of Commerce
California Association of Winegrape Growers
California Bankers Association
California Business Properties Association
California Cable and Telecommunications Association
California Chamber of Commerce
California Chapter of American Fence Association
California Citrus Mutual
California Coalition on Workers' Compensation
California Communications Association
California Cotton Ginners Association
California Cotton Growers Association
California Employment Law Council
California Farm Bureau Federation
California Fence Contractors' Association
California Grape and Tree Fruit League
California Grocers Association
California Hospital Association
California Hotel and Lodging Association
California Landscape Contractors Association
California League of Food Processors
California Manufacturers and Technology Association
California Newspaper Publishers Association
California Pool and Spa Association
California Restaurant Association
California Retailers Association
California Trucking Association
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
Civil Justice Association of California
Consolidated Communications Inc. (formerly SureWest)
CSAC Excess Insurance Authority

Custom Logistics & Delivery Association
Desert Hot Springs Chamber of Commerce & Visitors Center
El Dorado County Chamber of Commerce
Family Winemakers of California
Flasher Barricade Association
Fullerton Chamber of Commerce
Greater Bakersfield Chamber of Commerce
International Council of Shopping Centers
International Franchise Association
International Warehouse Logistics Association
Los Angeles Area Chamber of Commerce
Marin Builders Association
NAIOP of California, the Commercial Real Estate Development Association
National Federation of Independent Business
Oxnard Chamber of Commerce
Personal Insurance Federation of California
Plumbing-Heating-Cooling Contractors Association of California
Redondo Beach Chamber of Commerce
Rural County Representatives of California
San Diego East County Chamber of Commerce
San Gabriel Valley Economic Partnership
San Gabriel Valley Legislative Coalition of Chambers
San Jose Silicon Valley Chamber of Commerce
Santa Clara Chamber of Commerce and Convention-Visitors Bureau
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
TechNet
The Chamber of Commerce of the Santa Barbara Region
The United Chambers of Commerce of the San Fernando Valley
Torrance Area Chamber of Commerce
Urban Counties Caucus Visalia Chamber of Commerce
Visalia Chamber of Commerce
Western Agricultural Processors Association
Western Electrical Contractors Association
Western Growers Association
Wine Institute

Summary

1. AB 2416 would establish the California Wage Theft Prevention Act, which would authorize an employee to have a lien on all property of the employer in California, including after-acquired property, for the full amount of any wages and other compensation, penalties, and interest owed to the employee.

Background

2. Current law:
 - a. Provides mechanics, persons furnishing materials, artisans, and laborers of every class the right to file a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor and material. Existing law also requires the Legislature to provide, by law, for the speedy and efficient enforcement of such liens. (California Constitution Article XIV, Section 3)
 - b. Provides for mechanics liens relating to services and supplies authorized and provided on a work of improvement. Existing law also regulates the conditions under which a mechanics lien may be enforced. (Civil Code Section ;8400-8494)
 - c. Recognizes prejudgment wage liens against property as a remedy in certain industries, including mining (Civil Code Section 3060), agriculture (Civil Code Section ;3061.5-3061.6), and logging (Civil Code Section 3065).
 - d. Requires the Labor Commissioner and his or her deputies and representatives authorized by him or her in writing, upon the filing of a claim therefor by an employee, or an employee representative authorized in writing by an employee, with the Labor Commissioner, to take assignments of, among other things, wage claims and incidental expense accounts and advances and mechanics and other liens of employees. (Labor Code Section 96)
 - e. Authorizes the Labor Commissioner, after investigation and upon determination that wages or monetary benefits are due and unpaid to any worker in the State of California, to collect such wages or benefits on behalf of the worker without assignment of such wages or benefits to the Commissioner. (Labor Code Section 96.7)
 - f. Authorizes the Labor Commissioner to investigate employee complaints and provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and is required to determine all matters arising under his or her jurisdiction. (Labor Code Section 98)
 - g. Authorizes the Labor Commissioner, at the Commissioner's discretion and upon a final order, to place a lien on real property for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located. (Labor Code Section 98.2(g))
3. AB 2416 would provide that the amount of the lien would include unpaid wages and other compensation required by California law, penalties available under the Labor Code, interest at the same rate as for prejudgment interest in this state, and the costs of filing and service of the lien, but not less than the amount required by law, including direct wages and compensation required to be paid to other persons or entities that would qualify as "employer payments," as defined.
4. Further, a lien may be filed by any person or entity, including any governmental agency, to which a portion of an employer's compensation is payable or has standing under applicable law to maintain a direct legal action on behalf of the employee.
5. A lien pursuant to this legislative proposal is in addition to any other lien rights held by the employee and shall not be construed to limit these rights.
6. Furthermore, AB 2416 provides various prohibitions and new requirements when filing a lien, along with certain notice requirements in filing the lien and the creation of new lien enforcement requirements. Lastly, AB 2416 also provides various processes for releasing/extinction of a lien.
7. Wage Theft Background:

- a. In 2008, the Ford Foundation sponsored a survey of 4,387 workers in low-wage industries in the three largest U.S. cities: Chicago, Los Angeles and New York City.
 - b. The report of that survey, titled *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, revealed that 26 percent of workers in the sample were paid less than the legally required minimum wage the prior work week, and 60 percent of these workers were underpaid by more than \$1 per hour. In addition, 76 percent of the respondents who worked overtime in the previous week were not paid the legally required overtime rate by their employers.
 - c. The study also notes that minimum wage violation rates vary significantly by industry, and occupation. For example, some industries, such as apparel and textile manufacturing and personal and repair services have minimum wage violation rates that exceed 40 percent, while others, including restaurants, and retail and grocery stores, have rates of 20 to 25 percent.
 - d. However, the study found that undocumented immigrant women were at the greatest risk of minimum wage violations. The study estimated that the workers in low-wage industries Chicago, Los Angeles, and New York City lose more than \$56.4 million per week due to labor law violations.
 - e. A follow-up study by the UCLA Institute for Research and Labor and Employment was published earlier this year, and that study utilized the data from the 2008 survey, but focused specifically on Los Angeles County. This study, titled *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* focused on a survey results of 1,815 workers in Los Angeles County.
 - f. This study found similar results to the national survey: almost 30 percent of the workers sampled were paid less than the minimum wage in the prior work week, and 63.3 percent of these workers were underpaid by more than \$1 per hour. Assuming a full-year work schedule, Los Angeles County survey respondents lost an average of \$2,070.00 annually out of total earnings of \$16,536.00. The study estimated that workers in low-wage industries in Los Angeles County lose more than \$26.2 million per week as a result of employment and labor law violations.
 - g. Both of the studies make the same public policy recommendations to address these issues, which included strengthening government enforcement of existing employment and labor laws and stiffening the penalties.
8. AB 2416 has been identified by the California Chamber of Commerce as a “job killer” legislative proposal.
 9. AB 2416 is currently in the Senate Appropriations Committee and will be heard on 08/04/2014 10:00 am, John L. Burton Hearing Room (4203)

Arguments in Support

10. Proponents, argue that wage theft is a significant problem in California, with Los Angeles County's wage theft resulting in over \$1 billion unlawfully failing to reach the workers who desperately need it.
11. Proponents also note that current wage theft collection rates are less than 20%, meaning the vast majority of scofflaw employers are successful in robbing their workers of their lawful wages and believe that AB 2416 will help combat the high rate of wage theft in California by creating a simple lien process for workers to use against employers who rob them of their wages.
12. Proponents, noting Wisconsin's success, argue that wage liens are simple, effective, and a time tested approach to halting wage theft.

Arguments in Opposition

13. Opponents argue that AB 2416 would hurt California businesses by allowing any employee, governmental agency, or employee representative to record liens on an employer's real property or any property for an alleged, yet unproven, wage claim.
14. Opponents also note that AB 2416 is not just limited to minimum wage claims, but could include vacation pay, expense reimbursements, and compensation for tools, uniforms, and equipment.

15. Opponents also argue that the ability of an employee to file a wage lien against a third-party commercial property owner who had no actual control over the employee will create significant market disruptions and that this legislative proposal would place a significant burden on California's courts, and that there are already sufficient protections in place for the failure to pay wages.

Supporting

Service Employees International Union California (Sponsor)
Asian Americans Advancing Justice--Asian Law Caucus
Asian Americans Advancing Justice--Los Angeles
California Employment Lawyers Association
California Labor Federation, AFL-CIO
California Professional Firefighters
California School Employees Association; AFL-CIO
Centro Legal de la Raza
Chinese Progressive Association
CLEAN Carwash Campaign
Coalition for Humane Immigrant Rights of Los Angeles
Community Action Board of Santa Cruz County
Consumer Attorneys of California
Employee Rights Center
Equal Rights Advocates

Filipino Advocates for Justice
Garment Workers Center
Golden Gate University School of Law
Koreatown Immigrant Workers Alliance
Labor & Employment Committee
Los Angeles Alliance for a New Economy
Maintenance Cooperation Trust Fund
National Day Laborer Organizing Network
National Employment Law Project
National Immigration Law Center; National Lawyers Guild
Sunrise Floor Systems LLC
Wage Justice Center
Women's Employment Rights Clinic
Workplace Justice Initiative

Opposing

Acclamation Insurance Management Services
Air Conditioning Trade Association
Allied Managed Care
Associated Builders and Contractors of California
Associated Builders and Contractors - San Diego Chapter
Associated General Contractors
Building Owners and Managers Association of California
California Apartment Association
California Association for Health Services at Home
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Chapter of American Fence Association
California Employment Law Council
California Farm Bureau Federation
California Fence Contractors' Association
California Grocers Association
California Hospital Association
California Hotel and Lodging Association
California Land Title Association
California Landscape Contractors Association
California League of Food Processors
California Manufacturers and Technology Association
California Mortgage Bankers Association
California Newspaper Publishers Association
California Pool and Spa Association
California Professional Association of Specialty Contractor
California Restaurant Association

California Retailers Association
Civil Justice Association of California
Coalition of Small and Disabled Veterans Businesses
Construction Employers' Association
El Centro Chamber of Commerce
Flasher Barricade Association
Fullerton Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Riverside Chambers of Commerce
Independent Insurance Agents & Brokers of California
International Council of Shopping Centers
Marin Builders Association
NAIOP of California
The Commercial Real Estate Development Association
National Federation of Independent Business
Orange County Business Council
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California
Porterville Chamber of Commerce
San Jose Silicon Valley Chamber of Commerce
Santa Clara Chamber of Commerce and Convention-Visitors Bureau
Simi Valley Chamber of Commerce
Southwest California Legislative Council
Tahoe Chamber of Commerce
Visalia Chamber of Commerce
Western Electrical Contractors Association
Western Growers Association

Summary

1. AB 2617 imposes specified restrictions on the future contractual waivers of rights under the Ralph Civil Rights Act and the Tom Bane Civil Rights Act (Bane Civil Rights Act).

Background

2. Current law:
 - a. The Ralph Civil Rights Act, provides that all persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of personal or other characteristics or statuses, such as political affiliation, sex, race, color, religion, marital status, sexual orientation, or position in a labor dispute.
 - b. The Bane Civil Rights Act prohibits violence or the threat of violence based on grounds such as race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute.
 - c. Authorizes a court, if it finds as a matter of law that the contract or any clause of the contract was unconscionable at the time it was made, to refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
 - d. Provides that a person who violates the Ralph Civil Rights Act or aids, incites, or conspires in that act, is liable for actual damages suffered by any person denied that right, as well as a civil penalty and attorney's fees.
 - e. Provides that whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the foregoing rights the Attorney General (AG), any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action.
 - f. Provides that a person whose enjoyment of legal rights has been interfered with, or attempted to be interfered with, may bring a civil action for damages, including injunctive relief, and other appropriate equitable relief.
3. AB 2617 would:
 - a. Provides that a person shall not require another person to waive any legal right, penalty, remedy, forum, or procedure for violation of the Ralph Civil Rights Act or the Bane Civil Rights Act as a condition of entering into a contract for the provision of goods and services.
 - b. Provides that a person shall not refuse to enter into a contract with, or refuse to provide goods or services to, another person on the basis that the other person refuses to waive any legal right, penalty, remedy, forum, or procedure for violation of these civil rights acts with or otherwise notify the AG or any other public prosecutor or any law.
 - c. Provides that the exercise of a person's right to refuse to waive any legal right, penalty, remedy, forum, or procedure for a violation of these civil rights laws shall not affect any otherwise legal terms of a contract or an agreement.
 - d. Requires that any waiver of any legal right, penalty, remedy, forum, or procedure for violation of these civil rights acts be knowing and voluntary, and in writing, and expressly not made as a condition of entering into the contract or as a condition of providing or receiving goods and services, and that any person who seeks to enforce such a waiver shall have the burden of proving that it was knowing and voluntary and not made as a condition of the contract or of providing or receiving the goods or services.
 - e. Provides that any waiver of any legal right, penalty, remedy, forum or procedure for a violation of this bill that is required as a condition of entering into a contract for goods or services shall be deemed involuntary, unconscionable, against public policy, and unenforceable. This provision does not affect the enforceability or validity of any other provision of the contract.
 - f. Provides that the foregoing protections apply to any agreement to waive any legal right, penalty, remedy, forum, or procedure for a violation of these civil rights laws entered into, altered, modified, renewed, or extended on or after

January 1, 2015. This bill does not apply to any agreement to waive any legal rights, penalties, remedies, forums, or procedures for a violation of these civil rights acts after a legal claim has arisen.

- g. Provides that its provisions shall not be construed to negate or otherwise abrogate certain rights under the law that are currently unwaivable.
- 4. California has led the nation in enacting a statutory scheme which provides for civil, criminal, and administrative penalties for violations of civil rights laws.
- 5. In particular, the Ralph Civil Rights Act and Bane Civil Rights Act were designed to protect individuals from hate-based crimes of violence. Despite these statutory protections, hate crimes are still a common occurrence in some areas of California.
- 6. Prior Legislation:
 - a. AB 1715 (Assembly Judiciary Committee of 2003) would have, among other things, made it an unlawful employment practice for a covered employer to require an employee to waive any rights or procedures under the Fair Employment and Housing Act (FEHA) as a condition of employment. This bill was vetoed by Governor Gray Davis.
 - b. SB 1538 (Burton of 2002) would have, among other things, made it an unlawful employment practice to require an employee to waive any rights or procedures under FEHA, and would have made any predispute arbitration agreement between an employer and employee that violated this prohibition unenforceable. This bill was vetoed by Governor Gray Davis.
- 7. The California Chamber of Commerce has labeled AB 2617 as a "job killer" piece of legislation.
- 8. AB 2617 is current in the Senate awaiting its next hearing date.

Arguments in Support

- 9. In support of this legislative proposal, the California State Conference of the NAACP writes that "AB 2617 is good public policy in that it strengthens the circumvention of California Civil Rights by closing a loophole and prevents consumer abuse.
- 10. Currently some employers, landlords and merchants abuse consumers by requiring the consumer as a condition of receiving employment, housing, or goods and services to enter a contract with a mandatory arbitration clause buried in the contract preventing the consumer from going to court to seek justice under California's civil rights statutes.
- 11. Unfortunately, because of the widespread mandatory arbitration waivers in contracts, the effectiveness of the protections afforded by these [civil rights] laws is being seriously undermined. A right that is not enforceable in the courts is no right at all."

Arguments in Opposition

- 12. Opponents have raised concerns that the restrictions on waivers in AB 2617 as may be preempted by federal law. In a coalition letter, they write, "The Federal Arbitration Act (FAA) and the California Arbitration Act (CAA) evidence a strong preference for enforcement of arbitration agreements, so long as the underlying contract is fair.
- 13. The FAA generally prohibits state laws that restrict enforcement of arbitration agreements. [See *Armendariz v. Foundation Health Psychcare Services, Inc.* 24 Cal.4th 83 (2000) ("California law, like federal law, favors enforcement of valid arbitration agreements."); *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal.4th 1109 (2013) (agreeing that FAA preempts state law that seeks to limit the waiver of administrative hearing in arbitration agreement, as it interferes with arbitration goals of providing "'streamlined proceedings and expeditious results') and *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011) (holding that the FAA prohibits states from conditioning the enforceability of an arbitration agreement on the availability of class wide arbitration procedures, as such a requirement would be inconsistent with the intent of the FAA).]
- 14. "Despite consistent authority from both the United States Supreme Court and California Supreme Court regarding the inclination to promote arbitration and limit any statutes or common law that interfere with arbitration, AB 2617 seeks to do just that. Specifically, AB 2617 prohibits any contract that requires a waiver of the right to pursue a civil action for the violation of any alleged civil rights under the Civil Code or Fair Employment and Housing Act.

Supporting

AFSCME

American Civil Liberties Union

California School Employees Association

California State Conference of the NAACP

California State Employees Association

Consumer Attorneys of California

Equality California

Western Center on Law & Poverty

Opposing

Acclamation Insurance Management Services

Allied Managed Care

California Apartment Association

California Association of Health Facilities

California Bankers Association

California Chamber of Commerce

California Chapter of American Fence Association

California Citizens Against Lawsuit Abuse

California Employment Law Council

California Farm Bureau Federation

California Fence Contractor's Association

California Grocers Association

California Hospital Association

California Manufacturers and Technology Association

California New Car Dealers Association

California Restaurant Association

California Retailers Association

Civil Justice Association of California

Coalition of Small and Disabled Veteran Business

Cooperative of American Physicians

Flasher Barricade Association

Marin Builders Association

National Federation of Independent Business

Southwest California Legislative Council

Torrance Area Chamber of Commerce

Western Growers Association

General Election – November 4, 2014 – Summary of Ballot Measures

Below are the November 4, 2014 General Election Ballot Measures as of July 7, 2014. The ballot measures are in summary form only. In future Legislative Reports, all qualified ballot measures will be included with full background and available supporting and opposing organizations/individuals. Not all ballot measures maybe business oriented.

Proposition 43: Safe, Clean, and Reliable Drinking Water Supply Act of 2012.

Summary

The measure would enact the Safe, Clean and Reliable Drinking Water Supply Act, thus authorizing the issuance of bonds in the amount of \$11,140,000,000 for the purpose of financing a drinking water and water supply reliability program.

Proposition 44: Rainy Day Budget Stabilization Fund Act of 2014.

Summary

The measure would alter the state's existing requirements for the Budget Stabilization Account (BSA), as established by Proposition 58. The BSA is a rainy day fund. Proposition 44 would also establish a Public School System Stabilization Account (PSSSA).

Proposition 45: Approval of Healthcare Insurance Rate Changes. Initiative Statute.

Summary

Proposition 45 requires health insurance rate changes to be approved by Insurance Commissioner before taking effect and requires sworn statement by health insurer as to accuracy of information submitted to Insurance Commissioner to justify rate changes. Furthermore, Proposition 45 provides for public notice, disclosure and hearing on health insurance rate changes, and subsequent judicial review. Does not apply to employer large group health plans. Prohibits health, auto and homeowners insurers from determining policy eligibility or rates based on lack of prior coverage or credit history.

Proposition 46: Drug and Alcohol Testing of Doctors. Medical Negligence Lawsuits. Initiative Statute.

Summary

Proposition 46 requires drug and alcohol testing of doctors and reporting of positive test to the California Medical Board. Further, requires Board to suspend doctor pending investigation of positive test and take disciplinary action if doctor was impaired while on duty. Proposition 46 would also require doctors to report any other doctor suspected of drug or alcohol impairment or medical negligence and require health care practitioners to consult state prescription drug history database before prescribing certain controlled substances. Lastly, would increase \$250,000 cap on pain and suffering damages in medical negligence lawsuits to account for inflation.

Proposition 47: Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

Summary

Proposition 47 requires misdemeanor sentence instead of felony for petty theft, receiving stolen property, and forging/writing bad checks when value or amount involved is \$950 or less and misdemeanor sentence instead of felony for certain drug possession offenses. Allows felony sentence for these offenses if person has previous conviction for crimes such as rape, murder or child molestation or is a registered sex offender. Requires resentencing for persons serving felony sentences for these offenses unless court finds unreasonable public safety risk. Applies savings to mental health and drug treatment programs, K-12 schools, and crime victims.

Proposition 48: Referendum to Overturn Indian Gaming Compacts.

Summary

If Proposition 48 is approved by the state's voters, it will ratify AB 277 (Ch. 51, Stats. 2013) and ratify two gaming compacts between California and, respectively, the North Fork Rancheria of Mono Indians, and the Wiyot Tribe. Proposition 48 would exempt execution of the compacts, certain projects, and intergovernmental agreements from the California Environmental Quality Act (CEQA). This measure is a veto referendum; this means that a "yes" vote is a vote to uphold or ratify the contested legislation (AB 277) that was enacted by the California State Legislature while a "no" vote is a vote to overturn AB 277.