

Date of Hearing: May 19, 2020

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 3075 (Gonzalez) – As Amended May 4, 2020

**SUBJECT:** Wages: enforcement

**SUMMARY:** Requires that articles of incorporation include an attestation that the filer is not affiliated, as specified, with an employer that has an outstanding judgment issued by the Division of Labor Standards Enforcement or a court of law for violation of any wage order or provision of the Labor Code.

Specifically, **this bill:**

- 1) Requires that articles of incorporation include an attestation signed by the filers under penalty of perjury that the purpose of the corporation is lawful and that the filer is not an owner, director, officer, managing agent, or any other person acting on behalf of an employer, that has an outstanding judgment issued by the Division of Labor Standards Enforcement or a court of law for violation of any wage order or provision of the Labor Code.
- 2) Clarifies that nothing in Part 4 of Division 2 of the Labor Code related to employment regulation and supervision shall be deemed to restrict the exercise of local police powers in a manner that is at least as stringent as set forth in the Labor Code.
- 3) States the intent of the Legislature to authorize local jurisdictions to enforce labor standards requirements regarding the payment of wages that are at least as stringent as those in the Labor Code.

**EXISTING LAW:**

- 1) Provides for the formation and governance of corporations. Requires a corporation to file certain documents, including articles of incorporation, with the SOS in order to form and stay in good standing with the state. (Division 1 of Title 1 of the Corporation Code, commencing with Section 100)
- 2) Specifies information that must be set forth in articles of incorporation, including the following information about the corporation: name, street address, mailing address, and the classes and numbers of shares the corporation is authorized to issue. (Section 202 of the Corporations Code)
- 3) Authorizes the Labor Commissioner as Chief of the Division of Labor Standards Enforcement (DLSE) to investigate employers for compliance with and take enforcement action for violation of various labor laws related to minimum wage and overtime, worker's compensation, unlawful retaliation, prevailing wages, apprenticeship standards, and related issues. (Chapter 4 of Division 1 of the Labor Code, commencing with Section 79)

- 4) Clarifies that nothing in Part 4 of Division 2 of the Labor Code related to employment regulation and supervision shall be deemed to restrict the exercise of local police powers in a more stringent manner.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

1) PURPOSE

According to the author:

Workers often face an uphill battle recovering their hard-earned wages even after winning wage judgements ordering their employers to pay. We have seen how business owners leave their company or transfer assets after they are caught in order to avoid payment. This fraudulent transfer leaves the worker with a judgment against a corporation with no assets, making the judgment worthless. If a worker cannot collect their unpaid wages, they struggle to pay rent or put food on the table.

Even amid the COVID-19 pandemic, many workers who were laid off still have not been paid what they were owed. We must hold employers who fail to pay their workers accountable. These lawbreaking employers should not be able to use loopholes, or even worse use this pandemic, to avoid paying hard working individuals the wages they are owed.

2) BACKGROUND

State law requires that employers follow rules related to wages, benefits, and job protections. The Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement (DLSE), is responsible for enforcing state labor laws. DLSE carries out its duties by adjudicating wage claims, investigating complaints, conducting on-site inspections at employers' locations, and administering exams and issuing permits to employers in certain industries.

State law provides DLSE with a variety of enforcement tools and remedies to carry out its duties. These tools include, among others, the following authorities:

- Examine the books and records of an employer for evidence of a violation,
- Issue a citation that carries a civil penalty,
- Adjudicate a wage claim and issue an award to a prevailing worker,
- Issue a citation for the payment of owed wages.

The courts also have the authority to enforce various provisions of state labor laws with a variety of civil and criminal remedies depending on the violation. An employer may appeal an administrative action taken by DLSE, upon which the court decides whether to uphold the administrative action, take no action against the employer, or take a different action than DLSE. Besides pursuing a claim through the administrative process conducted by DLSE, a worker may pursue civil litigation to recover amounts owed by an employer.

### 3) A CREATIVE WAY TO ENFORCE UNPAID WAGE CLAIMS

According to a report from the Legislative Analyst's Office published on February 19, 2020, California workers file about 30,000 wage claims each year.<sup>1</sup> In 2017, workers filed claims for a total of \$320 million in unpaid wages—about \$10,000 per claim on average—and recovered about \$40 million in total, or 12.5% of claims. Most workers who pursued claims through the hearing process administered by DLSE received an award, but about 60% recovered zero wages because the employer never paid the amount awarded.

A 2013 report authored by the UCLA Labor Center and the National Employment Law Project states that workers who try to enforce DLSE judgments for unpaid wages often find that their employers have disappeared, hidden assets, or shut down operations and reorganized as a new entity.<sup>2</sup> The report finds that in 60 percent of cases where judgments were issued against business entities by the DLSE, employers who were found to owe their workers for unpaid wages were also found to be “non-active” business entities by the California Franchise Tax Board or the California Secretary of State. “Non-active” businesses include those that have forfeited, cancelled, or dissolved status. In 24 percent of all cases, employers were found to be non-active before the DLSE was able to issue its finding.

This bill implicitly recognizes that corporations lack their own volition. Natural persons who own, direct, and manage the corporate entity must be held responsible for their actions. Workers are harmed when these natural persons violate labor laws and then evade the reach of law enforcement by shedding the garb of one corporate entity and subsequently donning a new corporate façade. This bill seeks to disrupt such an evasive maneuver by requiring a natural person who files articles of incorporation to attest under penalty of perjury that the purpose of the corporation is lawful and that the filer is not an owner, director, officer, managing agent, or any other person acting on behalf of an employer, that has an outstanding judgment issued by the Division of Labor Standards Enforcement or a court of law for violation of any wage order or provision of the Labor Code.

### 4) CONSIDERATIONS FOR REFINING THE BILL TO MEET AUTHOR'S INTENT

Based on information provided by the author's office regarding the intent of the bill, Committee staff offers the following considerations to further that intent.

#### Coverage of various business types

The bill covers only one type of business that is required to submit filings to the SOS: corporations. The author may consider whether similar requirements for other business types are appropriate. For example, many small- and medium-sized employers in industries where wage theft is more common, such as restaurants, agriculture, and construction, are not organized as corporations, but rather as limited liability corporations. In order to meet the author's intent of discouraging wage theft broadly, the author may extend similar requirements to articles of organization of a domestic limited liability company, an application to register of a foreign limited liability company, a certificate of limited partnership, a statement of partnership authority, and an application to register a limited liability partnership.

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<sup>1</sup> <https://lao.ca.gov/Publications/Report/4165>

<sup>2</sup> <https://www.labor.ucla.edu/publication/hollow-victories-the-crisis-in-collecting-unpaid-wages-for-californias-workers/>

### Definition of outstanding judgment

The bill uses the following clause, “*outstanding judgment* issued by the Division of Labor Standards Enforcement or a court of law for violation of any wage order or provision of the Labor Code.” Based on the construction of existing law in the Labor Code, it appears that the term *judgment* is only used when referring to an action by a court of law. DLSE, on the other hand, has statutory authority to issue citations, orders, decisions, and awards. In order to ensure that filers of articles of incorporation and courts understand the author’s intent, the bill may be amended to clarify the meaning of “outstanding judgment.”

### Range of violations covered by this bill could be expansive

The purpose statement from the author’s office provided to this Committee (and even the title of the bill provided by Legislative Counsel) suggests that the bill intends to provide another enforcement mechanism for a violation of wage laws. However, the language in the bill refers to “violation of any...provision of the Labor Code.” While wage laws are included in the Labor Code, many other important and technical issues related to employment are also included. If the author intends for this bill to cover only wage provisions of the Labor Code, the bill should be amended to specify divisions, parts, chapters, or sections that the author intends to cover.

### Enforcement by local jurisdictions

The bill amends two adjacent code sections with similar language referring to the ability of a local jurisdiction to enforce labor standards in a manner that is “at least as stringent as set forth” in the Labor Code. One of these amendments is simply stating legislative intent to authorize local jurisdictions to do so. It is unclear why the legislature would state its intent to authorize a local jurisdiction to do something, rather than directly authorizing a local jurisdiction to do that act. The author may consider an amendment to either clarify the meaning of that language or delete the language if deemed superfluous.

## 5) ARGUMENTS IN SUPPORT

As co-sponsor, SEIU California writes:

If workers cannot collect their unpaid wages even after going through a lengthy, complicated legal process, they often cannot pay their rent or keep up with their bills. If employers find loopholes and fail to pay wages owed to their workers, even after a court-ordered judgment, this undermines faith in our legal system and our state’s labor protections.

Assembly Bill 3075 will ensure employers cannot reorganize as a “new entity,” change their company name, or hide their assets to avoid paying fines and workers what they are owed after being caught. It will also enable local enforcement agencies to issue citations for wage violations that may appear available only to the state. Lawbreaking employers should not be able to use loopholes to avoid paying hard working individuals the wages they are owed.

## 6) ARGUMENTS IN OPPOSITION

The California Chamber of Commerce and various business associations write in opposition that the bill “provides for interference with corporate formation based on

unclear and unfair standards.” The opponents also argue that the bill would “result in chaotic and inconsistent enforcement of wage and hour laws by local jurisdictions.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California State Council of Service Employees International Union (SEIU California) (Co-Sponsor)

9 to 5

Bet Tzedek Legal Services

California Partnership for Working Families

Center on Policy Initiatives

Central Coast Alliance United for A Sustainable Economy

Clean Carwash Campaign

East Bay Alliance for A Sustainable Economy

Garment Worker Center

Instituto De Educacion Popular Del Sur De California (IDEPSCA)

Kiwa (Koreatown Immigrant Workers Alliance)

Los Angeles Alliance for A New Economy

Los Angeles Black Worker Center

Los Angeles Worker Center Network

National Day Laborer Organizing Network (NDLON)

National Domestic Workers Alliance

Pilipino Association of Workers and Immigrants Santa Clara

Pilipino Workers Center

Prevention Institute

San Jose/silicon Valley NAACP

Siren: Services Immigrant Rights and Education Network

Somos Mayfair

Southern California Coalition for Occupational Safety & Health

The Restaurant Opportunities Center of Los Angeles

Vietnamese American Roundtable

Warehouse Worker Resource Center

Working Partnerships USA

### **Oppose**

Acclamation Insurance Management Services

Allied Managed Care

Associated General Contractors of California

Auto Care Association

California Association for Health Services At Home

California Chamber of Commerce

California Land Title Association

California Manufacturers and Technology Association

California Retailers Association

California Trucking Association

CAWA - Representing the Automotive Parts Industry

Coalition of Small and Disabled Veteran Businesses  
Flasher Barricade Association  
National Federation of Independent Business (NFIB)  
Official Police Garages of Los Angeles  
Western Car Wash Association  
Western Growers Association

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