

October 5, 2017

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VIA PERSONAL DELIVERY

Hon. Xavier Becerra
Attorney General of California
1300 I Street, 17th Floor, P.O. Box 944255
Sacramento, CA 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Statute

Dear Ms. Johansson:

Pursuant to Article II, Section 10(d) of the California Constitution, I hereby submit the attached proposed Initiative Statute, entitled the "Worker Protection and Lawsuit Accountability Act," to your office and request preparation of a title and summary of the measure as provided by law. Included with this submission are the required proponent affidavits signed by the proponent of this measure pursuant to Sections 9001 and 9608 of the California Elections Code. My address as a registered voter is attached to this letter, along with a check for \$2,000.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Kurt Oneto (telephone: 916/446-6752).

Thank you for your assistance.

Sincerely,



Sean McNally, Proponent

Enclosure: Proposed Initiative Statute

Section 1. Title.

This Act shall be known and may be cited as the Worker Protection and Lawsuit Accountability Act.

Section 2. Findings and Declarations.

The People of the State of California find and declare as follows:

(a) Thousands of California workers are being taken advantage of by trial attorneys who abuse the California Private Attorney General Act (PAGA) to file frivolous lawsuits.

(b) As “Private Attorneys General”, these trial attorneys step into the shoes of public officials and make big contingency fee profits while harmed workers get very little in return.

(c) PAGA has backfired. Instead of making employees whole, it has enriched private trial attorneys. It is a failed experiment.

(d) Trial attorneys shouldn’t get rich on the backs of wronged employees, especially when bringing suit in the name of the State of California. By limiting the amount of fees trial attorneys can take, more money can go to harmed employees.

(e) Furthermore, trial attorneys shouldn't get rich by cheating the State of California out of millions of dollars in Labor Code penalties. Trial lawyers have made it common practice to avoid paying the State of California its fair share of penalties by re-characterizing PAGA settlements as class action resolutions—putting more money in the pockets trial attorneys and less in the hands of the harmed employees and the State of California.

(f) The current PAGA system for resolving labor disputes is broken with wronged employees often having to wait over a year to have their complaints resolved and often receiving just a small fraction of any awards.

(g) The Worker Protection and Lawsuit Accountability Act will speed resolution for harmed workers by clarifying that only employees who have been harmed can collect penalties, protecting employee privacy from broad discovery abuse, and helping avoid Labor Code

violations in the first place by directing the Labor Commissioner to provide guidance to employers on how to better comply with California labor law.

(h) Harmed employees should not have to pay trial attorneys acting as Private Attorneys General as much as 45% of their awards or damages. Instead, we need to cap the amount given to private attorneys practicing under the State's authority to 25% of the first \$100,000 recovered, and 12.5% of everything above that.

(i) Existing California law already applies similar caps on attorneys' fees in medical malpractice and worker's compensation cases. They have worked well in those instances and will work well here to protect harmed workers.

Section 3. Statement of Purpose.

The purpose of the Worker Protection and Lawsuit Accountability Act is to protect harmed workers by ensuring that they get their fair share of awards and damages when they are a victim of labor law violations, and are not being taken advantage of by trial attorneys who make big contingency fee profits. Trial attorneys shouldn't be permitted to bring lawsuits by stepping into the shoes of public officials to make millions while the harmed employees receive little financial benefit.

Section 4. Part 14 (commencing with Section 2699.55) is added to Division 2 of the Labor Code, to read:

PART 14. WORKER PROTECTION AND LAWSUIT ACCOUNTABILITY ACT OF 2018

CHAPTER 1. Employee Rights.

Section 2699.55. (a) By authority of this Act, every employee and applicant for employment in this state has the right to report, pursuant to the provisions of this Code, any unfair labor practice or other violation of California's labor laws that he or she has personally suffered or witnessed without being subject to discharge, demotion, discrimination, or retaliation, or the threat thereof.

(b) The Labor Commissioner and the Division of Labor Standards Enforcement shall use all powers available to them to protect employees and applicants for employment in this state

from any actual or threatened discharge, demotion, discrimination, or retaliation as a result of reporting any unfair labor practice or other violation of California's labor laws, or filing any complaint associated therewith.

(c) In addition to other remedies available, a person who violates section 98.6 of this Code is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation thereof, to be awarded to the employee or employees who suffered the violation.

Section 2699.56. Notwithstanding anything to the contrary in Section 2699, on and after the effective date of this Part, civil penalties recovered pursuant to Part 13 shall be distributed 50 percent to the aggrieved employees, and 50 percent to the Labor and Workforce Development Agency for administration and enforcement of labor laws.

CHAPTER 2. Attorney Responsibilities.

Section 2699.6. (a) An attorney shall not contract for or collect a contingency fee for representing any person seeking penalties or damages in connection with an action or complaint described in Section 2699.65 in excess of the following limits:

- (1) 25 percent of the first \$100,000 recovered.
- (2) 12.5 percent of any amount on which the recovery exceeds \$100,000.

(b) The limitations in subdivision (a) shall apply without exception regardless of whether the recovery is by settlement, arbitration, or judgment.

Section 2699.65. (a) The limits contained in Section 2699.6 shall apply without exception to all actions, and any recoveries thereunder, included in a complaint that:

- (1) Includes an action pursuant to Part 13.
- (2) Initially did include an action pursuant to Part 13, but was subsequently amended to delete that action.
- (3) Initially did not include an action pursuant to Part 13, but was subsequently amended to add an action pursuant to Part 13.

(b) If an action pursuant to Part 13 is brought for any act or omission but is thereafter dismissed, withdrawn, or abandoned, the limits contained in Section 2699.6 shall continue to apply without exception to any and all other ongoing or future actions alleging a violation of this Code based on the same acts or omissions.

Section 2699.7. On and after the effective date of this Part:

(a) A representative action pursuant to Part 13 may only be brought by an employee who has personally suffered an actual injury under each and every action contained in the complaint.

(b) In any action brought pursuant to Part 13, or in any action contained in a complaint that at any point also contained an action pursuant to Part 13, discovery rights shall be limited to information regarding employees in the same job classification at the same geographic location as the representative. An employee can petition the court for broader discovery rights, which shall only be granted upon a showing of good cause.

(c) All complaints alleging an unfair labor practice or other violation of California's labor laws shall be submitted under penalty of perjury.

(d)(1) Penalties may be awarded pursuant to Part 13 for any violation of this Code except for those for which a statutory penalty or civil penalty is specifically provided.

(2) Penalties shall only be awarded pursuant to Part 13 for a willful violation of this Code.

Section 2699.75. An employer shall not be subject to penalties for any violation of this Code or wage order of the Industrial Welfare Commission if the employer pleads and proves to the trier of fact that, at the time the alleged act or omission occurred, the employer was acting in good faith and in conformity with, and in reliance on, an applicable administrative regulation, order, ruling, approval, or interpretation of the Labor Commissioner. This defense shall apply even if, after the alleged act or omission occurred, the administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy upon which the employer relied is modified, rescinded, or is determined by judicial authority to be invalid.

Section 2699.8. As used in this Part, all of the following definitions shall apply:

(a) “Action” means any cause of action, allegation, claim, demand, or other assertion.

(b) “Complaint” means any judicial or administrative complaint, petition, pleading, or other suit.

(c) “Part 13” means Part 13 of Division 2 of the California Labor Code as it existed on January 1, 2017, any amendments thereto, and any successor or replacement laws.

(d) “Recovered” means the net sum obtained after deducting any costs incurred in connection with prosecution or settlement of the claim.

(e) “Representative” means an employee who brings an action pursuant to Part 13 on behalf of himself or herself and other current or former employees.

(f) “Representative action” means an action brought by an employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Part 13.

Section 2699.85. In any year in which an attorney receives, or contracts to receive, a contingency fee subject to this Part, the attorney shall, in addition to any other requirements imposed by the California State Bar or the Supreme Court, complete an additional eight (8) hours of State Bar-approved continuing legal education in the field of legal ethics.

Section 2699.9. This Part shall apply to actions and complaints alleging a violation of the Labor Code that are filed with the executive or judicial branches on or after October 6, 2017.

Section 5. Liberal Construction.

This Act shall be liberally construed in order to effectuate its purposes.

Section 6. Conflicting Measures.

(a) In the event that this initiative measure and another initiative measure or measures relating to private enforcement of labor laws shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(b) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

Section 7. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

Section 8. Legal Defense.

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.