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Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 62 (Durazo)
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TSG

SUBJECT

Employment: garment manufacturing

DIGEST

This bill reinforces existing law in order to increase the legal responsibility of fashion brands and garment manufacturers for employment violations taking place in their supply chains. The bill also prohibits the payments of wages on a per piece basis in the garment industry, unless authorized by a collective bargaining agreement, and makes it easier for garment workers to obtain compensation for unpaid wages from the Garment Manufacturers Special Account (GMSA).

EXECUTIVE SUMMARY

Violations of labor law have long plagued the garment manufacturing industry, which has an especially large presence in Los Angeles. To address the situation, California enacted statutes in 1999 that were meant to cut down on abuse and exploitation in this sector. Unfortunately, despite the enactment of those laws, sweatshop conditions, including safety hazards and wage theft, remain prevalent. In light of that, this bill proposes a series of measures meant to fortify the existing law in order to make it more effective. Of particular note, the bill would (1) impose joint and several liability - instead of proportional liability - on brands and garment manufacturers for labor violations that take place in their supply chains; (2) prohibit the use of piece rate to pay garment workers unless done pursuant to a collective bargaining agreement; and (3) facilitate the ability of garment workers to get compensation for their unpaid wages through the a special fund set aside for that purpose.

The bill is sponsored by Bet Tzedek Legal Services, the California Labor Federation, the Garment Worker Center, and Western Center on Law & Poverty. Support comes from organized labor and other workers' rights advocates. Opposition comes from business and trade associations, who contend that greater public enforcement of existing laws would be a better approach to solving the problem. The bill passed out of the Senate Labor, Public Employment, and Retirement Committee by a vote of 4-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “garment manufacturing” to mean sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or persons contracting to have those operations performed and other operations and practices in the apparel industry as may be identified by the Labor Commissioner. (Lab. Code § 2671(b).)
- 2) Defines “contractor” as any person who, with the assistance of employees or others, is primarily engaged in sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for another person. “Contractor” includes a subcontractor that is primarily engaged in those operations. (Lab. Code § 2671(d).)
- 3) Defines “person” as any individual, partnership, corporation, limited liability company, or association, and includes, but is not limited to, employers, manufacturers, jobbers, wholesalers, contractors, subcontractors and any other person or entity engaged in the business of garment manufacturing. “Person” does not include any person who manufactures garments by themselves, without the assistance of a contractor, employee, or others; or any person who engages solely in that part of the business engaged solely in cleaning, alteration, or tailoring. (Lab. Code § 2671(a).)
- 4) Requires that every employer engaged in the business of garment manufacturing keep accurate records of specified information about their employees and compensation practices for three years. (Lab. Code § 2673.)
- 5) Requires that a person engaged in garment manufacturing who contracts with a second person for the performance of garment manufacturing operations guarantee the payment of the applicable minimum wage and overtime compensation that are due from that second person to its employees that perform those operations. Allows employees to enforce this guarantee by filing a claim with the Labor Commissioner against the contractor and the guarantor or guarantors, if known, to recover damages. (Lab. Code § 2673.1.)
- 6) Establishes a procedure by which the Labor Commissioner dispenses with claims filed for unpaid wages or overtime payments. This includes notification to involved parties, the calling of a meet-and-confer conference, the holding of a hearing, and an

issuance of an order, decision, or award by the Labor Commissioner. (Lab. Code § 2673.1.)

- 7) Requires every person engaged in garment manufacturing to register with the Labor Commissioner. Also sets conditions of registration or renewal of registration, including the requirement that a registrant have a surety bond on file if they have committed a minimum wage or overtime violation within three years prior to the attempt to renew registration. (Lab. Code § 2675.)
- 8) Orders the Labor Commissioner to deposit 75 dollars of each registrant's annual registration fee into one separate account, which is to be disbursed by the commission only to persons damaged by failure to pay wages or benefits by any garment manufacturer, jobber, contractor, or subcontractor. (Lab. Code § 2675.5.)
- 9) States that a person engaged in garment manufacturing who contracts with any other person similarly engaged who has not registered with the commissioner is deemed an employer, and is jointly liable for any violation of the above registration requirements. (Lab. Code § 2677.)
- 10) Allows any employee of an unregistered garment manufacturer to bring a civil action against that employer to recover any wages, damages, or penalties incurred from a violation of the above registration requirements. Further allows such an employee to file a claim with the Labor Commissioner. In any civil action brought pursuant to this subdivision, the court shall grant a prevailing plaintiff's reasonable attorney's fees and costs. (Labor Code §2677.)

This bill:

- 1) Makes a series of findings and declarations regarding the ongoing prevalence of labor violations in the garment industry and the need to fortify existing laws intended to prevent such violations.
- 2) States the intent of the Legislature to fortify existing state protections against labor violations in the garment industry without preempting local laws that establish additional protections.
- 3) Adds "dying, altering a garment's design, causing another person to alter a garment's design or affixing a label on a garment" to the definition of "garment manufacturing" and to the activities that meet the definition of "contractor" within the garment industry.
- 4) Defines "garment manufacturer" or "manufacturer" to mean any person who is engaged in garment manufacturing who is not a contractor.

- 5) Defines “brand guarantor” to mean any person contracting for the performance of garment manufacturing, including sewing, cutting, making, processing, repairing, finishing, assembling, dying, altering a garment’s design, affixing a label on a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual.
- 6) Allows the Labor Commissioner to amend regulations for the purpose of clarity and consistency with current and future industry practices, but not to limit the scope of the definition of “garment manufacturing”.
- 7) Requires all garment manufacturing employers to keep records for four years of all contracts, invoices, purchase orders, work orders, style or cut sheets, a copy of the garment license of every person with whom the employer has entered into a garment manufacturing contract and any other documentation pursuant to which work was, or is being, performed. This documentation must include the names and contact information of the contracting parties.
- 8) Requires brand guarantors to keep accurate records for 4 years and adds the following documents to those requirements:
 - a) contract worksheets indicating the price per unit agreed to between the brand guarantor and any contractors;
 - b) all contracts, invoices, purchase orders, work or job orders, and style or cut sheets; and
 - c) a copy of the garment license of every person with whom the brand manufacturer has entered into a contract for garment manufacturing.
- 9) Requires a person engaged in garment manufacturing who contracts with another person for the performance of garment manufacturing operations to jointly and severally share all civil legal responsibility and civil liability for all workers employed by that contractor or brand guarantor.
- 10) Requires a person engaged in garment manufacturing who contracts with another person for the performance of garment manufacturing operations to be liable for and guarantee all of the following:
 - a) the full amount of unpaid minimum, regular, overtime, and other premium wages, reimbursement for expenses, any other compensation, damages, and penalties due to any and all employees;
 - b) liquidated damages owed to any and all employees;
 - c) the employee’s reasonable attorney’s fees and costs;
 - d) penalties for the failure to obtain valid worker’s compensation insurance.
- 11) Creates a rebuttable presumption, with respect to a claim filed to recover unpaid wages, that if an employee provides labels or other credible evidence that the work done was ultimately destined for a particular brand or garment manufacturer, then

that brand or garment manufacturer is considered to be a guarantor with respect to the claim. In such a case, an employee's claim will be presumed valid unless the brand guarantor, garment manufacturer, contractor or subcontractor provides specific, compelling, and reliable written evidence to the contrary.

- 12) Allows an aggrieved employee to recover liquidated damages equal to the unpaid wages or overtime compensation unlawfully withheld and makes a guarantor as defined by this bill liable for those liquidated damages if they have acted in bad faith.
- 13) Prohibits the paying of an employee in the garment manufacturing industry by the piece or unit or by piece rate, unless the employee is covered by a bona fide collective bargaining agreement that provides for the payment of premium wages for overtime and regular wages of not less than 30 percent more than the state minimum wage.
- 14) Imposes a \$200 statutory penalty per pay period on an employer who pays their employee on a piece-rate basis, enforceable by filing a claim against the employer with the Labor Commissioner.
- 15) Names the Garment Manufacturers Special Account (GMSA), which is funded by 75 dollars of each registrant's annual registration fee deposited with the Labor Commissioner. The commissioner disburses funds from the GMSA to persons damaged by the failure to pay wages and benefits by a garment manufacturer, jobber, brand guarantor, contractor, or subcontractor.
- 16) Requires that employees assign all claims and judgments to be paid from the GMSA to the Labor Commissioner, only after that employee's claim is determined to be valid.
- 17) Requires that any statutory damages or penalties recovered or assessed in an action be paid to the employee.
- 18) Requires that if an employee already has a final judgment that specifies the amount they are due, the Labor Commissioner must pay the claim and any interest from the GMSA, minus any amounts already covered by the claimant.
- 19) If no final judgment has been issued, the employee must submit evidence to support their claim. If this evidence is determined to be insufficient by the Labor Commissioner, a hearing to investigate the claim must be set.
- 20) Requires the employee be provided notice of the hearing and have the right to appear and present evidence. States that the employer does not have standing to appear as a party at the hearing.

- 21) Allows the Labor Commissioner to exercise discretion to determine the order and amount of payment on claims in order to maintain solvency of the GMSA. The Labor Commissioner may consider the nature of the violations, the economic need of the claimant, the age of the claim and any other factors that might be required by principles of justice and equity. Authorizes the Labor Commissioner to order an investigatory hearing to determine the validity of a claim seeking recovery from the GMSA.

COMMENTS

1. Background on the problem this bill is intended to address

The garment industry has a long and notorious history of labor abuse.¹ Because Los Angeles is a major hub for garment production, California has been no stranger to these problems. In an attempt to combat the issue, the Legislature enacted AB 633 (Steinberg, Ch. 554, Stats. 1999), the Garment Worker Protection Act in 1999. Among other things, AB 633 introduced two major innovations.

First, AB 633 made the entities contracting to have garments produced “guarantors” of the wages earned by the workers cutting and sewing the product. Under AB 633, in other words, if a particular clothing company orders shirts from a factory, and that factory fails to pay its workers properly for making the shirts, the clothing company is on the hook to pay the workers’ wages, even though the workers are employees of the factory, not the clothing company.

AB 633’s second major innovation was the creation of a backstop fund from which garment workers could obtain compensation for unpaid wages when there became no hope of recovering the money from the employer.

In spite of AB 633, however, there is strong evidence that labor abuses continue to plague the garment industry in California.

Just six years after AB 633 passed, a report from multiple nonprofit organizations monitoring the garment industry found that AB 633 had led to a sharp increase in wage claims made by garment workers and that it had dramatically improved the average amount that each individual garment worker making a claim was able to recover. Nonetheless, the report concluded that this probably still represented only a small fraction of the wage violations taking place in the industry. Ultimately, according to the report, “AB 633 is a powerful tool that has been ineffectively utilized by [the California

¹ See, generally, *Sweatshops in America*. Behring Center, Smithsonian National Museum of American History <https://americanhistory.si.edu/sweatshops> (as of Mar. 25, 2021).

Division of Labor Standards Enforcement] and hence ignored by many companies that continue to profit from sweatshop labor.”²

More recently, a 2016 study by the UCLA Labor Center documented that labor violations in the garment industry remain common. That study calculated that Southern California garment workers were making an average of only \$5.15 an hour, less than half the minimum wage at the time. The study also found evidence that unsafe conditions were widespread throughout the industry, with a majority of garment workers reporting that they worked in spaces with such poor ventilation that the heat and dust made it difficult to work, and even to breathe.³ That same year, a federal Department of Labor survey revealed that 85 percent of garment workers were earning less than minimum wage.⁴

Since existing law has proven insufficient to eradicate the problem of widespread labor violations in the garment industry, this bill proposes three additional measures: (a) strengthening laws to hold licensors, fashion brands, and garment manufacturers accountable for abuses taking place in their supply chains; (b) prohibiting the use of piece-rate as a basis for paying wages in the garment industry; and (c) making it easier for garment workers to obtain at least partial relief from the Garment Manufacturers Special Account.

2. Reinforcing and expanding the accountability of brands and manufacturers for what happens in their supply chains

This bill fortifies AB 633’s concept of making upstream contractors and brand guarantors responsible for violations that take place in their supply chains. The bill goes about this in four different ways: (a) establishing joint and several liability for labor violations to all parties in garment manufacturing supply chain; (b) establishing a rebuttable presumption that brand guarantors and manufacturers are liable for wage violations once a worker credibly shows that the products the worker was assembling were destined for that brand or manufacturer; (c) creating a rebuttable presumption that garment worker’s wage claims are valid; and (d) extending the retention requirement from three to four years for garment industry-related employment.

² Reinforcing the Seams: Guaranteeing the Promise of California’s Landmark Anti-Sweatshop Law, An Evaluation of Assembly Bill 633 Six Years Later (Sep. 2005) Asian Law Caucus, Asian Pacific American Legal Center, Garment Worker Center, Sweatshop Watch, Women’s Employment Rights Clinic <https://www.advancingjustice-la.org/sites/default/files/Reinforcing%20the%20Seams-%20Guaranteeing%20the%20Promise%20of%20California-s%20L.pdf> (as of Mar. 25, 2021) at p. 7.

³ Dirty Threads, Dangerous Factories: Health and Safety in Los Angeles’ Fashion Industry (Dec. 2016) UCLA Labor Center https://www.labor.ucla.edu/wp-content/uploads/2016/11/DirtyThreads_FINAL_web_single.pdf (as of Mar. 25, 2021).

⁴ Bergman, Labor Department Investigation Finds 85 Percent of LA Garment Factories Break Wage Rules (Nov. 17, 2016) KPCC <https://www.scpr.org/news/2016/11/17/66200/labor-department-investigation-finds-85-percent-of/> (as of Mar. 25, 2021).

a. Joint and several liability throughout the supply chain

AB 633 made brands and manufacturers *proportional* guarantors of the wages owed by anybody they directly contract with to make their garments. Thus, as things stand today, if a contractor in the garment industry fails to pay its workers properly, the brand guarantor or manufacturer is only on the hook to pay the part of those wages that corresponds to production of the brand or manufacturer's garments. (Lab. Code § 2673.1.)

For example, suppose Spiffy Jeans orders production of 250 pairs of its pants from a garment manufacturer, Stitch Boss. Fab Fashion orders production of 750 of its pants from Stitch Boss as well. Stitch Boss puts its employees to work cutting and assembling the orders. Later, the workers complain to the Labor Commissioner that, during the time that they were working on the Spiffy Jeans and Fab Fashion orders, Stitch Boss paid them less than the minimum wage. Pursuant to AB 633, the Labor Commission assesses the evidence and determines that the workers spent about 25 percent of their time on Spiffy Jeans' order and 75 percent of their time on the Fab Fashion order. Accordingly, if Stitch Boss does not pay the workers their unpaid wages and any associated penalties, Spiffy Jeans will be on the hook to pay the workers 25 percent of those wages and penalties while Fab Fashion will be responsible for the other 75 percent.

This bill would impose *joint and several liability* throughout the garment supply chain instead. Joint and several liability means that a person or entity can be held legally responsible for the full amount of harm done to another person, even if a third party was also partially or wholly responsible for causing that harm. In the context of the garment industry, this would mean that brand guarantors and garment manufacturers would act be responsible not just for the wages and penalties due on work performed on their products, but any work performed within the brand's supply chain.

In the example set forth above, for instance, under this bill both Spiffy Jeans and Fab Fashion would be on the hook to pay the workers all of the wages and penalties they are due, not just a percentage of it. Of course, if one of the joint and severally liable entities pays the entire amount of the wage violation, it can proceed to seek proportional indemnification from the other responsible entities. Thus, if Spiffy Jeans pays the workers the full amount, it can then seek indemnification from Fab Fashion for 75 percent of the bill and, similarly, if Fab Fashion pays the entire amount, it can seek indemnification from Spiffy Jeans for Spiffy Jean's 25 percent share. In other words, once the worker is made whole, the joint and severally liable entities are then free to fight among each other to ensure that each entity pays their corresponding share of the bill. To mitigate against the associated risks, brand guarantors and garment manufacturers could, and likely would, include indemnification clauses in their contracts with garment producers in their supply chains, and perhaps require that those producers carry bonds or insurance to cover any wage claim that might emerge.

The practical effect of this move would be to increase the likelihood that garment workers get paid in full for their labors. Joint and several liability strongly incentivizes brand guarantors to monitor their supply chains for labor violations because the brand guarantors have skin in the game. And if that increased vigilance fails to prevent the violations in the first place, joint and several liability expands the pool of people and companies from which the workers can collect their unpaid wages.

In contexts like the garment industry, where multiple contractual layers are involved in the production of a final product, the absence of joint and several liability actually creates an economic incentive for the actors higher up the supply chain to ignore violations taking place at lower levels. If lower level suppliers can pay sub-minimum wages or cut costs by brushing off safety concerns, then those lower level suppliers can provide their part of the overall product at a lower price to the next entity up on the supply chain. That next entity benefits from buying at the lower price, and so on up the supply chain. Even consumers benefit in the form of a lower price tag on the final product. In other words, cheating creates a competitive advantage that ricochets up the supply chain. The flip side, of course, is that workers lose, as do any honest businesses that are trying to compete while playing by the rules.

Imposing joint and several liability up the supply chain should further reverse the competitive advantage associated with cheating. Provided that the financial risk associated with getting caught cheating outweighs the financial benefits from cheating, joint and several liability should cause each player up the supply chain to carefully monitor what is happening at the layers beneath them. Why? Because through the joint and several liability, the players higher up will be on the hook to pay for every violation and any associated penalties that take place at those lower levels.

In this sense, the imposition of joint and several liability can be thought of as privatizing the monitoring and enforcement of labor laws. Instead of relying exclusively on public entities like the California Occupational Health and Safety Administration or the California Labor Commissioner to monitor every worksite for labor law violations, joint and several liability incentivizes businesses in the garment industry to police their supply chains themselves.

In opposition to this bill, the California Chamber of Commerce argues that the root cause of wage theft in the garment industry is better addressed by boosting public enforcement of existing laws:

[...] [T]his bill places enormous burdens on employers in the clothing industry, presumes that entities with no control over garment workers are liable for an employee's entire wage claim, and includes punitive enforcement measures. The bill does all of this without addressing the root cause of the problems that exist in the garment industry: the need for increased enforcement of

existing laws and education of workers and employers about California's labor laws.

More generally, the opposition argues that imposing joint and several liability in this context puts brand guarantors and garment manufacturers on the hook for conduct that is beyond their control. They point out that since brand guarantors and garment manufacturers are not directly in charge of the workplace where garments are being made, they do not necessarily even know what is happening there and do not have direct authority to make changes. While this is true, it can also be said that it is precisely the point behind the proposed imposition of joint and several liability in this bill. Joint and several liability requires brand guarantors and garment manufactures to become more vigilant about what is taking place in their supply chains: to ensure that they are contracting with reputable entities, to seek assurance (perhaps backed by bonding requirements, insurance, or indemnification agreements) that the workers in their supply chains are being paid in full, and maybe even to conduct some monitoring. In this way, brand guarantors and garment manufacturers would be incentivized to exert more of the sort of control over what happens in their supply chains that they currently say they lack.

b. New burden shifting system for establishing brand guarantor liability

This bill makes it more difficult for a brand guarantor to deny responsibility for a violation by establishing legal presumptions that those brand guarantors must overcome in order to be absolved of liability.

AB 633 made brands responsible for the unpaid wages in their supply chains, but AB 633 left the burden on the worker to show that the worker was involved in the brand's supply chain. Meeting this burden presents a steep challenge for the worker. Information about the contracts and relationships that make up a manufacturing supply chain is evidence that is almost always entirely in the hands of the companies involved. Workers will rarely have access to it. As a result, garment workers will often have great difficulty meeting their burden of proving where the products they worked on were ultimately destined. Garment worker advocates report that brands frequently respond to an allegation that a worker's claim falls within their supply chain with a simple denial in the form of a declaration. According to these advocates, since the garment worker rarely has a copy of the contract or invoice with which to prove otherwise, and the burden is on the worker, such declarations are frequently sufficient to carry the day.

In light of the informational asymmetry involved, this bill proposes an alternative system featuring burden-shifting. Specifically, the bill proposes that once a garment worker provides the Labor Commissioner with credible evidence that the products made by the worker were destined for a particular brand, the burden shifts to the brand to show that the garment worker making the claim was not, in fact, part of the brand's supply chain.

For example, imagine that a worker presents the Labor Commissioner with a bunch of leftover clothing labels from Spiffy Jeans as part of the worker's claim for unpaid wages against Stitch Boss. The worker goes on to explain – credibly, in the view of the Labor Commissioner Hearing Officer – that Stitch Boss gave the worker the labels and directed the worker to sew them into the pants the worker was assembling for Stitch Boss. Under this bill, the burden would now switch to Spiffy Jeans to show that the worker was not, in fact, part of Spiffy Jeans' supply chain.

In ordinary circumstances, asking an entity to prove that it was not involved in something in this sort of a way might be troubling. Proving a negative is notoriously difficult and for that reason, sometimes unfair. (*Sissoko v. Rocha* (9th Cir. 2006) 440 F.3d 1145, 1162 (“As a practical matter it is never easy to prove a negative. For this reason, fairness and common sense often counsel against requiring a party to prove a negative fact [...]” Internal citations omitted.)) In this instance, however, the informational asymmetry involved may justify the approach. Fairness and common sense also favor placing the burden of coming forward with evidence on the party with superior access to the affirmative information. (*Ibid.*) Here, the party with superior access to information about the supply chain is by far and away the brand.

Additionally, brands and garment manufacturers are required to keep records of their contractual relationships. (Lab. Code § 2673.) This bill further expands on those requirements. So long as they maintain the required documentation, brand guarantors and manufacturers should not have difficulty overcoming the presumption that the bill creates. In fact, the bill is clear that a brand can and should use those records to demonstrate that the garment worker was not part of its supply chain; a mere declaration to that effect will no longer suffice.

So, to return to the example discussed earlier, Spiffy Jeans could rebut the workers claim that Stitch Boss was making pants for Spiffy Jeans by submitting its records relating to all of its orders for pants to the Labor Commissioner. If the records are credible and complete and Stitch Boss cannot be found among them, then presumably Spiffy Jeans will have successfully overcome the presumption established by this bill.

c. Creating a rebuttable presumption that a garment worker's wage claim is valid

Ordinarily, when a worker files a claim for unpaid wages or violations of the minimum wages laws, the worker bears the burden of demonstrating the validity of the claim. This bill would instead direct the Labor Commissioner to presume that a garment worker's wage claim is valid and accurate, and the bill places the burden on all of the possible defendants – brand guarantors, contractors, and garment manufacturers – to prove otherwise. Moreover, the bill limits the evidence that the defendants can use to rebut the presumption. They must present “specific, compelling, and reliable written evidence” which “shall include accurate, complete, and contemporaneous records [...] including, but not limited to, itemized wage deduction statements, bona fide complete

and accurate payroll records, evidence of the precise hours worked by the employee for each pay period during the period of the claim, and evidence, including, but not limited to, a purchase order or invoice identifying the person or persons for whom garment manufacturing operations were performed.”

As the opponents to this bill point out, only the direct employer of the worker can reasonably be expected to possess all of these documents. Even a brand guarantor that is quite vigilant about monitoring its supply chain will not be present in every factory producing its clothes frequently enough to be able to provide “evidence of the precise hours worked by the employee.” Thus, in contrast to evidence about the supply chain, where the brand guarantors have vastly superior access, on the issue of the validity of the worker’s wage claim, it is the worker who has better access to the evidence and the brand guarantors who have almost none. Given this difference, the Committee may wish to consider whether the use of a rebuttable presumption is appropriate in the context of establishing the validity of the worker’s claim.

d. Extending the length and scope of the record retention requirement

Finally, the bill modestly extends what records garment brands and manufacturers must retain and for how long. Existing law requires garment industry employers to keep mostly employment-related information and only makes them keep these records around for three years. (Lab. Code § 2673.) This bill would require garment industry employers, as well as brand guarantors, to also retain records about their business contracts in addition; things like purchase orders, job orders, invoices, style sheets, and cut sheets. Having these records on hand will facilitate the resolution of disputes about whether specific wage violations took place within or outside of any particular supply chain. This bill would extend the amount of time these records must be kept to four years. This harmonizes the retention requirement with the state statute of limitations for bringing a claim based on breach of a written contract, including employment contracts, which is four years. (Code Civ. Proc. § 337(a).)

3. Restriction on the use of payment by the piece in the garment industry

Payment by the amount of time worked is the most common method for paying non-salaried employees, but employers can structure compensation in a variety of ways. Paying workers for each unit produced – so called “piece rate” – is another common approach. Piece rate is especially prevalent in agriculture and the garment industry, where speed and volume are key. Piece rate pay is designed to incentivize workers to produce as much as possible and as quickly as possible.

Historically, piece rate has also been used by unscrupulous employers to subvert the minimum wage. By paying piece rate, these employers could pay less than what the minimum hourly wage would have been, by setting the piece rate low enough that only the very fastest workers could produce enough pieces in an hour to earn the equivalent

of minimum wage. That practice is illegal in California: if an employer pays by the piece, the applicable hourly minimum wage must still act as a floor below which a worker's wages cannot drop. (Lab. Code § 226.2; *Balasanyan v. Nordstrom, Inc.* (S.D. Cal. 2012) 913 F. Supp. 2d 1001.) Nonetheless, according to the author and sponsors of this bill, paying a piece rate that results in a sub-minimum hourly wage remains a frequent practice in the garment industry.

Given how frequently piece rate is abused in garment industry, this bill proposes to curtail its use dramatically. Under the bill, piece rate could no longer be used as a garment worker's primary form of compensation. Garment manufacturers could still use per piece bonuses or other incentives for working quickly and producing high volume, but such compensation would have to come in addition to the minimum hourly wage, not as part of it.

The bill contains an exception to its general rule against the use of piece rate. It would permit piece rate to be used pursuant to a collective bargaining agreement, provided that the collective bargaining agreement expressly provides for: (1) wages, hours of work, and working conditions of the employees; (2) premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage; (3) stewards or monitors; and (4) a process to resolve disputes concerning nonpayment of wages. The author explains that the exception reflects confidence that, where the terms of employment are negotiated between an employer and a union, the relatively equal bargaining power and sophistication of both sides should be adequate to eliminate exploitative use of piece rate pay.

4. Facilitation of garment workers' access to compensation through the GMSA

As part its reforms and innovations for addressing labor violations in the garment industry, AB 633 created a backstop compensation fund, the Garment Manufacturers Special Account (GMSA). The GMSA is funded through the fees that AB 633 required garment manufacturers and contractors to pay as part of a mandatory registration process. (Lab. Code § 2675(a)(5).) From each registrant's overall fees, the Labor Commissioner must deposit \$75 into the GMSA. Garment workers who have not been paid their full earnings can apply to the Labor Commissioner for compensation out of this account. The idea is to ensure that garment workers get paid their due, even in circumstances - bankruptcy by the employer, most obviously - where it will be difficult or impossible for the worker to recover what they are owed from their employer.

According to the author and sponsors of the bill, deposits into the GMSA have not kept pace with the volume and amount of claims that garment workers have submitted. As a result, many garment workers were waiting years to obtain any relief. A recent state budget allocation has apparently addressed much of the backlog, but the author and

sponsors are concerned that the problem of backlogs and underfunding will soon return.

To try to address the issue, this bill makes some modifications to how claims on the GMSA are to be handled. Most notably, the bill spells out procedures that the Labor Commissioner is to follow when administering the account. Under these procedures, if the garment worker's claim has already been quantified in the form of an award or judgment, the Labor Commissioner is to pay out that amount upon verifying the authenticity of the award or judgment. If the garment worker's claim has not been reduced to a judgement or award, then the Labor Commission is to examine whatever evidence the worker submits in support of the worker's claim. If the evidence is strong, the Labor Commission may proceed with the claim against the employer through the meet-and-confer and Berman Hearing process. If the Labor Commission finds that the evidence submitted in support of the garment worker's claim is insufficient, then the Labor Commission is to convene an investigatory hearing, presumably to try to establish enough facts to enable the worker's claim to be approved or denied. In all instances, when the Labor Commission pays out money from the GMSA, the worker is to assign the debt owed to them over to the Labor Commission in exchange for the payout from the account. This gives the Labor Commission the ability to press on with its efforts to collect from the employer and, in the case of success, to reimburse the GMSA.

Additionally, the bill explicitly endows the Labor Commission with the authority to determine how best to allocate the money in the GMSA in the event that it is insufficient to cover all of the claims being made. The bill gives the Labor Commission broad discretion to prioritize some claims over others and to make partial payments on claims if it is necessary to keep the account solvent. The bill suggests that, in exercising this discretion, the Labor Commission consider the nature of the violations, the economic need of the claimant, the age of the claim, the likelihood of recovery from other sources besides the fund, and any other factors as may be required by principles of justice and equity.

5. Delegation of legislative authority to the Labor Commissioner

This bill empowers the Labor Commissioner to adopt and amend regulations to "clarify and refine" the bill's definitions of "brand guarantor," "garment manufacturing," and "contractor" so that those terms stay "consistent with current and future industry practices." This formulation appears to be intended to enable the law to stay relevant to an industry that is constantly evolving and has a history of exploiting loopholes. However, if the bill progresses out of this Committee, the author may wish to revisit and perhaps revise these provisions to make sure that they do not run afoul of the prohibition on delegation of legislative authority.

The doctrine prohibiting delegations of legislative power does not invalidate reasonable grants of power to an administrative agency, when suitable safeguards are established to guide the power's use and to protect against misuse. Accordingly, an unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy." (Gerawan Farming, Inc. v. Agricultural Labor Relations Bd. (2017) 3 Cal.5th 1118, 1146 [internal quotations and citations omitted.]

In the case of this bill, the fundamental policy issue is expressed by the Legislature, leaving only modifications to definitions in the hands of the Labor Commissioner. It is somewhat harder to say whether the bill in print provides sufficient direction to the Labor Commission regarding how go about altering the definitions of "brand guarantor," "garment manufacturing," and "contractor." The bill does instruct the Labor Commissioner that "the regulations shall not "limit the scope" of each definition, and perhaps that would be enough direction to satisfy a reviewing court. However, the bill does not provide guidance on how far the regulations could expand each definition. The inclusion of some additional guardrails might help to fortify the bill against possible constitutional attack on these grounds.

6. Confusing, possibly contradictory language regarding the evidentiary impact of the Deputy Labor Commissioner's "assessment" of a garment worker's claim

Existing law requires the Deputy Labor Commissioner assigned to a garment worker's wage claim to prepare an "assessment" of that claim for purposes of the meet-and-confer conference. (Lab. Code § 2673.1(d)(3).) Essentially, the "assessment" is a calculation of how much the claim would be worth assuming the worker's allegations are correct. The assessment operates in the context of the meet-and-confer conference as a way of framing any settlement conversation. It provides a good estimate of the maximum possible value of the claim. Existing law goes on to say that this assessment shall not be admissible during the subsequent hearing on the matter. (*Ibid.*) That makes sense because the assessment is simply a calculation of the maximum *possible* value of the claim.

Confusingly, though, this bill then states that the Deputy Labor Commissioner must present an "assessment" of the claim at the hearing. Of course, if the "assessment" prepared for the meet-and-confer conference is inadmissible at the hearing, then the Deputy Labor Commissioner should not be presenting it at the hearing. Presumably, the Deputy Labor Commissioner should be testifying at the hearing as to their findings of how much is, in fact, owed to the worker, if anything. Those findings may, or may not, correspond with the amount calculated in the assessment of the claim that the Deputy Labor Commissioner prepared for purposes of the meet and confer conference.

The author proposes to offer amendments intended to untangle this potential source of confusion, by distinguishing more carefully between the “assessment” that the Deputy Labor Commissioner is to prepare for purposes of the meet and confer conference, and the “findings” that the Deputy Labor Commissioner must testify to if the matter proceeds to a hearing.

7. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- eliminate the rebuttable presumption that a garment worker’s claim is valid and associated limitations on the evidence that could be used to rebut that presumption;
- clarify that a Deputy Labor Commissioner’s assessment of a garment worker’s wage claim prepared for purposes of the meet-and-confer conference is not admissible at the hearing and that the Deputy Labor Commissioner should instead testify as to their findings regarding the claim, which may or may not be the same as the assessment;
- make other non-substantive, technical changes; and
- add coauthors.

A mock-up of the amendments in context is attached to this analysis.

8. Arguments in support of the bill

According to the author:

[...] Garment workers’ are especially vulnerable in this health and economic crisis due in large part to widespread exploitation and lack of accountability in the industry. Even now, these highly skilled professionals are producing protective masks sometimes for as little as \$5 an hour. [...] Bad-actor manufacturers have found ways to circumvent the law to avoid liability, resulting in the entrenched exploitation of thousands of workers and millions in wages stolen from working women, their families and the communities of color where they spend their money. These loopholes have made the industry hostile to ethical garment companies trying to eliminate sweatshops, build a more inclusive and fair garment industry economy and ensure that “made in the USA” represents quality and justice. [...] SB 62 makes clear that a business contracting to have garments made is liable for unpaid minimum wage and overtime pay to the workers who manufacture those garments [...].

This bill will end the minimum wage carve out in the garment industry which allows manufacturers to pay workers by the piece –

or 'piece rate.' Not only does the piece rate system enable, and even justify, sub-minimum wage, it also creates unsafe working conditions, as garment workers are constantly racing against the clock to complete as many items as possible.

As sponsor of the bill, Bet Tzedek, the California Labor Federation, the Garment Workers Center, and Western Center on Law and Poverty write:

A landmark worker protection law when it was enacted in 1999, AB 633 (Steinberg), sought to end wage theft in the garment industry. In the beginning, it did. However, in the more than 20 years since its passage, retailers and manufacturers have found countless ways to circumvent the law to avoid liability, resulting in thousands of workers in California continuing to be exploited, experiencing wage theft due to subminimum wages, and being unable to recover their stolen wages. [...]

[N]umerous retailers and manufacturers frustrated AB 633's original purpose, avoiding liability for systemic abuse by creating layers of subcontracting, enabling retailers and manufacturers to claim that they do not fall under AB 633's definition of "garment manufacturer," and are therefore not liable for rampant and egregious wage violations. Until the original intent of AB 633 can be restored, and upstream liability can be established, the unrelenting problem of wage theft in the garment industry will continue.

9. Arguments in opposition to the bill

In opposition to the bill, a coalition of 21 business and trade associations led by the California Chamber of Commerce writes:

Manufacturers are jointly liable for the wages of the employees of garment contractors with whom they directly enter into contracts, just like other companies who exercise control over an employee's working conditions. SB 62 seeks to significantly broaden that joint liability by instituting a presumption that any company involved in a laundry list of garment related activity in California is liable for all wages and associated penalties sought by a garment workers, even if that company has no control over those workers. [...]

Nothing in SB 62 will address the problem of underground, bad actors in the garment industry evading the law. Instead, SB 62 simply eliminates piece rate work and allows those bad actors to

continue to operate with business as usual while passing the buck to companies that have no control over these workers. To eliminate the bad actors that presently operate outside of the law in this industry, the Legislature should look to its existing enforcement mechanisms and educating workers about their rights. [...]

This bill proposes to eliminate piece rate compensation for any employee engaged in the performance of garment manufacturing. Eliminating this form of payment is unnecessary given that California law already ensures that all time is compensated at no less than minimum wage. [...]

SB 62 also significantly expands the representative actions that can be pursued through Labor Code Private Attorneys General Act (PAGA). PAGA has plagued the employer community for years, with trial attorneys utilizing the law to leverage costly settlements for claims that lack merit. [...]

SB 62 also imposes a broad document retention policy that does not clearly identify the documents an employer must retain. [Emphasis in the original.]

SUPPORT

Bet Tzedek Legal Services (sponsor)
California Labor Federation (sponsor)
Garment Worker Center (sponsor)
Western Center on Law & Poverty (sponsor)
9 to 5
American Association of University Women - California
Alliance for Boys and Men of Color
Alliance of Californians for Community Empowerment
Alkala
American Civil Liberties Union of California
Arizona Sustainable Apparel Association
Asian Americans Advancing Justice - California
Astor + Orion
California Asset Building Coalition
California Catholic Conference
California Child Care Resource & Referral Network
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Domestic Workers Coalition

California Employment Lawyers Association
California Federation of Teachers
California Immigrant Policy Center
California Latinas for Reproductive Justice
California League of Conservation Voters
California Low-income Consumer Coalition
California Partnership
California Rural Legal Assistance Foundation
California Teamsters Public Affairs Council
California Women's Law Center
California Work & Family Coalition
Career Ladders Project
The Center for Popular Democracy
Central American Resource Center
Centro Legal de la Raza
Child Care Law Center
Clergy and Laity United for Economic Justice
Coalition to Abolish Slavery & Trafficking
Comunidades Indigenas en Liderazgo
Conscious Chatter
Consumer Attorneys of California
Courage California
East Bay Alliance for a Sustainable Economy
End Hunger!
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
Enji Studio Jewelry
Equal Rights Advocates
Fashion Revolution USA
Five Counties Central Labor Council
Food Chain Workers Alliance
Freefrom
Friends Committee on Legislation of California
Interfaith Center on Corporate Responsibility
Mara Hoffman Inc.
International Brotherhood of Electrical Workers, Local 617
Koreatown Immigrant Workers Alliance
La Causa Clothing
La Raza Centro Legal
Legal Aid at Work
Legal Aid of Marin
Los Angeles Alliance for a New Economy
Los Angeles County Board of Supervisors
Los Angeles County Chief Executive Office
Los Angeles County Democratic Party

Los Angeles County Federation of Labor
LYMI, Inc., DBA Reformation
The Maintenance Cooperation Trust Fund
Model Alliance
Mujeres Unidas y Activas
Nana Atelier & Toit Volant
National Association of Social Workers, California Chapter
National Council of Jewish Women-California
National Day Laborer Organizing Network
National Employment Law Project
National Women's Political Caucus of California
Neighborhood Legal Services of Los Angeles County
Opportunity Institute
Orange County Employees Association
Parent Voices
Partners for Dignity and Rights
Pre-Loved Podcast
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Public Counsel
Public Law Center
Raising California Together
Remake
Ruthie
San Mateo County Central Labor Council
Seeker Modern Monk
Senza Tempo Fashion, LLC
Shibori
Sierra Club California
South Bay AFL-CIO Labor Council
Southern California Coalition for Occupational Safety & Health
Southern California Fibershed
Stronger California Advocates Network
Swap Society, Inc.
Tact & Stone
Tonle, Inc.
Tradeswomen, Inc.
Triarchy
Unite Here International Union, AFL-CIO
United Food and Commercial Workers, Western States Council
Upcycle It Now
Utility Workers Union of America, AFL-CIO
Voices for Progress

Wage Justice Center
Warehouse Worker Resource Center
Women's Foundation of California
Worksafe
5 individuals

OPPOSITION

Beverly Hills Chamber of Commerce
Brea Chamber of Commerce
California Chamber of Commerce
California Manufacturing Technology Association
California Retailers Association
Carlsbad Chamber of Commerce
Civil Justice Association of California
Garden Grove Chamber of Commerce
Greater Riverside Chamber of Commerce
Hollywood Chamber of Commerce
Lodi Chamber of Commerce
Oceanside Chamber of Commerce
Oxnard Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Tulare Chamber of Commerce
Wilmington Chamber of Commerce

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1399 (Durazo, 2020) was substantially similar to this bill. SB 1399 died on the Assembly Floor.

AB 1701 (Thurmond, Ch. 804, Stats. 2017) held general contractors and subcontractors in the construction industry jointly liable for unpaid wages, including fringe benefits, and authorized civil actions to enforce the joint liability.

SB 588 (De León, Ch. 803, Stats. 2015) authorized the Labor Commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer.

AB 1897 (R. Hernández, Ch. 728, Stats. 2014) established joint liability between employers and labor contractors for unpaid wages and failure to secure worker's compensation insurance.

AB 633 (Steinberg, Ch. 554, Stats. 1999) created new regulations for garment manufacturers and their contractors to prevent wage theft within the industry. Created a special fund using money from garment manufacturer's registration fees to cover unpaid wage claims brought against an employer or contractor in the garment industry in cases where the claim cannot be paid by the violator.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 4, Noes 0)

Amended Mock-up for 2021-2022 SB-62 (Durazo (S))

Mock-up based on Version Number 99 - Introduced 12/7/20

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

Introduced by Senator Durazo
(Principal coauthors: Assembly Members Lorena Gonzalez and Kalra)
(Coauthors: Senator Skinner, Gonzalez, Hertzberg, and Leyva)
(Coauthors: Assembly Members Carrillo, and Jones-Sawyer, and L. Rivas)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

The garment industry in California is rife with violations of minimum wage law, overtime laws, and health and safety standards. California has the highest concentration of garment industry workers in the country.

Proper payment of wages, and paid time to wash hands or to disinfect work stations, to California's garment workers and every Californian is of vital importance to the welfare of our entire state, especially during the COVID-19 public health crisis in which many Californians are experiencing financial distress through no fault of their own.

So-called retailers contract with a network of manufacturers and subcontractors to produce their garments and dictate the pricing structure that causes wage violations. This leads to a vicious price competition, resulting in garment workers being paid an average of \$5.15 per hour, well below minimum wage.

In 1999, Assembly Bill 633 (Chapter 554 of the Statutes of 1999) (AB 633) authored by then Assembly Member Steinberg, was enacted with the purpose of preventing wage theft in the garment industry and creating access to justice for victims. Some retailers and manufacturers have spent the last 20 years finding ways to circumvent this law in order to avoid liability, resulting in thousands of garment workers in California being unable to recover their stolen wages.

These so-called retailers have frustrated the law, avoiding liability for this systemic abuse, by creating layers of subcontracting, which has enabled them to claim that they do not fall under the definition of “garment manufacturer,” as defined in AB 633, and are therefore not liable for these egregious wage violations. The intent of AB 633 must be restored, and upstream liability established, or the unrelenting problem of wage theft in the garment industry will continue.

Adding to this problem is the peculiar way in which garment workers are paid—by the piece. Not only does utilizing the piece rate enable, and even justify, subminimum wage, but it also creates unsafe working conditions, as garment workers are forced to constantly work as quickly as possible to complete as many items as possible in a workday.

COVID-19 has had a devastating impact on the garment industry, and its vulnerable workforce. Workers have lost their job and all prospects for income almost overnight, due to Safer at Home Orders, and the closure of all nonessential businesses. In response to these orders, most fashion brands canceled contracts with local manufacturers, sometimes without paying for current orders, and with no regard for the impact on garment workers. Workers were left without paid leave, severance, and in some instances, without final wages. The majority of workers are undocumented and ineligible for unemployment benefits or federal stimulus aid.

Workers are working behind locked doors and shuttered windows for apparel factories that are violating Safer at Home Orders. Without sanitization, these factories are endangering workers’ health while paying sweatshop wages. The fashion brands still contracting for this production are complicit in the exposure of workers to coronavirus infection and the violation of workers’ wage rights. Workers are forced to choose between loss of all wages or exposure to the virus.

Workers are working in factories that are making medical and nonmedical personal protective equipment (PPE), such as face masks and medical gowns. Most of these factories are taking only minimal measures to protect workers’ health and continue to pay workers subminimum wages by the piece rate, despite the essential and important nature of their labor. While some of this production is purchased by health care systems and companies with frontline workers, some of this production is for fashion brands shifting their product to masks or medical scrubs for individual sale. Just as with apparel production, they are complicit in exposing workers to infection and violating workers’ wage rights, and workers are forced to choose between loss of all wages or exposure to the virus.

Workers paid by a piece rate lose income when they take breaks, and are often reprimanded by their managers for doing so. This is especially concerning when frequent handwashing is necessary to prevent the spread of COVID-19 and is a clear obstacle to workers performing this necessary health safeguard.

SEC. 2. Section 2670 of the Labor Code is amended to read:

2670. (a) It is the intent of the Legislature to restore the purpose of Assembly Bill-AB 633 (Chapter 554 of the Statutes of 1999) (AB 633) to prevent wage theft against garment workers by clarifying ambiguities in the original language. AB 633 sought to ensure that persons who contracted to have garments manufactured were liable as guarantors for the unpaid wages and overtime of the workers making their garments.

Several manufacturers, however, have attempted to avoid liability as a guarantor by adding layers of contracting between themselves and the employees manufacturing the garments. This undermines the purpose of AB 633 because manufacturers have no incentive to ensure safe conditions or the proper minimum wage and overtime payments for the workers producing their garments if they do not face guarantor liability.

This act, therefore, revises this part to make clear that a person contracting to have garments made is liable for unpaid wages, damages, penalties, and other compensation owed to the workers who manufacture those garments regardless of how many layers of contracting that person may use.

AB 633 was also designed to ensure that underpaid, and unpaid, garment workers would be able to recoup their stolen wages, even when factories shut down, declared bankruptcy, or otherwise shirked their obligations to lawfully pay their workers. In order to make sure that these workers were made whole, AB 633 required that a portion of garment manufacturers' annual registration or renewal fees be deposited into a fund. However, in the last 20 years, registration and renewal fees have remained frozen in place, while minimum wage and worker claims have risen steadily, meaning the revenues flowing into the fund have not kept up with the demands on the fund. As a result, workers who have already proven that they are owed stolen wages are on a waiting list, waiting anywhere from 5 to 20 years, to be paid. While the Legislature recently passed a budget with a one-time appropriation of funds temporarily eliminating the waiting list, structural change is necessary in order to permanently eliminate the hardship placed on garment workers who are unable to recoup their stolen wages within a reasonable amount of time.

(b) By restoring the original intent of this part, the Legislature will be able to more effectively establish and regulate a system of registration, penalties, confiscation, bonding requirements, and misdemeanors for the imposition of prompt and effective criminal and civil sanctions against violations of, and especially patterns and practices of violations of, any of the laws as set forth herein and regulations of this state applicable to the employment of workers in the garment industry. The civil penalties provided for in this part are in addition to any other penalty provided by law. This part shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health, safety, and peace of the people of the State of California. Nothing herein shall prohibit a local municipality from enacting its own protections for workers employed in the garment industry, so long as those protections are equal to, or in addition to, the protections provided herein.

SEC. 3. Section 2671 of the Labor Code is amended to read:

2671. As used in this part:

(a) “Person” means any individual, partnership, corporation, limited liability company, or association, and includes, but is not limited to, employers, manufacturers, jobbers, wholesalers, contractors, subcontractors, and any other person or entity engaged in the business of garment manufacturing.

“Person” does not include any person who manufactures garments by oneself, without the assistance of a contractor, employee, or others; any person who engages solely in that part of the business engaged solely in cleaning, alteration, or tailoring; any person who engages in the activities herein regulated as an employee with wages as their sole compensation; or any person as provided by regulation.

(b) “Garment manufacturer” or “manufacturer” means any person who is engaged in garment manufacturing who is not a contractor.

(c) “Garment manufacturing” means sewing, cutting, making, processing, repairing, finishing, assembling, dyeing, altering a garment’s design, causing another person to alter a garment’s design, affixing a label to a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or any persons contracting to have those operations performed and other operations and practices in the apparel industry as may be identified in regulations of the Department of Industrial Relations consistent with the purposes of this part. The Department of Industrial Relations, through the Labor Commissioner, shall adopt, and may from time to time amend, regulations to clarify and refine this definition to be consistent with current and future industry practices, but the regulations shall not limit the scope of garment manufacturing, as defined in this subdivision.

(d) “Brand guarantor” means any person contracting for the performance of garment manufacturing, including sewing, cutting, making, processing, repairing, finishing, assembling, dyeing, altering a garment’s design, causing another person to alter a garment’s design, affixing a label on a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale and other operations and practices in the apparel industry as may be identified in regulations of the Department of Industrial Relations consistent with the purposes of this part. Contracts for the performance of garment manufacturing include licensing of a brand or name, regardless of whether the person with whom they contract performs the manufacturing operations or hires contractors or subcontractors to perform the manufacturing operations. The Department of Industrial Relations, through the Labor Commissioner, may adopt, and may from time to time amend, regulations to clarify and refine this definition to be consistent with current and future industry practices; however, the regulations shall not limit the scope of garment manufacturing, as defined in this section.

(e) "Commissioner" means the Labor Commissioner.

(f) "Contractor" means any person who, with the assistance of employees or others, is engaged in garment manufacturing by primarily engaging in sewing, cutting, making, processing, repairing, finishing, assembling, dyeing, altering a garment's design, causing another person to alter a garment's design, affixing a label on a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for another person, including, but not limited to, another contractor, garment manufacturer, or brand guarantor. "Contractor" includes a subcontractor that is primarily engaged in those operations. The Department of Industrial Relations, through the Labor Commissioner, may adopt, and may from time to time amend, regulations to clarify and refine this definition to be consistent with current and future industry practices; however, the regulations shall not limit the scope of garment manufacturing, as defined in this section.

SEC. 4. Section 2673 of the Labor Code is amended to read:

2673. (a) Every employer engaged in the business of garment manufacturing shall keep accurate records for four years which show all of the following:

- (1) The names and addresses of all garment workers directly employed by such person.
- (2) The hours worked daily by employees, including the times the employees begin and end each work period.
- (3) The daily production sheets, including piece rates.
- (4) The wage and wage rates paid each payroll period.
- (5) The contract worksheets indicating the price per unit agreed to between the contractor and manufacturer.
- (6) All contracts, invoices, purchase orders, work or job orders, and style or cut sheets. This documentation shall include the business names, addresses, and contact information of the contracting parties.
- (7) A copy of the garment license of every person engaged in garment manufacturing who is required to register with the Labor Commissioner pursuant to Section 2675, and with whom the employer has entered into a contract for the performance of garment manufacturing.
- (8) The ages of all minor employees.
- (9) Any other conditions of employment.

(b) Brand guarantors shall keep accurate records for four years that show all of the following:

(1) Contract worksheets indicating the price per unit agreed to between the brand guarantor and the contractor or manufacturer.

(2) All contracts, invoices, purchase orders, work or job orders, and style or cut sheets. This documentation shall include the business names, addresses, and contract information of the contracting parties.

(3) A copy of the garment license of every person engaged in garment manufacturing who is required to register with the Labor Commissioner pursuant to Section 2675, and with whom the employer has entered into a contract for the performance of garment manufacturing.

(c) The recordkeeping requirements in this section are in addition to the recordkeeping requirements set forth in this code and in the industrial commission wage orders.

SEC. 5. Section 2673.1 of the Labor Code is amended to read:

2673.1. (a) (1) To ensure that employees are paid for all hours worked, a garment manufacturer or brand guarantor who contracts with another person for the performance of garment manufacturing operations shall be jointly and severally liable with any manufacturer and contractor who performs those operations for the garment manufacturer or brand guarantor, for all of the following:

(A) The full amount of unpaid minimum, regular, overtime, and other premium wages, reimbursement for expenses, any other compensation, damages, and penalties due to any and all employees who performed the manufacturing operations for any violation of this code.

(B) Liquidated damages owed to any and all employees who performed the manufacturing operations pursuant to subdivision (d) of this section.

(C) The employee's reasonable attorney's fees and costs pursuant to subdivision (e).

(D) Civil penalties for the failure to secure valid workers' compensation coverage as required by Section 3700.

(2) Nothing in this section shall prevent or prohibit two or more parties, who are held jointly and severally liable under this section after a final judgment is rendered by the court, from establishing, exercising, or enforcing, by contract or otherwise, any lawful or equitable remedies, including, but not limited to, a right of contribution and indemnity against each other for liability created by acts of the other.

(b) Employees may enforce this section solely by filing a claim with the Labor Commissioner against the contractor, the manufacturer, and the brand guarantor or

guarantors, if known, to recover unpaid wages. Manufacturers and brand guarantors whose identity or existence is unknown at the time the claim is filed may be added to the claim pursuant to paragraph (2) of subdivision (c).

(c) Claims filed with the Labor Commissioner for payment of wages pursuant to subdivision (b) shall be subject to the following procedure:

(1) Within 10 business days of receiving a claim pursuant to subdivision (b), the Labor Commissioner shall give written notice to the employee, the contractor, and the identified manufacturer and brand guarantors of the nature of the claim and the date of the meet-and-confer conference on the claim. Within 10 business days of receiving the claim, the Labor Commissioner shall issue a subpoena duces tecum requiring the contractor and any identified manufacturer and brand guarantor to submit to the Labor Commissioner those books and records as may be necessary to investigate the claim and determine the identity of any potential manufacturers and brand guarantors for the payment of the wage claim, including, but not limited to, invoices for work performed by any and all persons during the period included in the claim. Compliance with a request for books and records, within 10 days of the mailing of the notice, shall be a condition of continued registration pursuant to Section 2675. At the request of any party, the Labor Commissioner shall provide to that party copies of all books and records received by the Labor Commissioner in conducting its investigation.

(2) Within 30 days of receiving a claim pursuant to subdivision (b), the Labor Commissioner shall send a notice of the claim and of the meet-and-confer conference to any other person who may be a manufacturer or brand guarantor with respect to the claim.

(3) Within 60 days of receiving a claim pursuant to subdivision (b), the Labor Commissioner shall hold a meet-and-confer conference with the employee, the contractor, and all identified manufacturers and brand guarantors to attempt to resolve the claim. Prior to the meet-and-confer conference, the Labor Commissioner shall conduct and complete an investigation of the claim, shall make an ~~finding and~~ assessment of the amount of wages damages, penalties, expenses, and other compensation owed, and shall conduct an investigation and determine liability. The investigation shall include, but not be limited to, interviewing the employee and their witnesses and making an ~~finding and~~ assessment of the amounts due, if any, to the employee. If an employee provides the Labor Commissioner with labels, or the equivalent thereto, from a brand guarantor or garment manufacturer, or other information that the commissioner finds credible relating to the identity of any brand guarantor or garment manufacturer for whom the employee performed garment manufacturing operations, there shall be a presumption that the brand guarantor or garment manufacturer is liable with the contractor for any amounts found to be due to the employee, as set forth in paragraph (1) of subdivision (a). An employee's claim of hours worked, and wages, damages, penalties, expenses, and other compensation due, including the claim of liability of a brand guarantor or garment manufacturer upon provision by the employee of labels or other credible information about work performed for any person, shall be presumed valid and shall be the Labor Commissioner's

assessment, unless the brand guarantor, garment manufacturer, or contractor provides specific, compelling, and reliable written evidence to the contrary. That evidence from the brand guarantor, garment manufacturer, or contractor shall include accurate, complete, and contemporaneous records pursuant to Sections 226, 1174, and 2673, and the industrial commission wage order, including, but not limited to, itemized wage deduction statements, bona fide complete and accurate payroll records, evidence of the precise hours worked by the employee for each pay period during the period of the claim, and evidence, including a purchase order or invoice identifying the person or persons for whom garment manufacturing operations were performed. In the absence of the provision of that evidence, or the failure to timely respond to a subpoena pursuant to paragraph (1), a written declaration from a brand guarantor, garment manufacturer, or contractor is not sufficient to rebut the presumption of validity of the worker's claim and liability of the respective parties. If the Labor Commissioner finds falsification by the garment manufacturer or contractor of payroll records submitted for any pay period of the claim, any other payroll records submitted by the garment manufacturer or contractor shall be presumed false and disregarded.

The Labor Commissioner shall present their ~~findings and~~ assessment of the amount of wages owed to the parties at the meet-and-confer conference and shall make a demand for payment of the amount of the assessment. If no resolution is reached, the Labor Commissioner shall, at the meet-and-confer conference, set the matter for hearing pursuant to paragraph (4). The Labor Commissioner's assessment, pursuant to this paragraph, of the amounts due to an employee is solely for purposes of the meet-and-confer conference and shall not be admissible or be given any weight in the hearing conducted pursuant to paragraph (4). If the Labor Commissioner has not identified any garment manufacturer or brand guarantor after investigation and the matter is not resolved at the conclusion of the meet-and-confer conference, the Labor Commissioner shall proceed against the contractor pursuant to Section 98.

(4) The hearing shall commence within 30 days of, and shall be completed within 45 days of, the date of the meet-and-confer conference. The Labor Commissioner shall present their findings ~~and assessment~~ at the hearing. Any party may present evidence at the hearing to support or rebut the proposed findings. If an employee has provided the Labor Commissioner with labels, or the equivalent thereto, from a brand guarantor or garment manufacturer, or provides other information or testimony that the Labor Commissioner finds credible relating to the identity of any brand guarantor or garment manufacturer, for whom the employee performed garment manufacturing operations, there shall be a presumption that the brand guarantor or garment manufacturer is liable with the contractor for any amounts found to be due to the employee, as set forth in paragraph (1) of subdivision (a). ~~An employee's claim of hours worked, as well as wages, damages, penalties, expenses, and other compensation due, including the claim of liability of a brand guarantor or garment manufacturer upon provision by the employee of labels or other credible information about work performed for any person, shall be presumed valid, and shall be the Labor Commissioner's assessment, unless the brand guarantor, garment manufacturer, or contractor provides specific, compelling, and reliable written evidence to the contrary. That evidence from the brand guarantor, garment manufacturer, or contractor shall include, accurate, complete, and~~

~~contemporaneous records, pursuant to Sections 226, 1174, and 2673, and the industrial commission wage orders, including, but not limited to, itemized wage deduction statements, bona fide complete and accurate payroll records, evidence of the precise hours worked by the employee for each pay period during the period of the claim, and evidence, including, but not limited to, a purchase order or invoice identifying the person or persons for whom garment manufacturing operations were performed. In the absence of the provision of that evidence, or the failure to timely respond to a subpoena pursuant to paragraph (1),~~ Aa written declaration or testimony from a brand guarantor, garment manufacturer, or contractor is not sufficient to rebut the presumption of **validity of the worker's claim and** liability of the respective parties. If the Labor Commissioner finds falsification by the garment manufacturer or contractor of payroll records submitted for any pay period of the claim, any other payroll records submitted by the garment manufacturer or contractor shall be presumed false and disregarded. Except as provided in this paragraph, the hearing shall be held in accordance with the procedure set forth in subdivisions (b) to (h), inclusive, of Section 98. It is the intent of the Legislature that these hearings be conducted in an informal setting preserving the rights of the parties.

(5) Within 15 days of the completion of the hearing, the Labor Commissioner shall issue an order, decision, or award with respect to the claim and shall file the order, decision, or award in accordance with Section 98.1.

(d) An employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully withheld, as set forth in Section 1194.2, and liquidated damages in an amount equal to unpaid overtime compensation due. A garment manufacturer or brand guarantor under subdivision (a) shall be liable for those liquidated damages if the garment manufacturer or brand guarantor has acted in bad faith, including, but not limited to, failure to pay or unreasonably delaying payment to the contractor, unreasonably reducing payment to its contractor where it is established that the garment manufacturer or brand guarantor knew or reasonably should have known that the price set for the work was insufficient to cover the wages owed by the contractor, asserting frivolous defenses, or unreasonably delaying or impeding the Labor Commissioner's investigation of the claim.

(e) If either the contractor, garment manufacturer, or brand guarantor refuses to pay the assessment, and the employee prevails at the hearing, the party that refuses to pay shall pay the employee's reasonable attorney's fees and costs. If the employee rejects the assessment of the Labor Commissioner and prevails at the hearing, the contractor shall pay the employee's reasonable attorney's fees and costs. The garment manufacturer and brand guarantor shall be jointly and severally liable with the contractor for the attorney's fees and costs awarded to an employee.

(f) Any party shall have the right to judicial review of the order, decision, or award of the Labor Commissioner made pursuant to paragraph (5) of subdivision (c) as provided in Section 98.2. As a condition precedent to filing an appeal, the contractor, garment manufacturer, or brand guarantor, whichever appeals, shall post a bond with the Labor Commissioner in an amount equal to one and one-half times the amount of the award.

No bond shall be required of an employee filing an appeal pursuant to Section 98.2. At the employee's request, the Labor Commissioner shall represent the employee in the judicial review as provided in Section 98.4.

(g) If the contractor, garment manufacturer, or brand guarantor appeals the order, decision, or award of the Labor Commissioner and the employee prevails on appeal, the court shall order the contractor, garment manufacturer, or brand guarantor, as the case may be, to pay the reasonable attorney's fees and costs of the employee incurred in pursuing their claim. If the employee appeals the order, decision, or award of the Labor Commissioner and the contractor, garment manufacturer, or brand guarantor prevails on appeal, the court may order the employee to pay the reasonable attorney's fees and costs of the contractor, garment manufacturer, or brand guarantor only if the court determines that the employee acted in bad faith in bringing the claim.

(h) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provision of state or federal law. If a finding and assessment is not issued as specified and within the time limits in paragraph (3) of subdivision (c), the employee may bring a civil action for the recovery of unpaid wages pursuant to any other rights and remedies under any other provision of the laws of this state unless, prior to the employee bringing the civil action, the garment manufacturer or brand guarantor files a petition for writ of mandate within 10 days of the date the assessment should have been issued. If findings and assessments are not made, or a hearing is not commenced or an order, decision, or award is not issued within the time limits specified in paragraphs (4) and (5) of subdivision (c), any party may file a petition for writ of mandate to compel the Labor Commissioner to issue findings and assessments, commence the hearing, or issue the order, decision, or award. All time requirements specified in this section shall be mandatory and shall be enforceable by a writ of mandate.

(i) The Labor Commissioner may enforce the joint and several liability of a garment manufacturer or brand guarantor described in this section in the same manner as a proceeding against the contractor. The Labor Commissioner may, with or without a complaint being filed by an employee, conduct an investigation as to whether all the employees of persons engaged in garment manufacturing are being paid all minimum, regular, overtime, and other premium wages, reimbursement for expenses, any other compensation, damages, and penalties due and, with or without the consent of the employees affected, commence a civil action to enforce joint and several liability described in this section. Prior to commencing such a civil action and pursuant to rules of practice and procedure adopted by the Labor Commissioner, the commissioner shall provide notice of the investigation to the garment manufacturer or brand guarantor and the employee, issue findings and an assessment of the amount of wages due, hold a meet-and-confer conference with the parties to attempt to resolve the matter, and provide for a hearing.

(j) Except as expressly provided in this section, this section shall not be deemed to create any new right to bring a civil action of any kind for unpaid minimum, regular, overtime, and other premium wages, reimbursement for expenses, any other

compensation, damages, penalties, attorney's fees, or costs against a brand guarantor, garment manufacturer, or contractor.

(k) The payment of the wages provided in this section shall not be used as a basis for finding that the brand guarantor or registered garment manufacturer making the payment is a joint employer, coemployer, or single employer of any employees of a contractor that is also a registered garment manufacturer.

(l) The Labor Commissioner may, in their discretion, revoke the registration under this part of any registrant that fails to pay, on a timely basis, any wages awarded pursuant to this section, after the award has become final.

(m) The Labor Commissioner may also enforce this section by issuing stop orders or citations. The procedures for issuing, contesting, and enforcing judgments for citations issued by the Labor Commissioner under this section shall be the same as those set forth in subdivisions (b) ~~through to~~ (k), inclusive, of Section 1197.1.

(n) Any statutory damages or penalties recovered or assessed in an action brought under this section shall be payable to the employee.

SEC. 6. Section 2673.2 is added to the Labor Code, to read:

2673.2. (a) To ensure that employees are paid for all hours worked, an employee engaged in the performance of garment manufacturing shall not be paid by the piece or unit, or by the piece rate. Nothing in this section shall be deemed to prohibit incentive-based bonuses. This section shall not apply to workplaces where employees are covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, and working conditions of the employees; premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage; stewards or monitors; and a process to resolve disputes concerning nonpayment of wages.

(b) In addition to, and entirely independent and apart from, any other penalty provided in this code, any garment manufacturer or contractor who violates subdivision (a) shall be subject to statutory damages of two hundred dollars (\$200) for each pay period in which the employee is paid by the piece rate.

(c) This section may be enforced solely by filing a claim with the Labor Commissioner against the contractor, manufacturer, and the brand guarantor or guarantors, if known. Manufacturers and brand guarantors whose identity or existence is unknown at the time that the claim is filed may be added to the claim pursuant to paragraph (2) of subdivision (c) of [Section 2673.1](#).

(d) The Labor Commissioner may also bring an action to enforce this section under Section 98.3 or issue a citation against the garment manufacturer or contractors who violate this section. The procedure for issuing, contesting, and enforcing judgments for

citations issued by the commissioner pursuant to this section shall be the same as those set forth in subdivisions (b) to (l), inclusive, of Section 1197.1.

(d) Any statutory damages or penalties recovered or assessed in an action brought under, or a citation issued by the Labor Commissioner pursuant to, this section or Section 98.3, shall be payable to the employee.

SEC. 7. Section 2675.5 of the Labor Code is amended to read:

2675.5. (a) The commissioner shall deposit seventy-five dollars (\$75) of each registrant's annual registration fee, required pursuant to paragraph (5) of subdivision (a) of Section 2675, into a separate account known as the Garment Manufacturers Special Account. Funds from the Garment Manufacturers Special Account shall be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages, damages, penalties, expenses, and other compensation and benefits by any garment manufacturer, brand guarantor, or contractor.

(1) In making these determinations, the Labor Commissioner shall disburse amounts from the fund to ensure the payment of wages and benefits, interest, penalties, and any damages or other monetary relief arising from the violation of orders of the Industrial Welfare Commission or from a violation of this code, including statutory penalties recoverable by an employee, determined to be due to a garment worker by a registered or unregistered garment business.

(2) A disbursement shall be made pursuant to a claim for recovery from the fund in accordance with procedures prescribed by the Labor Commissioner.

(3) Before receiving any payment from the fund, an employee shall assign to the Labor Commissioner all of the employee's claims and judgments to be paid from the fund; however, the assignment shall not be required until the employee's claim is determined by the Labor Commissioner to be valid and payment is ready to be issued from the fund. Any disbursed funds subsequently recovered by the Labor Commissioner, pursuant to an assignment of the claim to the commissioner for recovery, including recovery from a surety under a bond pursuant to Section 2675, or otherwise recovered by the Labor Commissioner from a liable party, shall be returned to the Garment Manufacturers Special Account.

(b) The remainder of each registrant's annual registration fee not deposited into the Garment Manufacturers Special Account to subdivision (a) shall be deposited in a subaccount and applied to costs incurred by the commissioner in administering the provisions of Section 2673.1, Section 2675, and this section, upon appropriation by the Legislature.

(c) (1) The Labor Commissioner shall determine whether a claim is accepted, and the amount of money, if any, that is to be disbursed from the Garment Manufacturers Special Account on an accepted claim.

(2) If the amount due to the employee has already been established by a final judgment from any court or a final citation or award issued by the Labor Commissioner, the Labor Commissioner shall pay from the fund that amount, less any amounts already recovered by the claimant, along with interest accrued by law after the date of the determination. Under these circumstances, the Labor Commissioner's determinations regarding the fund application shall be limited to determining the authenticity of documents supporting the claim, the amount of any payments already recovered by the employee, and whether the claim arises from the failure to pay wages and benefits by a contractor, garment manufacturer, or brand guarantor.

(3) If the employee has not obtained final judgment against the employer and the Labor Commissioner has not issued a final award or citation, the claimant shall submit evidence supporting the validity and amount of the claim. If the Labor Commissioner is able to locate and serve the employer, and proceedings against the employer are not stayed by operation of the law, the Labor Commissioner may set a hearing on the claims pursuant to Section 98 or 2673.1-~~or 98~~.

(d) If the Labor Commissioner determines that the evidence provided by the employee with their claim is insufficient to show that they are entitled to payment of the amount sought from the fund, the Labor Commissioner shall set a hearing to investigate the claim pursuant to subdivision (e).

(e) (1) The Labor Commissioner shall have the authority to order an investigatory hearing to determine the validity of a claim seeking recovery from the Garment Manufacturers Special Account, including the amount of any damages actually suffered by the employee, if any. The employee shall be provided notice of the hearing and shall have the right to appear and to present evidence and argument supporting their claim. Although the employer may be subpoenaed as a witness at the hearing, notice of the hearing does not need to be served on the employer and the employer shall not have standing to appear as a party at the hearing. The Labor Commissioner shall issue, serve, and enforce any necessary subpoenas.

(2) The hearing shall be conducted by a deputy labor commissioner and may be held in the Division of Labor Standards Enforcement's district office having jurisdiction of the geographic location where the nonpayment of wages allegedly occurred, or the Labor Commissioner may designate any other venue they deem appropriate.

(f) Notwithstanding any other provision of this section, if the Labor Commissioner believes that the claims made to the fund may exceed the ability of the fund to pay all current and anticipated future claims over the following 12 months, the Labor Commissioner may exercise discretion to determine the order of payment of claims and may pay existing claims in part or pro rata in order to maintain the solvency of the fund. Any claims that have been paid in part or pro rata shall be deemed to be pending with the Labor Commissioner until the claims are paid in full. In exercising this discretion, the Labor Commissioner may consider the nature of the violations, the economic need of

the claimant, the age of the claim, the likelihood of recovery from other sources besides the fund, and any other factors as may be required by principles of justice and equity.