

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 988 (Wiener)
Version: April 1, 2024
Hearing Date: April 16, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Freelance Worker Protection Act

DIGEST

This bill establishes the Freelance Worker Protection Act to require that hiring parties of freelance workers for professional services of a specified amount provide freelance workers with a written contract with specified terms, pay freelance workers by the date specified in the contract or no later than 30 days after the work is completed, and to retain a copy of the contract for at least four years. This bill would also prohibit a hiring party from discriminating or taking an adverse action against a freelance worker for exercising their rights, and provides for enforcement and specified damages in court by an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor.

EXECUTIVE SUMMARY

More and more Californians are engaging in freelance work every year. However, because freelance workers are not employees and often do not have written contracts when they provide services, they can be vulnerable to late or non-payment by a hiring party. In order to provide freelance workers with more protections and rights, this bill requires that a hiring party provide a written contract with specified information to a freelance worker when the contract is for 250 dollars or more of services, or when the parties have contracts totaling 250 dollars or more over four months. This bill also requires a hiring party pay a freelance worker by the date specified in the contract, or no later than 30 days after the work has been completed, if no date is specified. This bill prohibits a hiring party from retaliating against a freelance worker for exercising their rights, and from requiring freelance workers to accept less compensation or perform more work or grant more intellectual property rights in exchange for timely payment. This bill provides for enforcement by an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor, and provides for damages as specified. SB 988 is sponsored by the California Teamsters Public Affairs Council, and is supported by the National Writer's Union, National Press Photographer's Association, the American

Photographic Artists, Inc., the American Photographic Artists of San Francisco, Inc., Media Alliance, and CAMEO. It is opposed by the California Chamber of Commerce.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA), and vests it with authority to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code § 50.5.)
- 2) Establishes within the DIR various entities, including the Labor Commissioner (LC), the Division of Workers Compensation (DWC), and the California Division of Occupational Safety and Health. (Labor Code § 56.)
- 3) For the purposes of the Labor Code, the Unemployment Insurance Code, and of wage orders of the Industrial Welfare Commission, specifies that a person providing labor or services for remuneration is considered an employee rather than an independent contractor, unless the hiring entity demonstrates all of the following:
 - a) that the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract and in fact;
 - b) that the person performs work that is outside the usual course of the hiring entity's business; and
 - c) that the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. (Labor Code § 2775.)
- 4) Excludes an itemized list of occupations and arrangements from the test for determining if an individual is an employee or an independent contractor described in (3), above, and provides that the standard is instead the standard in the California Supreme Court case *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, if a specified list of conditions are met. The exclusions include:
 - a) bona fide business-to-business contracting relationships, as specified;
 - b) referral agency and service provider relationships, as specified;
 - c) recording artists, songwriters, record producers, and others involved in the creating, marketing, promoting, or distributing of sound recordings or compositions;
 - d) a physician or surgeon or similar medical professional as specified; and
 - e) contracts for "professional services," as specified.

- 5) Defines “professional services,” for the purpose of excluding contracts for professional services from the test in (3), above, for determining whether a person providing labor or services is an employee or independent contractor, as the following services:
 - a) marketing, as specified;
 - b) administrator of human resources, as specified;
 - c) travel agent services, as specified;
 - d) graphic design;
 - e) grant writer
 - f) fine artist, as specified;
 - g) services of an individual licensed to practice before the Internal Revenue Service, such as a licensed tax attorney or preparer;
 - h) payment processing agent through an independent sales organization;
 - i) services by still photographers, photojournalists, videographer, or photo editors, as specified;
 - j) services provided by a freelance writer, translator, editor, copy editor, illustrator, or newspaper cartoonist, as specified;
 - k) services provided by an individual as a content contributor, advisor, producer, narrator, or cartographer for a journal, book, periodical, evaluation, or other publication, as specified;
 - l) services by a licensed esthetician, electrologist, manicurist, barber, or cosmetologist, as specified;
 - m) a specialized performer hired by a performing arts company or organization to teach a master class for no more than one week;
 - n) services by an appraiser, as defined;
 - o) services by a registered professional forester.

- 6) Defines a “public prosecutor” as the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor, for the purposes of alternative enforcement of labor laws under Sections 180 to 182. (Labor Code § 180.)

This bill:

- 1) Defines, for the purposes of the provisions of this bill, the following terms:
 - a) “freelance worker” to mean a person or organization composed of no more than one person, whether or not incorporated or using a trade name, that is hired or retained as an independent contractor by a hiring party to provide professional services, as defined, in exchange for an amount equal to or greater than \$250, on its own or in total between all agreements between the parties over a four month period;
 - b) “hiring party” to mean a person or organization in the State of California that retains a freelance worker to provide professional services, except for the United States government, the state of California or its subdivisions, a foreign

- government, or an individual hiring services for the personal benefit of themselves, their family, or their homestead;
- c) "professional services" to mean the same as they are defined in Labor Code Section 2778(b)(2);
 - d) "public prosecutor" as is defined in Labor Code Section 180.
- 2) Requires a hiring party to pay a freelance worker the compensation specified by their contract either:
 - a) on or before the date that compensation is due pursuant to the contract;
 - b) no later than 30 days after the completion of the contracted for services, if the contract does not specify when payment should be made.
 - 3) Prohibits a hiring party, once a freelance worker has begun performance under the contract, from requiring as a condition of timely payment either that:
 - a) the freelance worker accept less compensation than the amount specified by the contract;
 - b) the freelance worker provide more goods or services, or provide more intellectual property rights than agreed to in the contract.
 - 4) Requires that, whenever a hiring party has retained the services of a freelance worker, the contract between both parties be put into writing, with a signed copy of the contract provided by the hiring party to the freelance worker either physically or electronically. Requires that the hiring party retain a copy of the contract for at least four years.
 - 5) Requires that written contracts required pursuant to (4), above, include at a minimum the following information:
 - a) the name and mailing address of each party to the contract;
 - b) an itemized list of all services to be provided by the freelance worker, including the value of the services and rate and method of compensation;
 - c) the date on which the hiring party is required to pay the freelance worker, or the mechanism by which the date for payment will be determined; and
 - d) the date by which a freelance worker must submit to the hiring party a list of services rendered, in order to meet the hiring party's internal processing deadlines for timely payment.
 - 6) States that any waiver of any provisions of this bill is to be deemed contrary to public policy and is void and unenforceable.
 - 7) Prohibits a hiring party from discriminating or taking any adverse action against the freelance worker that penalizes the freelance worker for, or is reasonably likely to deter the freelance worker from, doing any of the following:
 - a) opposing any practice prohibited by this bill's provisions;

- b) participating in proceedings related to the enforcement of this bill's provisions;
 - c) seeking to enforce any rights provided by this bill; and
 - d) otherwise asserting or attempting to assert rights provided by this bill.
- 8) Permits an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor to bring a civil action to enforce the above provisions.
- 9) Specifies that a prevailing plaintiff in an action alleging a violation of this bill's provisions is entitled to receive reasonable attorney's fees and costs, injunctive relief, and any other remedies deemed appropriate by the court.
- 10) Specifies that an aggrieved freelance worker is entitled to the following damages:
- a) when a freelance worker requests prior to commencing work that the hiring party provide a written contract, and the hiring party refuses, damages in the amount of \$1,000;
 - b) when a hiring party fails to pay the freelance worker the contracted for compensation by the time required under (2), above, damages up to double the amount that remained unpaid at the time that payment was due, and specifies that, when a freelance worker requested a written contract and the hiring party refused, the amount unpaid is determined by the rate the freelance worker reasonably understood to apply to the work; and
 - c) when a hiring party violates any other provision of this bill, damages equal to the value of the contract or work to be performed by the freelance worker, whichever is greater.
- 11) Specifies that nothing in this bill limits existing contract law, and does not prevent a freelance worker from enforcing an oral contract or recovering under the doctrine of promissory estoppel.
- 12) States that there shall be sufficient evidence that a contract exists when no written contract was provided, for the purposes of enforcement by the freelance worker, if:
- a) the hiring party made representations to the freelance worker regarding the rate for services to be performed;
 - b) the freelance worker provided in writing any documentation, including email, text message, or other electronic communication, a summary of the rate and the work to be performed prior to performing the work; and
 - c) the freelance worker performed the work that the freelance worker understood was to be performed.
- 13) Specifies that the provisions of this bill only apply to contracts entered into or renewed between hiring parties and freelance workers on or after January 1, 2025.

COMMENTS

1. Author's statement

According to the author:

Senate Bill 988 will protect freelancers from exploitation by providing them with basic protections and ensuring prompt payment. Freelance workers frequently report experiencing months of late or non-payment, which is a significant financial hardship. Most freelance workers don't have a written contract and are often living paycheck-to-paycheck. Just like any other type of worker, they deserve to be compensated fairly for their work and to have recourse if they're mistreated. Senate Bill 988 provides basic protections for freelance workers by requiring mandatory contracts, 30-day payment terms, payment agreement protections, anti-retaliation measures and damages protections.

2. Freelancers are an increasingly significant portion of the workforce

Freelance workers, or workers who engage in temporary, supplemental, or project- or contract-based work, are becoming an increasingly larger portion of the workforce. In 2023, there were an estimated nearly 64 million Americans who engaged in freelance work, accounting for 38 percent of the United States workforce.¹ These numbers of freelance workers have only increased over the past few years, up from 60 million in 2022 and 53 million in 2014. In 2023, these freelance workers contributed 1.27 trillion dollars to the United States economy in annual earnings.

Freelancers engage in a variety of types of work and services. Almost half provide what are called "knowledge services;" services like computer programming, marketing, information technology, and consulting.² About a quarter create social media content or sell goods, respectively. About 34 percent provide other services or manual labor.

Freelance work has significant differences and legal distinctions from traditional work arrangements. Freelance workers usually create their own schedules, choose their clients and projects, and operate independently of their clients. However, freelance workers also typically do not have access to many of the benefits that traditional employees do, such as unemployment benefits, healthcare covered by their employers, paid time off, employer-sponsored retirement programs, workers' compensation, and overtime and minimum wage protections. This is because freelance workers are typically not considered an employee under the law, and thus they are not covered by

¹ Edelman Data & Intelligence, *Freelance Forward 2023*, Upwork (2023), available at <https://www.upwork.com/research/freelance-forward-2023-research-report>.

² *Id.*

the same protections, and do not pay into and have access to, the same benefits programs provided to employees.

3. Freelancers are not protected under current labor law

Because freelance workers typically work project-to-project, and are paid per service rather than as part of a continued employment arrangement, they also are more vulnerable to issues of nonpayment or late payment for their work. Freelance workers also can have more informal arrangements, where contracts either are not written or do not specify all details relating to payment and timelines for paying invoices. Even when agreements are clear, freelance workers often must invoice their clients on their own for payment, and wait for the client to pay the bill.

During the COVID-19 pandemic, many freelance workers were severely impacted by the government closures needed to stop the spread of the coronavirus. This was because freelance workers could not qualify for unemployment benefits when their freelance work dried up due to the shut downs, since they are not considered employees and do not pay part of a paycheck into the system. In light of this, a push was made to extend various forms of relief, including unemployment insurance, to independent contractors or freelance workers. As part of the CARES Act, Congress enacted the Pandemic Unemployment Assistance Program to specifically provide unemployment benefits to self-employed workers and independent contractors otherwise not eligible for such benefits.³ While these efforts helped during the pandemic, they also demonstrate the precarious and insecure position freelance workers face as individuals responsible for finding and making their own income.

According to the author, many freelance workers experience being paid late or not being paid at all for their work. The author asserts that many are working without written contracts, and live paycheck-to-paycheck. Indeed, some data supports these assertions. One survey found that 74 percent of freelance workers surveyed do not get paid on time, with 16 percent reporting not getting paid for more than two months or more.⁴ Furthermore, 72 percent reported having outstanding invoices that have gone unpaid, 59 percent of whom reported being owed 50,000 or more for work they have already completed. The Freelancers Union, a sponsor of this bill, also report that 71 percent of their members report experiencing late or non-payment for their work, with

³ S. 3548 (McConnell, 116th Cong. 2020); Labor & Workforce Development Agency, Pandemic Unemployment Assistance (PUA) Program (accessed Mar. 31, 2024), available at <https://www.labor.ca.gov/pandemic-unemployment-assistance-pua-program/>.

⁴ Independent Economy Council, Getting Paid in the Independent Economy: Insights from 400+ 1099 Workers (Feb. 16, 2022), available at <https://www.independenteconomy.org/our-blog/getting-paid-in-the-independent-economy>.

59 percent reporting living paycheck-to-paycheck.⁵ Moreover, they explain that only 25 percent report consistently having written contracts.

4. Efforts to provide freelance workers with greater protections

Over the last few years, various states and local jurisdictions have endeavored to protect freelance workers' rights through policy. The first freelance worker protections were enacted by New York City in 2017.⁶ New York City's Freelance Isn't Free Act required all contracts worth more than \$800 to be in writing, including when an employer and a freelance worker have multiple agreements that total \$800 collectively over four months. In addition, New York City's law required payment for a freelance work contract of any value be made on or before the date agreed to in the contract, or otherwise within 30 days after the work is completed if the contract is silent on the date for payment. The law also included prohibitions on retaliation by hiring parties for a freelance worker exercising their rights, and provided freelance workers an avenue to file complaints of violations with the city's employment law enforcement agency. That enforcement agency was required to run a "navigation program" to educate the public, respond to general inquiries about pursuing claims in court, provide legal referrals for freelancers with potential claims, and administer a complaint resolution process. Under the complaint resolution process, the city reported receiving 2,542 complaints of violations of the law between 2019 and 2023.⁷ To help implement the law, the city also created a model contract for freelance workers and their hiring parties to use.

On February 24, 2023, the city of Los Angeles passed its own freelance worker protection law, the Freelance Workers Protection Ordinance. Los Angeles' ordinance went into effect July 1 of 2023, and requires employers to provide freelance workers with a written contract for all freelance projects worth \$600 or more over a calendar year and make full payment by the date specified in the contract or no later than 30 days after the work is completed.⁸ It also requires both parties of the contract to retain records relating to such contracts for four years, and prohibits employers from punishing, penalizing, retaliating against, or taking adverse actions against any freelance worker who exercises their rights.

Even more recently, two states – New York and Illinois – passed statewide laws enacting protections for freelance workers. The law enacted by the state of Illinois was

⁵ Rafael Espinal, New Legislation Introduced to Expand Freelance Protections to California State, Freelancers Union (Feb. 8, 2024), available at <https://blog.freelancersunion.org/2024/02/08/new-legislation-introduced-to-expand-freelance-protections-to-california-state/>.

⁶ Freelance Workers, New York City Department of Consumer and Worker Protection (accessed Mar. 31, 2024), available at <https://www.nyc.gov/site/dca/workers/workersrights/freelancer-workers.page>.

⁷ Consumer & Worker Protection Dept., 5-Year Report on NYC's Freelance Isn't Free Act, New York City (Nov. 1, 2023) p. 3.

⁸ Los Angeles Municipal Code § 189.100 et seq.

substantially similar to New York City and Los Angeles' ordinances.⁹ New York's law is similar to the freelance worker protections enacted by the city of New York, but also requires the state commissioner to receive, investigate, and enforce violations of the law's protections for freelance workers, and provides for specified damages.¹⁰ Additionally, it provides authority to the state's attorney general to commence a civil action against a hiring party engaged in a pattern or practice of violations of freelance worker protections and seek a civil penalty of \$25,000.

5. SB 988 attempts to ensure freelance workers in California are protected from wage theft and other harms

SB 988 aims to enact similar protections for freelance workers throughout the state of California. It requires that a hiring party of a freelance worker to pay the freelance worker the specified-for compensation on or before the date compensation is due in the contract, or if the contract does not specify when payment shall be made, no later than 30 days after the completion of the work under the contract. It also requires that any contract for freelance services be in writing, furnished by the hiring party, and that the contract contain at a minimum: the name and mailing address of each party; an itemized list of all services to be provided; the value of the services to be provided and the rate and method of calculating compensation; the date on which the hiring party must pay the freelance worker the agreed-to compensation, the mechanism to determine this date; and the date by which the freelance worker must submit a list of services rendered to the hiring party.

To ensure that freelance workers' rights under its provisions are not curtailed by employers, SB 988 includes provisions deeming any waiver of its provisions as contrary to public policy and void and unenforceable, prohibiting a hiring party from requiring a freelance worker to accept less compensation or provide more work or intellectual property rights in order to receive timely payment, and provisions prohibiting a hiring party from discriminating against or taking adverse action against a freelance worker for asserting their rights. It specifically prohibits a hiring party from discriminating or taking any adverse action for a freelance worker for opposing any practice that is prohibited by this bill's provisions, participating in proceedings to enforce the freelance worker's rights, seeking to enforce those rights, or otherwise asserting the freelance worker's rights. SB 988 also requires the hiring party to retain the contract for at least four years, an amount of time equal to the California statute of limitations for conflicts arising from written contracts.

⁹ 820 Illinois Compiled Statutes (ILCS) § 193 (H.B. 1122, Pub. Act 103-0417).

¹⁰ New York Labor Law § 191-d (S. 5026), Governor Kathy Hochul, Governor Hochul Signs Legislation to Protect the Rights of Freelance Workers (Nov. 22, 2023), available at <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-rights-freelance-workers>.

SB 988's protections do not apply to every contract entered into by a freelance worker. Instead, it applies its provisions only to freelance workers whose services are made in exchange for at least \$250, either for one project or agreement or for an aggregate of all contracts between the parties within a period of four months. Additionally, it excludes from the definition of "hiring party" the United States government, the state of California or any of its subdivisions, a foreign government, or an individual who is hiring personal services for themselves, their family, or their homestead. SB 988 also does not apply its provisions to all types of services, but rather only to freelancers providing professional services as defined in Section 2778 of the Labor Code, which defines professional services as: marketing; an administrator of human services; travel agent services; graphic design; grant writing; a fine artist; a licensed tax preparer; a payment processing agent; a freelance writer or related services; appraisal services; registered professional foresters; a photographer or photojournalist; a content contributor or producer; cosmetology services; and other similar services. Thus, SB 988's provisions do not cover every freelance worker, if they provide services other than those defined as professional services, or if their contracts do not meet the monetary threshold.

6. SB 988's provisions will be enforced by the Labor Commissioner, by the aggrieved freelance worker, or a public prosecutor

SB 988 provides that an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor can bring a civil action in court to enforce SB 988's provisions. A public prosecutor for the purposes of SB 988's provisions permitting a civil action means the Attorney General, a district attorney, city attorney, county counsel, or any other city or county prosecutor.

A prevailing plaintiff in any such civil case may obtain attorney's fees and costs, injunctive relief, and any other remedies the court deems appropriate. However, SB 988 also prescribes specific damages that must be awarded for different violations of its provisions. If a hiring party refuses to provide a written contract after the freelance worker requests one prior to commencing work, the freelance worker is to be awarded \$1,000. If the hiring party fails to pay the freelance worker by the required time under the contract or SB 988's provisions, the freelance worker is entitled to damages of up to double the amount that remained unpaid at the time the payment was due. For situations where the contract was not committed to writing, this amount is determined by the rate the freelance worker reasonably understood to apply. In addition to damages under these two specified circumstances, SB 988 provides for damages equal to the value of the contract or work performed, whichever is greater, for all other violations of SB 988's provisions. This means that a freelance worker who is retaliated against for exercising their rights under this bill could be entitled to damages in the amount of the contract or the value of the services provided. It could also mean that, if the hiring party does not provide a contract with the minimum required information, or does not retain a copy of the contract for four years, a freelance worker could also

potentially receive damages equal to the contract or value of the services they provided. Through these provisions, SB 988 provides an avenue for an aggrieved freelance worker, to pursue and potentially obtain damages from a hiring party who violates the requirements and protections provided in SB 988.

The author argues that the damages provided in this bill will serve to ensure that hiring parties provide a contract and pay freelance workers on time. Certainly, damages of double the value of the contract are significant, and could serve as a significant disincentive to paying a freelance worker late. Any late payment, even if just a day or two late, could trigger such damages, therefore encouraging hiring parties to ensure that payment is on time by the date required in the contract, or the statutory 30 days if the contract is silent. Opposition may argue that these damages are excessive if a hiring party is only late by a short period of time, but proponents argue that double damages are needed to act as a sufficient deterrent to hiring parties for not paying their freelance workers on time. As previously discussed, a significant percentage of freelance workers report being paid late. Moreover, when freelance workers are working project to project, and must cover all of their business expenses and health insurance costs, receiving timely payment for their work is even more important. In contrast, California employment law requires employers to pay employees at least every two weeks, a level of regularity and certainty that freelance workers do not enjoy. It is also worth noting that two parties in any professional services contract likely negotiated over the timing for invoicing and payment, such that a late payment is a breach of the agreement the two parties previously made. Thus, SB 988's damages provisions arguably represent a reasonable public policy choice to incentivize compliance with the law and recognize the unique and vulnerable position of freelance workers.

7. SB 988 includes provisions regarding the bill's relation to contract law

SB 988 includes a provision that specifies how its provisions relate to current contract law. The provision clarifies that nothing in SB 988's provisions are meant to limit existing contract law or prevent a freelance worker from enforcing an oral contract or recovering under the doctrine of promissory estoppel. This provision makes clear that SB 988's provisions are not meant to override normal contract law or preclude a freelance worker from also pursuing any action related to contract disputes and contract law. Such a provision is useful, considering SB 988 mandates that the contracts for covered freelance work be written, yet it is entirely possible that a hiring party will nonetheless not provide a contract and a dispute relating to the contract made will arise. Just because, in that circumstance, a written contract has not been made as required by this bill, a freelance worker should not be foreclosed from enforcing their rights to payment or showing in court that there was a valid contract. Thus, SB 988 makes clear that its provisions do not foreclose enforcement through normal contract law as well.

This provision of SB 988 also includes a provision relating to the evidence that is sufficient to prove a contract exists when no written contract was provided by the

hiring party. It specifies that sufficient evidence is met if: the hiring party made representations regarding the rate for services to be performed; the freelance worker provided in writing prior to performing the work any document to the hiring party, including by electronic communication or text message, that summarizes the rate and work to be performed; and the freelance worker performed the work that the freelance worker understood was to be performed.

Under traditional contract law, a contract is formed when a party makes an offer, the other party accepts, and there is consideration in exchange for the goods or services promised. An offer must give the other party the power to accept and create a contract between the parties. Some acts are not offers because they do not provide the other party with the power to accept, even if they provide some amount of information about what the acting party would accept for a contract to be made.

SB 988 does not change the elements of a contract. It is meant to clarify the evidence that may be sufficient to show that the parties reached an agreement when there is no written contract as otherwise required by the bill. A freelance worker would still need to demonstrate that the essential elements of a contract were met. The California Statute of Frauds, contained in Civil Code Section 1624, contains similar language regarding the evidence that is sufficient to show that a contract was made, and lists a number of circumstances including electronic communications and a confirmation in writing indicating that a contract was made between the parties. (Civ. Code § 1624(b)(3).) SB 988's language in Section 10505, subdivision (c) is modeled after this language.

a. Amendments

In order to clarify that SB 988's above-mentioned provisions regarding the evidence of an oral contract relate to the evidence that a contract was formed, and do not change the elements of a contract, the author has agreed to the amendments contained in the mock-up at the end of this analysis. In addition, the author has agreed to accept the opposition's amendments to Section 10506(b)(3) to address their concerns. A full mock-up of these amendments are at the end of this analysis.

8. Arguments in support

According to the California Teamsters Public Affairs Council, the sponsor of SB 988:

SB 988 would establish prompt payment rules for certain freelance professionals. The bill would also require written contracts when professional services reach a specified dollar amount.

Freelancing is rapidly growing sector of the economy. In 2022, 60 million Americans freelanced, making up 39% of the total workforce and contributing \$1.35 trillion to the national economy. Unfortunately, most freelancers lack basic

worker protections, most notably, the right to be paid for their work on time. According to the Freelancers Union, 71% of workers experienced late or non-payment. 59% report living paycheck to paycheck, and most do not have written contracts.

In 2017, New York City passed the first 'Freelance Isn't Free Act' in the U.S., creating a pathway for freelancers to recoup wages due to non-payment. Since then, freelance workers have recovered over \$2.5 million in unpaid invoices. While impressive, this is just a fraction of the total amount owed to freelance workers. Since that time both Illinois and the City of Los Angeles have passed similar legislation. While this is great, much more needs to be done to prevent exploitation. We believe the next step is having statewide protections for these workers and SB 988 does just that.

9. Arguments in opposition

According to the California Chamber of Commerce, which is opposed to SB 988:

The California Chamber of Commerce respectfully OPPOSES SB 988 (Wiener). Our concern is limited to bill's proposed enforcement provisions, specifically section 10506(b)(3). That section provides that damages equal to the value of the contract or work performed are due if a hiring entity violates any provision of the law. That provision applies regardless of whether there was any harm. For example, if the freelance worker does not request a written contract, they are paid in full and on time for their work, and there is no dispute, the freelance worker can still sue the hiring entity and recover those damages if there was no written contract or if the contract does not perfectly conform to the law. If there is no harm, there should not be liability or, at the very least, there should not be an automatic award of damages equivalent to the price of the work performed. Otherwise, this incentivizes litigation where there is no injury.

SUPPORT

California Teamsters Public Affairs Council (sponsor)
American Photographic Artists, Inc.
American Photographic Artists, Los Angeles Chapter
American Photographic Artists of San Francisco, Inc.
Authors Guild
CAMEO
Justice at Last
Media Alliance
National Press Photographers Association
National Writers' Union

OPPOSITION

California Chamber of Commerce

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1423 (Galgiani, 2020) would have required changed the test for determining when an individual is an independent contractor, would have required the independent contractor to be covered by a workers' compensation policy, and would have required the contracting entity to maintain a policy against discrimination against independent contractors. SB 1423 died in the Senate Rules Committee.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 5, Noes 0)

MOCK-UP OF PROPOSED SENATE JUDICIARY COMMITTEE AMENDMENTS

SECTION 1.

Division 7 (commencing with Section 10500) is added to the Labor Code, immediately following Division 6, to read:

DIVISION 7. Independent Contractors

10500.

This division shall be known, and may be cited, as the Freelance Worker Protection Act.

10501.

For purposes of this division, the following definitions apply:

(a) "Freelance worker" means a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than two hundred and fifty dollars (\$250), either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days.

(b) "Hiring party" means a person or organization in the State of California that retains a freelance worker to provide professional services, except any of the following:

(1) The United States government.

(2) The State of California or any subdivision thereof.

(3) A foreign government.

(4) An individual hiring services for the personal benefit of themselves, their family members, or their homestead.

(c) "Professional services" has the same meaning as paragraph (2) of subdivision (b) of Section 2778.

(d) "Public prosecutor" has the same meaning as Section 180.

10502.

(a) Except as otherwise provided by law, a hiring party shall pay a freelance worker the compensation specified by a contract for professional services:

(1) On or before the date compensation is due pursuant to the contract.

(2) If the contract does not specify when the hiring party shall pay, no later than 30 days after the completion of the freelance worker's services under the contract.

(b) Once a freelance worker has commenced performance of services under a contract, a hiring party shall not require as a condition of timely payment that the freelance worker do either of the following:

(1) Accept less compensation than the amount of compensation specified by the contract.

(2) Provide more goods or services or grant more intellectual property rights than agreed to in the contract.

10503.

(a) Whenever a hiring party retains the services of a freelance worker, the contract between the hiring party and the freelance worker shall be in writing. The hiring party shall furnish a signed copy of the

written contract, either physically or electronically, to the freelance worker. The hiring party shall retain the contract for no less than four years.

(b) The contract shall include, at minimum, all of the following information:

(1) The name and mailing address of each party.

(2) An itemized list of all services to be provided by the freelance worker, including the value of those services and the rate and method of compensation.

(3) The date on which the hiring party shall pay the contracted compensation or the mechanism by which the date shall be determined.

(4) The date by which a freelance worker shall submit a list of services rendered under the contract to the hiring party to meet the hiring party's internal processing deadlines for purposes of timely payment of compensation.

(c) This section does not limit existing contract law, including, but not limited to, that it does not prevent a freelance worker from enforcing an oral contract or recovering under the doctrine of promissory estoppel. Notwithstanding a refusal by the hiring party to provide a written contract as required by subdivision (a), ~~there shall be sufficient evidence that a contract exists for purposes of enforcement by the freelance worker if all of the following are met~~ the following may be evidence that a contract was formed between the parties:

(1) The hiring party made representations to the freelance worker regarding the rate for services to be performed.

(2) The freelance worker provided in writing any document to the hiring party, including email, text message, or other electronic communication, a summary of the rate and work to be performed prior to performing the work.

(3) The freelance worker performed the work that the freelance worker understood was to be performed.

10504.

A waiver of any provision in this division shall be deemed contrary to public policy and is void and unenforceable.

10505.

A hiring entity shall not discriminate or take any adverse action against a freelance worker that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, taking any of the following actions:

(a) Opposing any practice prohibited by this division.

(b) Participating in proceedings related to the enforcement of this division.

(c) Seeking to enforce rights provided by this division.

(d) Otherwise asserting or attempting to assert rights provided by this division.

10506.

(a) An aggrieved freelance worker, the Labor Commissioner, or a public prosecutor may bring a civil action to enforce this division.

(b) A prevailing plaintiff in an action alleging a violation of this division is entitled to reasonable attorney's fees and costs, injunctive relief, and any other remedies deemed appropriate by the court. Damages shall be awarded to an aggrieved freelance worker as follows:

(1) If the freelance worker requested a written contract prior to commencing work under the contract and the hiring entity refused in violation of Section 10503, the freelance worker shall be awarded an additional one thousand dollars (\$1,000).

(2) *If the hiring entity failed to pay the freelance worker the contracted compensation by the time required under Section 10502, the freelance worker shall be awarded damages up to twice the amount that remained unpaid at the time payment was due. If the freelance worker requested a written contract prior to commencing work under the contract and the hiring entity refused in violation of Section 10503, the amount unpaid shall be determined by the rate the freelance worker reasonably understood to apply to the work.*

(3) *If the hiring entity violates any other provision of this division, the freelance worker ~~shall~~may be awarded damages equal to the value of the contract or the work performed, whichever is greater.*

10507.

This division applies only to contracts entered into or renewed on or after January 1, 2025.