

2001

Legislative Summary for the year 2001

Assembly Committee on Labor and Employment

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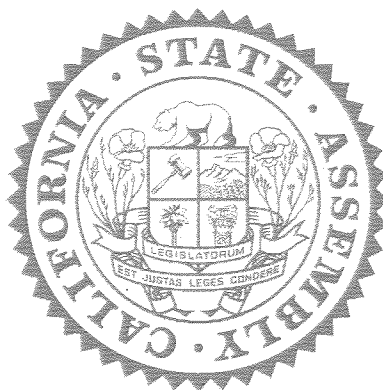
ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

PAUL KORETZ
CHAIR

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GOLDEN GATE UNIVERSITY



LEGISLATIVE SUMMARY *FOR THE YEAR 2001*

Members:

Gloria Negrete McLeod (Vice Chair)
Jackie Goldberg
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Dennis Mountjoy
Anthony Pescetti
Kevin Shelley

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ASSEMBLY COMMITTEE
ON LABOR AND EMPLOYMENT

PAUL KORETZ, CHAIR
ASSEMBLYMEMBER, FORTY-SECOND DISTRICT

October 26, 2001

STATE OF CALIFORNIA
MAY 14 2002
GOLDEN CALIFORNIA UNIVERSITY

Dear Friends:

As Chair of the Assembly Committee on Labor and Employment, I am proud to submit my first annual report of legislation for the year 2001. The Committee heard many significant labor and employment bills this year.

The Committee's responsibility is not limited to evaluating and voting on new labor and employment legislation, but also includes oversight of the state's implementation and enforcement of existing labor and employment laws. The Committee held oversight hearings on labor law enforcement by the Department of Industrial Relations in four industries: agriculture, construction, garment, and janitorial. We gathered testimony and documentary evidence from labor, management, and agency officials. These hearings have raised significant concerns about the lack of enforcement of existing laws, and therefore I expect the Committee's oversight process to be ongoing.

As Chair, I also worked hard in the budget process this year to increase labor law enforcement resources. Those efforts resulted in a budget augmentation of \$2 million. That progress is now threatened by new cuts resulting from a growing state budget shortfall. One of the Legislature's key challenges this year is to find new ways to strengthen the enforcement of our labor and employment laws in the face of such limited resources. I look forward to tackling that challenge with the help of labor groups, employer groups and others who recognize that workers, businesses, and the taxpayers all lose when legitimate employers are competing against those employers who cheat workers and taxpayers.

Many of the bills listed in the 2001 report are still pending before the Legislature. Some of these will move through the Legislative process during the second year of the two-year session. Beginning in January, new bills will be introduced as well. I encourage all interested persons to participate in the Committee's hearing process. Such involvement is vital to our work in developing sound labor and employment relations policy for the people of California.

The report briefly describes the year 2001 bills, separated by subject matter. We have also included for your information an index by subject matter/results, and the Governor's veto messages. For the full text of all versions of any bill, committee analyses, and history including

votes, please go to the Assembly's web page at www.assembly.ca.gov and click on "legislation."
If you need additional information, please contact me or the Committee staff at (916) 319-2091.

Sincerely,

A handwritten signature in black ink that reads "Paul Koretz". The signature is written in a cursive, flowing style.

Paul Koretz
Chairman, Labor and Employment

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Wages and Hours

The Committee's principal wage and hour bill in 2001 is AB 1675 (Koretz), which relates to the wages and working conditions of sheepherders. The enactment of this bill, along with the action of the Industrial Welfare Commission, will begin to bring basic labor law protections to sheepherders, who have historically been omitted from protections established for workers in other industries.

AB 1675 Koretz Sheepherders

AB 1675 codifies a sheepherder minimum wage adopted by the Industrial Welfare Commission (IWC) and requires future increases in sheepherder minimum wages based on the percentage of future increases in the state minimum wage. AB 1675 also includes sheepherders under several of the provisions of Wage Order 14 of the Industrial Welfare Commission (IWC), which are applicable to farm workers, but not sheepherders. These include the provision of necessary tools and equipment; and meal periods and rest periods, as specified. This bill also requires specified improvements in mobile housing (sheep camps), which are common in the industry and lack basic standards according to the sponsors. AB 1675:

- 1) Provides that a sheep herder employed on a regularly scheduled 24-hour shift on a seven-day-a-week basis shall be paid a monthly minimum wage as provided in Wage Order 14-2001 (WO 14), adopted by the Industrial Welfare Commission (IWC). Provides that the monthly minimum wage established under the WO 14 shall be increased by same percentage that the state minimum wage is increased. Specifies that the wages for any non-shepherding work shall be paid under the applicable WO on a workweek basis.
- 2) Requires an employer to provide necessary tools or equipment, as specified, unless the sheepherder earns more than two times the minimum wage established for sheepherders. This provision is based on Section 9 of WO 14.
- 3) Requires a 30-minute meal period for a work period of more than five hours except where such a meal period cannot reasonably be provided, as specified. This is based on Section 11 of WO 14. Provides, to the extent practicable, for a rest period of ten minutes per four hours of work. This provision is based on Section 12 of WO 14.
- 4) Provides that when the nature of the work reasonably permits the use of seats, suitable seats shall be provided for sheepherders working on or at a machine. This provision is based on Section 13 of Wage Order 14.
- 5) Provides that in cases where a sheepherder is lodged in a mobile housing unit where there is practicable access for mobile housing units, the housing shall include toilets, heating, inside lighting, hot and cold water, adequate cooking facilities and utensils; and, a working refrigerator.

- 6) Provides that all shearers shall be provided with regular mail service, a means of communication through telephone or radio, as specified, visitor access to the housing, and upon request and to the extent practicable, access to transportation to and from the nearest locale where shopping, medical or cultural facilities and services are available on a weekly basis. Provides that telephone or radio communications are solely for use in a medical emergency or for an emergency relating to the herding operation. Authorizes the employer to provide additional means of communication where such devices are inoperable. This provision is based on, but significantly varies from, Section 14 of WO 14 as amended April 24, 2001.
- 7) Requires posting of specified information about rights under this bill in a language understood by the shepherd, or where this is impractical, requires the employer to make a copy available to every shepherd upon request. This provision is based on Section 20 of WO 14.
- 8) Provides for an initial civil penalty of \$50 per worker for each pay period for a violation of these requirements. This amount increases to \$100 for subsequent violations. This provision is based on Section 18 of WO 14, which contains similar penalties specifically applicable to wage violations.

Supporters argued that shearers are deprived of basic minimum wages and protections, which are available to other workers in California under WO 14, which covers agricultural workers. Opponents argued that the industry is suffering economically, is competing with other lower wage sheep production areas, and cannot afford these requirements.

2001 Bills

AB 181 Koretz Minimum Wage

This bill, which would be known as the Living Wage Act, would require the Industrial Welfare Commission to establish the hourly minimum wage at not less than \$7.25 effective January 1, 2003, \$7.75 effective January 1, 2004, \$8.25 effective January 1, 2005 and \$8.75 effective January 1, 2006. Thereafter, the bill would require the commission to adjust the minimum wage annually, as specified to maintain employee purchasing power.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1028 John Campbell Legislative Employees

Provides that employees of the Legislature shall have the same rights in respect to wages, hours, and all other conditions of employment as are applicable under the laws of California to persons employed in the private sector. All employment-related laws applicable to private-sector employers shall apply to the houses of the Legislature.

Status: Two-year bill, Assembly Rules Committee.

AB 1404 **Cox**

Working Hours: flexible schedules

Allows certain individual health care workers to adopt an alternative workweek schedule with the consent of the employer. Permits the establishment of an alternative workweek for individual home health care or hospice employees without complying with existing procedural requirements. Such employees could adopt an alternative workweek of up to twelve hours a day within a 40-hour week, with employer consent, provided that the employee is guaranteed a base salary.

Status: Two-year bill, failed in the Assembly Committee on Labor and Employment, reconsideration granted.

AB 1456 **Briggs**

Minimum Wage: determination by county

Requires the Industrial Welfare Commission (Commission) to reduce the minimum wage in high unemployment rate counties based on a specified formula. Requires the Commission to adjust the minimum wage for each county in accordance with its then current unemployment rate by dividing the state minimum wage by one plus the amount by which the county's unemployment rate, expressed as a decimal, exceeds the statewide average unemployment rate. Provides that the state minimum wage established by the Commission applies in counties where the unemployment rate is less than the statewide average unemployment rate. Provides that in no event may a county minimum wage be less than the wage established by Labor Code Section 1182.11, which is \$5.75 per hour.

Status: Dead bill.

AB 1675 **Koretz**

Shepherders

See discussion above.

Status: Chapter # 948, Statutes of 2001.

AB 1677 **Koretz**

Exempt Employees

AB 1677, as amended in the Senate, amends several provisions of the Labor Code related to wages and hours. It amends Labor Code §515 to allow an executive, administrative, or professional employee who is exempt from overtime compensation to remain exempt under specified circumstances although the employee is subject to a weeklong furlough resulting in a pro rate reduction of the employee's monthly salary, as specified. The bill also provides for meal and rest breaks for commercial drivers employed by public agencies. It codifies the definition of "hours worked" under the recent Supreme Court decision. It also prohibits deduction of wages by employer for cashing employee's paycheck and adopts a technical amendment to SB 1208 (Romero - 2001). The bill also requires the appointment of a previously authorized garment advisory committee to advise the Labor Commissioner.

Status: Two-year bill, Senate Inactive File.

SB 360 Machado State Employees: wages

This bill provides that wages earned by state employees for labor performed in excess of the normal work period be paid no later than the next regular payroll period.

Status: Two-year bill, Assembly Inactive File.

SB 912 Chesbro Employment of Minors: agricultural packing plants

This bill (a) extends the sunset date for Lake County agricultural packing plants to employ minors 16 and 17 years of age up to 60 hours per week during non-school periods, and (b) requires specified reports and inspections.

Status: Chapter # 345, Statutes of 2001.

SB 1027 Romero Overtime Requirements: health care employees

This bill prohibits compulsory overtime for registered nurses or health care industry employees after the conclusion of the employee's applicable daily work schedule and after 40 hours in a workweek, except during a federal, state, or county declaration of emergency, or if an unanticipated and nonrecurring catastrophic event occurs in the community served by that health care facility.

Status: Two-year bill, Senate Inactive File.

SB 1159 Polanco Labor Standards: meal and rest periods

This bill provided that the provisions of all orders of the Industrial Welfare Commission regulating meal periods and rest periods of employees shall apply to employees of any public institution that issues doctorate degrees in health care professions, including, but not limited to, medicine and dentistry, who are employed as nurses, medical center employees and employees of health clinics. Provides that nothing in this bill shall be construed to exempt the University of California (UC) from the provisions of any order of the Commission otherwise applicable to it.

Status: Vetoed by Governor Gray Davis.

SB 1208 Romero Working Hours: overtime exemption

This bill exempts physicians from premium overtime pay requirements and clarifies provisions of AB 60 (Knox), Chapter 134, Statutes of 1999, with respect to the exclusion of an employee covered by a qualified collective bargaining agreement from specified statutory requirements.

Status: Chapter # 148, Statutes of 2001.

Labor Standards Enforcement

In 2001, the Committee focused significant attention on issues related to the enforcement of labor standards, especially in industries with a history of underground economic activities. In addition to the new legislation discussed below, the Committee held oversight hearings on labor law enforcement by the Department of Industrial Relations in four industries: agriculture, construction, garment, and janitorial. The enforcement hearings, held in conjunction with Budget Subcommittee No. 4 (Nakano), documented significant concerns about the lack of enforcement of existing laws, including a lack of enforcement resources. In response to the Committees' work, the Legislature augmented the budget of the Department of Industrial Relations (Department) by \$5 million for wage and hour law enforcement. The Governor reduced that augmentation to \$2 million.

The budget process documented the need for and feasibility of a new computer system to track labor law violations in California and to improve efficiency in the Department's labor law enforcement efforts. The Committee has a bill, AB 1676, to establish such a system. It is pending in the Senate.

New Legislation and Committee Action in Four Industries. In 2001, the Committee passed important new enforcement-related bills for the protection of farmworkers, horse track backstretch workers, and janitors. These bills were signed into law. This contrasts sharply with 2000, when the Committee passed similar measures, each of which was vetoed. Two key farmworker measures are AB 423 (Hertzberg) and SB 1125 (Burton). The backstretch workers bill is AB 856 (Wesson). The janitorial bill is SB 20 (Alarcon).

1. Garment Industry

The California garment industry, which is centered in Los Angeles, is the largest in the United States. Figures compiled by the Employment Development Department (EDD) indicate that the number of garment employers in California doubled between 1982 and 1999 and the number of employees increased by 45%. The workforce is largely composed of Latino and Asian immigrant workers. The majorities are women.

The history of widespread labor law violations in the garment industry has prompted legislation and enforcement initiatives in California. The legislation includes the 1980 enactment of the garment manufacturers' registration law, and the 1999 enactment of the garment workers' wage guarantee law (AB 633). On three occasions between 1980 and 1999, the legislature enacted civil joint liability bills, which were vetoed by Governors Deukmejian and Wilson. The state enforcement initiatives have included the Concentrated Enforcement Program (CEP) (1977-83), the Targeted Industry Partnership Program (TIPP) (1992-present), and the Joint Enforcement Strike Force on the Underground Economy (1994-present). However, widespread labor law violations in the industry have continued, and appear to be getting worse rather than better in recent years.

In the year 2000, only 33% of garment firms in Los Angeles were found to be in compliance with federal minimum wage and overtime laws according to the U.S. Department of Labor in its Garment Industry Compliance Survey. This is 6 % less than in 1996 and 1998. The Survey involves registered garment shops. Unregistered shops are likely to be worse. The Survey also reported that in Los Angeles, only 46% of the garment companies were in compliance with minimum wage laws. Yet, the state's TIPP program issued only five minimum wage citations in the garment industry in 1999. Other garment industry enforcement activities including inspections and citations have also declined in recent years according to data provided to the Committee by the agency.

In 1999, California enacted AB 633 (Steinberg), the most significant California garment legislation since the 1980 registration act. AB 633 provides garment workers with an expedited wage claim procedure at the Labor Commissioner's office. Under AB 633, workers who are owed wages have a claim under this process not only against the contractor who employed them, but the manufacturers for whom the contractor is producing apparel. AB 633 classifies the manufacturers as wage guarantors for the workers' wages. AB 633 also increases garment manufacturing registration fees to fund the Labor Commissioner's program.

However, the Committee has learned that significant problems have arisen in implementation of AB 633. The Committee held an oversight hearing on July 26th in Los Angeles. At the hearing, witnesses raised significant concerns about the implementation of the new statute including problems identifying guarantors for the workers' wage claims, failure to collect wages owed, lack of bilingual materials, and the inadequate capacity of the agency to follow up on an individual wage claim to collect the wages of other workers employed by the same contractor. The proposed AB 633 implementing regulations were not issued until the Committee held its July 26th hearing. By the time the final regulations are adopted, nearly two years will have elapsed since the statute went into effect.

The Committee is continuing to follow developments in this area. For that purpose, it has requested quarterly progress reports from the Department detailing its activities. Persons interested in obtaining hearing materials should contact the Committee.

2. Agriculture

The Committee conducted a May oversight hearing concerning labor law enforcement in Agriculture, and it passed significant legislation on this subject. At the hearing, the Committee was informed that there are 36,753 agricultural employers in California according to the Employment Development Department. This is an increase of 11% since 1983. The Bureau of Field Enforcement (BOFE) inspects agricultural employers at an average rate of 596 employers per year (1995-2000). At that pace it will take 62 years to inspect each employer once.

Data provided to the Committees by BOFE shows a trend of less inspections, citations, penalties collected, and wages recovered. For example, in 2000, the number of citations issued (87) was the lowest in six years. The amount of wages recovered (\$199,106) in 2000 was significantly lower than the last reported year. In 1997, \$411,934 in wages were recovered. Penalty collections were also reported at a six-year low.

The Committee heard significant legislation concerning failure to pay minimum wage and other wage violations in the agricultural industry. Much of the focus was on farm labor contractors (FLCs). In 2000, the Committee passed and the Legislature approved AB 2862 (Romero) which established a license verification system, and significant criminal penalties for wage violations. The bill was vetoed by the Governor, who expressed support for the concept, but expressed concern about some of the criminal penalty provisions. In 2001, the Committee passed a similar measure, AB 423 (Hertzberg), which was later signed into law.

AB 423 (Hertzberg) establishes a system for the verification of farm labor contractor (FLC) licenses including a Verification Unit at the Department of Industrial Relations (DIR). It specifies the duties of growers and FLCs to obtain copies of licenses and to use the verification system to determine if they are valid. It also revises criminal penalties (fines) for specified wage violations, and establishes a program of state and local enforcement units to prosecute such cases.

This bill, sponsored by the United Farm Workers of America, AFL-CIO, focuses on the problem of wage payment violations by FLCs. The text of this bill, as introduced, was contained in AB 2862 (Romero) of 2000, which was vetoed. The Governor's veto message indicated that he would sign legislation that incorporated all of the provisions in the bill, but with stiff civil penalties in place of criminal sanctions for employers who knowingly violate the law. As enacted, AB 423 deletes the provision for mandatory jail time upon a third conviction and other provisions increasing jail time upon conviction. Instead, it increases the fines upon conviction under the bill. AB 423:

- 1) Establishes an affirmative obligation of a grower, as defined, to inspect, copy, and verify the license of a person contracted as a FLC. Establishes the duty and a procedure for a grower to verify a FLC license by contacting within specified timelines a license verification unit to be established by the Labor Commissioner (LC). Establishes a similar duty for an FLC to inspect the license of persons, as specified, contracted by the FLC.
- 2) Requires the LC to establish and maintain a Farm Labor Contractor License Verification Unit (Verification Unit), no later than July 1, 2002, to certify, upon the request of a grower or FLC, the status of a state license issued to a FLC, and to provide a unique verification number to the requestor. The obligation to verify licenses and related penalties do not apply until three months after the verification unit becomes operational as certified by the State Auditor, and may be suspended if the system becomes inoperable.

- 3) Requires a FLC whose license is not renewed to notify a grower within three days and provides that it is a misdemeanor for a person whose license was suspended or revoked to act as a FLC.
- 4) Specifies the duties of a FLC to ensure that every person who is performing farm labor contracting activities on behalf of the FLC has obtained a license. Provides that a FLC is responsible for specified labor law violations committed by his or her employee.
- 5) Provides that any grower, FLC, or other person as specified who knowingly and willfully fails to pay, or causes the failure to pay, wages, as specified, is guilty of a misdemeanor. Provides a minimum fine upon a second conviction of \$10,000. The minimum fine upon a third conviction is \$25,000.
- 6) Provides for other sanctions under specified statutes, and requires the LC to revoke the defendant's license for a specified period upon conviction. Provides that a person may not be prosecuted under any other law if the prosecution would be based upon the same set of acts if a person is prosecuted under these provisions.
- 7) Provides that upon final determination of the LC that a grower, FLC, or person acting in the capacity of a FLC has failed to pay wages to its employees, the grower, FLC or such person shall immediately pay those wages. If payment is not made within 30 days of the final determination, the LC shall notify the local district attorney.
- 8) Requires the Director of DIR to establish a State Enforcement Unit to develop a program of technical assistance to a district attorney's office that establishes a local FLC enforcement unit (local unit). Provides that a portion of the annual FLC license fee shall be allocated to the FLC verification unit as well as the State Unit. Provides that a local unit shall concentrate enhanced prosecution efforts on the prosecution of FLCs who violate a state law regulating wages.

SB 1125 (Burton) The Committee also passed SB 1125 (Burton) which repeals the provisions of existing law that prohibit the use of the farm labor contractor wage surety bond (Wage Bond) and the Farmworker Remedial Account (FRA) for payment of penalties for nonpayment or late payment of wages. SB 1125 authorizes the use of the Wage Bond and the FRA for monetary relief awarded to an agricultural worker as a result of a violation of the Labor Code.

3. Janitorial and Building Maintenance Services

In 2000, the Committee passed SB1877 (Alarcon) which required a contractor who enters into a contract for janitorial and building maintenance services at a job site to retain the employees of a former contractor providing such services at the job site during a 90-day transition employment period (transition period). The Governor vetoed that measure. This year, the Committee passed a similar measure, SB 20 (Alarcon), which was signed into law by the Governor.

Requires a contractor who enters into a contract for janitorial and building maintenance services at a job site to retain the employees of a former contractor providing such services at the job site during a 60-day transition employment period (transition period). This bill gives janitorial employees protected employment status at a job site for 60 days following a change of contractors. The successor contractor would generally be required to retain the employees of the former contractor during that period. At the end of the period, the successor would be required to offer the employees continued employment if the employee's performance during that 60-day period is satisfactory. This bill's protection of the employee's status expires after that time. The requirements of this bill apply to both the private and public sector. This bill is modeled after local ordinances adopted in San Francisco in 1998 and Washington D.C. in 1994. Specifically, SB 20:

- 1) Enacts the Displaced Janitor Opportunity Act, which applies to contracts entered into on or after January 1, 2002. Establishes requirements and procedures related to continued employment of janitorial and building maintenance employees at a job site following the termination of a contract for janitorial or building maintenance services with a contractor and the awarding of a new contract for such services with a successor contractor. Applies the requirements of this bill to contractors employing 25 or more individuals and to subcontractors generally.
- 2) Requires a terminated contractor to provide a list of its employees at a job site to a successor contractor (successor) within three working days after the terminated contractor receives specified notice from an awarding authority.
- 3) Provides that the successor shall retain employment of the employees of the terminated contractor at a job site during the transition period following the termination of a contract for janitorial and building maintenance services unless the successor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract. Provides that the successor is not required by this bill to pay the same wages or offer the same benefits as were provided by the prior contractor or subcontractor.
- 4) Prohibits the successor from discharging, without cause, employees retained under the provisions of this bill during the transition period. Requires the successor to maintain a preferential hiring list of employees not retained by the successor and requires the successor to hire additional employees from such list during the transition period.
- 5) Requires at the end of the transition period that the successor provide a written performance evaluation to each employee retained pursuant to the requirements of this bill, and to offer such employees continued employment if their performance during the transition period is satisfactory. Provides that any employment after the transition period shall be at-will employment under which the employee may be terminated without cause.

- 6) Authorizes an employee who is not retained or has been discharged in violation of the provisions of this bill, or his or her agents on behalf of the employee, to bring a civil action for wages, as specified, and for an injunction, and attorney's fees, if he or she prevails. Prohibits an employee from maintaining an action solely for the failure of an employer to provide a written performance evaluation in the absence of a wrongful termination claim, as specified.
- 7) Provides that, except as specified, this chapter does not increase the relationship or duties of a property owner or an awarding authority with respect to contractors, subcontractors, or their employees. Provides further that this chapter does not limit the right of a property owner or an awarding authority to terminate a service contractor or to replace a contractor with another contractor or with the property owner's or awarding authority's own employees. Provides that this statute does not prevent a local agency from enacting ordinances relating to displaced janitors that impose greater standards or establish additional enforcement provisions.

SB 1877 (Alarcon) of 2000, which was vetoed, contained substantially similar provisions. The Governor stated in his veto message that he might be open to a much more limited version of the bill. This bill has been amended to reduce the transition period from 90 days to 60, to limit the obligations of property owners and awarding authorities, to clarify their right to terminate a contractor, and to prohibit an employee lawsuit solely for failure to provide a written evaluation.

4. Backstretch Workers in the Horseracing Industry

In 2000, The Committee held a joint hearing with the Committee on Governmental Organization concerning working and living conditions of backstretch workers at California's racetracks. It was prompted by the reporting of the *Los Angeles Times* that the wage law violations and deplorable living conditions are a major problem in the backstretch. Based on the hearing, and the work of the Commissioner, AB 2760 (Wesson) was introduced. It established a legal framework for backstretch employees to exercise their right to unionize. The National Labor Relations Board has declined jurisdiction over racetrack employees. It also established a specific program for the Commissioner to audit payroll records and enforce wage and hour laws in the backstretch. AB 2760 also addressed issues concerning inadequate housing of backstretch workers. The labor and housing provisions of AB 2760 were combined later in the legislative process with a measure relating to account wagering. The bill was passed and then vetoed by the Governor, who stated he would support a bill to protect backstretch employees from being subjected to dismal living and working conditions without the wagering component.

This year the Committee passed AB 856 (Wesson), a measure with similar provisions to protect backstretch workers. The backstretch worker provisions of AB 856 were later amended into AB 471 (Hertzberg), which was passed and signed into law. AB 856 was also signed into law in an amended form to clean up several of the provisions of AB 471.

AB 856	Wesson	Horse Racing
AB 471	Hertzberg	Horse Racing

AB 856 (Wesson) and AB 471 (Hertzberg) contain, in addition to provisions related to advance deposit wagering, the following provisions:

- 1) Requires the Labor Commissioner to notify California Horse Racing Board (CHRB) of Labor Code violations when committed by a person licensed by CHRB, and authorize CHRB to suspend or revoke a license for labor law violations.
- 2) Requires trainers to keep accurate payroll records and to make those records available for inspection to the employee or his or her representative and to CHRB and the Division of Labor Standards Enforcement of the Department of Industrial Relations.
- 3) Requires the Labor Commissioner to establish and maintain a program to audit the payroll records of trainers who are not parties to a collective bargaining agreement, as specified.
- 4) Expresses legislative intent to establish an orderly procedure for racetrack backstretch employees to exercise their statutory rights to organize a labor union.
- 5) Directs the CHRB to oversee the conduct of a union recognition procedure for backstretch employees as specified, including: the submission of a petition signed by workers; access of a labor organization to specified information; reasonable access at racetracks for representatives of labor unions to meet with backstretch workers; anti-coercion/retaliation language; recognition as the collective bargaining agent for backstretch employees based on signed union authorization cards in one of the four election units established in the bill; use of the California State Mediation and Conciliation Service (CSMCS) to conduct a secret ballot election.
- 6) Requires employers to bargain with the union either on an individual basis or as part of a multi-employer bargaining unit as specified, if a majority of a trainer's employees vote in favor of representation by the union. Provides for mandatory mediation and conciliation if individual trainers negotiating on their own behalf fail to reach a collective bargaining agreement within 90 days of CHRB-issued negotiating order. Provides for final and binding arbitration following an impasse, as specified.
- 7) Permits a labor union and an individual trainer, or a group of trainers, to enter into a mutually acceptable agreement that may substitute for the labor requirements set forth in this bill. This bill does not require the parties in negotiation to enter into any labor agreement, so long as each party is negotiating in good faith.

- 8) Requires the CHRB to adopt emergency regulations to establish backstretch employee housing standards at California's racetracks. Require CHRB and either the Department of Housing and Community Development or the local housing authority to annually inspect the living conditions of backstretch employee housing to ensure compliance with the housing standards. This bill prohibits CHRB from issuing a license to a racing association to conduct a horseracing meeting unless CHRB determines the living conditions are in compliance with the housing requirements.
- 9) AB 856 deletes a provision that authorizes the CHRB to contract with the Agricultural Labor Relations Board and adds specifics concerning the authority of arbitrators used to resolve disputes between parties to the collective bargaining agreements created under these provisions and makes a clarifying change. This bill also amends provisions relating to inspection of the living conditions of backstretch workers by providing that the CHRB may be assisted by a local building department or other local entity designated by the jurisdiction in which the racetrack is located in conducting these annual inspections to ensure compliance with the standards it has established.

2001 Bills

AB 202 Corbett Joint Enforcement Strike Force on Underground Economy

This bill includes the State Department of Insurance in the Joint Enforcement Strike Force on the Underground Economy.

Status: Chapter # 180, Statutes of 2001.

AB 423 Hertzberg Farm Labor Contractors: license requirements

See discussion above.

Status: Chapter # 157, Statutes of 2001.

AB 638 Steinberg Farm Labor: written contracts and agreements

Provides that a contract between an agricultural grower and a farm labor contractor shall be in writing, as specified. Provides that the absence of a written contract, as specified, shall be given significant weight by the court in any action involving an agricultural grower or an FLC in support of a determination that the FLC is not an independent contractor.

Status: Two-year bill, Assembly Inactive File.

AB 856 **Wesson** **Horse Racing**
AB 471 **Hertzberg** **Horse Racing**

See discussion above.

Status: Chapter # 783, Statutes of 2001. (AB 856)

Status: Chapter # 198, Statutes of 2001. (AB 471)

AB 1459 **Reyes** **Farm Labor Contractors**

Increases the amount of a surety bond required for farm labor contractors (FLC) with large payrolls, as specified, and establishes a toll-free telephone number for reporting labor law violations affecting farm workers.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1674 **Labor Committee** **Industrial relations: enforcement**

Requires the Director of the Department of Industrial Relations (Department) to report to the Legislature not later than July 1, 2002, on the coordination of enforcement activities among the divisions in the Department and between the Department and other departments and agencies with respect to employers who are in violation of multiple labor laws.

Status: Two-year bill, Assembly Appropriations Committee.

AB 1676 **Labor Committee** **Data Base of Labor Violations**

Requires the Labor Commissioner, who is the chief of the Division of Labor Standards Enforcement of the Department of Industrial Relations, to develop and maintain a statewide database of labor law violations.

Status: Two-year bill, held in the Senate Appropriations Committee.

AB 1678 **Labor Committee** **Industrial Relations: limited and non-English speakers**

Expands to cover all six divisions of the Department of Industrial Relations the current Labor Code bilingual services requirements, which currently applies specifically to the Division of Labor Standards Enforcement.

Status: Two-year bill, Assembly Appropriations Committee.

AB 1680 **Labor Committee** **Farm Labor Contractors: educational classes**

This bill requires the Labor Commissioner to conduct the classes necessary for farm labor contractors to receive their license, and requires the Commissioner to charge a fee to cover administrative costs of the classes. Provides that the Commissioner shall take appropriate steps to reduce the cost of the classes, including offering them regionally where possible. Delays the effective date for this requirement until September 1, 2002.

Status: Vetoed by Governor Gray Davis.

SB 20 Alarcon Displaced Janitors

See discussion above.

Status: Chapter # 795, Statutes of 2001.

SB 25 Alarcon Labor and Civil Rights Agency

This bill creates effective July 1, 2002, a Labor and Civil Rights Agency in state government consisting of designated labor-related agencies. In vetoing the bill, the Governor acknowledged that workers would benefit from a more coordinated effort by the various state departments, and that the Department of Industrial Relations and the Employment Development Department could provide better service by being combined within a single entity. He has instructed the Director of the Department of Industrial Relations to make a recommendation by the end of the year.

Status: Vetoed by Governor Gray Davis.

SB 1125 Burton Farm Labor Contractors: licensing

See discussion above.

Status: Chapter # 147, Statutes of 2001.

SB 1198 Romero Agricultural Employees

This bill reenacts and thereby clarifies that an enacted 1997 statute, which establishes a special fund for the dispersal of monetary relief for farm workers suffering damages, is existing law.

Status: Chapter # 408, Statutes of 2001.

Employment Rights

The Committee voted on major bills in the area of employment rights during 2001. These include AB 800 (Wesson) which restricts the use of English only policies in the workplace; AB 25 (Migden) which expands the rights of domestic partners; and AB 1015 (Wright) which protects employees and jobs applicants from unlawful discrimination.

AB 800 Wesson Employment: workplace language policies

AB 800 makes it unlawful for an employer to prohibit or limit the use of any language in a workplace, except under specified conditions. Specifically, AB 800 provides that it is an unlawful employment practice for an employer to adopt or enforce a policy limiting or prohibiting the use of a non-English language in the workplace unless justified by a business necessity, which is defined as an overriding legitimate business purpose, as specified, and notice, as specified, is provided to employees.

During the past 12 years, at least three bills addressing this issue have been passed by the Legislature and vetoed by the Governor: AB 2440 (Becerra) in 1992; SB 834 (Marks) in 1991; and SB 1454 (Marks) in 1989.

Existing law prohibits, under the California Fair Employment and Housing Act (FEHA), employment discrimination based on race, religious creed, color, national origin, and other specified bases. The California Fair Employment and Housing Commission (FEHC) has ruled that an employer discriminates against an employee's national origin and ancestry when imposing an English only workplace rule without business justification. FEHC regulations specify the "business necessity" conditions under which an employer may require employees to speak only English at certain times, and provide that a practice may still be impermissible if an alternative less discriminatory practice serves the same business purpose equally well.

Existing federal law prohibits, under Title VII of the Civil Rights Act of 1964, employment discrimination on enumerated bases including national origin and ancestry. The Federal Equal Employment Opportunity Commission (EEOC) has adopted similar guidelines. The federal courts, including the Ninth Circuit Court of Appeals, have generally declined to follow the EEOC guidelines in this area.

In support of this bill the author states that one of the fundamental goals of California's civil rights statutes is the elimination of discrimination based on national origin. Language is intimately tied to national origin. Rules prohibiting the use of languages other than English discriminate and have an adverse impact on protected groups. Forced suppression of one's native language creates an oppressive and intimidating workplace. Federal courts have varied in their interpretation of the circumstances under which an English-only policy is permissible. A state statute would provide a clear state policy on the issue and give guidance to state courts regarding English-only policies. In support of this bill, the Attorney General states that this bill is important because it would codify the

standards currently contained in the regulations of the Department of Fair Employment and Housing and would clarify the ambiguities in this area of law that have arisen by conflicts in federal court decisions.

Opponents state that this bill increases employer liability by making it an unlawful employment policy under FEHA to adopt or enforce a policy that limits or prohibits the use of a non-English language in any workplace unless very specific procedures are followed. They state that this bill does not contain the FEHA exemption for employers with less than five employees. Opponents also state that the federal courts have expressly rejected the EEOC guidelines, and that this bill violates Article 3, Section 6 of the California Constitution, which declares that English is the official language of California.

AB 25 Migden Domestic Partnership

AB 25 expands the group of individuals who may register as domestic partners, and confers various new legal rights on all registered domestic partners. Specifically, this bill:

- 1) Expands the group of individuals who may register as domestic partners to include opposite sex couples where one of the persons is over the age of 62. Current law allows opposite sex couples to register as domestic partners only where both partners are over the age of 62.
- 2) Confers various new rights, privileges, and standing on all registered domestic partners, consistent with the rights, privileges and standing of spouses, including:
 - a) The right to recover damages for negligent infliction of emotional distress;
 - b) The right to assert a cause of action for wrongful death;
 - c) The right of a domestic partner to adopt a child of his or her partner as a stepparent;
 - d) The right to receive continued health care coverage (including the right of his or her child to receive coverage) because he or she is a surviving beneficiary of the deceased employee or annuitant;
 - e) The right to make health care decisions for an incapacitated partner;
 - f) The right to nominate a conservator, be nominated as conservator, oppose, participate, file various petitions in the conservatorship, and to receive all notices relevant to conservatorship proceedings, including temporary conservatorships, involving his or her domestic partner;
 - g) The right to receive an allowance from the estate of a conservatee who is his or her domestic partner, to pay for basic living expenses during the conservatorship, in the same manner as a spouse and the minor children of a conservatee are entitled; the right to jointly purchase real property with a conservatee who is his or her partner and to receive gifts from the conservator upon court approval; the right and priority of his or her nominee to be appointed conservator equal to the right and priority of a nominee of a spouse;

- h) The right to be treated the same as a spouse in a statutory will; the right to inherit property from a deceased partner in the same manner as a spouse inheriting under the intestate succession laws of the state; the right to be appointed as administrator of decedent's estate, in the same manner and priority as a spouse; if he or she predeceased the decedent, the right of his or her children, parents, brothers and sisters to be appointed as administrator of decedent's estate, in the same manner and priority as the children, parents, brothers and sisters of a predeceased spouse;
 - i) The right to be treated as the spouse of a taxpayer for purposes of determining personal state income tax liability;
 - j) The right to use employee sick leave to attend to an illness of his or her partner or his or her partner's child and the right not to be discriminated against for the use of sick leave to attend to an illness of his or her partner or partner's child;
 - k) The right to unemployment insurance benefits for leaving employment to join his or her domestic partner at a remote location to which commuting to work is impractical and a transfer of employment is not available;
 - l) The right to file a claim for disability benefits for his or her partner, in the same manner as a spouse may file such a claim.
- 3) Unless the will expressly provides otherwise, termination of a domestic partnership, after the execution of the will, revokes: a bequest of property made in a will to a former domestic partner; a general or special power of appointment conferred on the former domestic partner; and, a nomination of the former domestic partner to be an executor, trustee, conservator, or guardian.

AB 1015 Wright Employment Discrimination

AB 1015 extends employee anti-discrimination remedies under the Labor Commissioner to applicants for employment and job training programs and prohibits discrimination against employees and applicants for employment engaged in lawful conduct during nonworking hours away from the employer's premises and for political activities, as specified. Law enforcement agencies, newspaper publishers, and specified religious institutions would be exempt from the changes enacted by this bill. This bill also does not change existing law with respect to employment discrimination related to the consumption of tobacco products.

This bill provides an administrative remedy under the Labor Commissioner for employees and applicants for employment, including employment training programs, for cases involving specified conduct by the employee or applicant including protected political activities and lawful conduct during non-working hours away from the employer's premises.

The provisions of this bill creating new actions or remedies do not apply to three categories of employers: law enforcement, newspaper publishers, and certain religious institutions. The bill is drafted to preserve existing remedies related to such groups.

It also does not abrogate two types of employment contracts: (1) contracts that protect an employer against any conduct that is actually in direct conflict with the enterprise-related interests of the employer, as specified, and (2) contracts that protect a firefighter against any disease that is presumed to arise out of and in the course of employment, by limiting the firefighter's consumption of tobacco products on or off the job.

The bill also provides that it does not affect existing law regarding employment discrimination related to the consumption of tobacco products.

The Senate amendments to AB 1015 shifted the jurisdiction for administrative remedies for the specified employment discrimination from the Department of Fair Employment and Housing to the Labor Commissioner. They also deleted references to labor organizing rights due to concern about possible conflicts with remedies under those statutes.

Supporters state that this bill will strengthen the existing rights of employees by enabling the LC to provide an adequate administrative remedy for individuals who are disadvantaged or disciplined in violation of their rights. It will provide a cost-effective alternative to having employees litigate employment discrimination issues in federal court.

Opponents state that this bill will have a negative impact on employment relationships in this state, and will increase employer liabilities without any commensurate protections. The Senate amendments removed the opposition of several groups concerned with issues related to tobacco consumption.

2001 Bills

AB 25 Migden Domestic Partnership

See discussion above.

Status: Chapter # 893, Statutes of 2001.

AB 276 Migden Discrimination: remedies

This bill extends from one to two years the time given to the State Department of Fair Employment and Housing to investigate civil violations of California's hate crimes law.

Status: Chapter # 813, Statutes of 2001.

AB 800 Wesson Employment: workplace language policies.

See discussion above.

Status: Chapter # 295, Statutes of 2001.

AB 1015 Wright Employment Discrimination

See discussion above.

Status: Chapter # 820, Statutes of 2001.

AB 1025 Frommer Lactation Accommodation

Requires employers to provide reasonable unpaid break time and to make reasonable efforts to provide the use of an appropriate room for an employee to express breast milk for the employee's infant child.

Status: Chapter # 821, Statutes of 2001.

AB 1309 Goldberg Employment: reports on gender and ethnicity

This bill would require employers who solicit and/or obtain a public contract of \$50,000 or more to submit reports on the gender and ethnicity of their workforce to the contracting agency and the Department of Fair Employment and Housing (DFEH). It would also require all employers and labor organizations with 100 or more employees to submit reports to the DFEH on the gender and ethnicity of their workforce.

Status: Two-year bill, failed in the Senate Judiciary Committee, reconsideration granted.

AB 1475 Liu Employment Harassment: religious exemption

This bill makes the Fair Employment and Housing Act provisions prohibiting harassment in the workplace (because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation), applicable to hospitals or health care facilities affiliated with or owned by religious institutions.

Status: Chapter # 909, Statutes of 2001.

AB 1599 McLeod Age Discrimination in Employment

The bill would make it an unlawful employment practice, subject to certain exceptions, for an employer on the basis of a person's age to refuse to hire or employ the person, to refuse to select the person for a training program leading to employment, to bar or discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in the terms, conditions, or privileges of employment. In addition to exceptions, among other things, for age restriction in other laws and bona fide occupational qualifications, the bill would specify that the bill does not preclude promotions within existing staff, hiring or promotion on the basis of experience and training, or hiring under specified established recruiting programs.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1649 Goldberg Discrimination

This bill expands the definition of "sex" to include gender for anti-harassment and discrimination purposes.

Status: Two-year bill, Senate Inactive File.

SB 147 Bowen Employee Computer Records

This bill prohibits an employer from monitoring employee electronic mail (e-mail) or other computer records without first advising the employee of the employer's workplace privacy and monitoring policy.

Status: Vetoed by Governor Gray Davis.

SB 269 Alarcon Expanded municipal utilities: employee rights and benefits

This bill prohibits an expanded municipal utility that acquires a public utility from engaging in displacement, layoff, or reductions in pay or benefits of the public utility's employees. This bill requires an expanded municipal utility to hire and retain all employees of an acquired public utility, subject to collective bargaining. The rights and obligations of the parties set forth in a collective bargaining agreement prevail over the bill's provisions.

This bill requires an expanded municipal utility to assume the public utility's employee labor agreements. The bill also requires the expanded municipal utility to assume the labor obligations imposed by state or federal law. The expanded municipal utility must maintain the retirement, health, welfare, and other employee benefits of the acquired public utility until modified by a collective bargaining agreement. The bill prohibits a "worsening" of these benefits because an expanded municipal utility acquires a public utility. If the public utility is bargaining with unions representing employees who may be transferred to an expanded municipal utility, the bill allows the public utility to consult with the municipal utility before the transfer occurs. This bill defines an "expanded municipal utility" as a local publicly owned utility of a city or a specified type of special district that acquires a public utility's existing facilities to expand into areas formerly served by the public utility.

Status: Two-year bill, Assembly Local Government Committee.

SB 504

Scott

**Employment Discrimination: nonprofit
educational institutes**

Provides that a nonprofit public benefit corporation formed by, or affiliated with, a particular religion that operates an educational institution as its sole or primary activity may restrict employment, including promotion, in any or all employment categories to individuals of a particular religion. Provides that such an institution shall in all other respects be subject to the Fair Employment and Housing Act (FEHA), including, but not limited to, the prohibitions against discrimination made unlawful employment practices by FEHA.

Status: Chapter # 910, Statutes of 2001.

SB 1197

Romero

Sick Leave

Provides that it is a per se (by itself) violation of the law establishing the right of an employee to use sick leave to attend to an illness of a child, parent, or spouse, for an employer to adopt an absence control policy which may lead to or result in discipline, discharge, demotion, or suspension, by counting use of such sick leave. Provides that employees working under such an absence control policy shall be entitled to appropriate legal and equitable relief.

Status: Vetoed by Governor Gray Davis.

Occupational Safety and Health

AB 1127 (Steinberg) was enacted in 1999 to strengthen enforcement of worker health and safety laws in California. That bill increased civil and criminal penalties for serious and willful safety violations. AB 1599 (Torlakson - 2000) authorized funding for the Circuit Prosecutors Project to assist local district attorneys in prosecuting criminal violations of this law. In 2001, the Committee monitored the activities of Cal/OSHA including the implementation of AB 1127 and the work of the Worker Safety Circuit Prosecutors Project of the California District Attorneys Association. Concerns have been raised with the Committee about the need to significantly strengthen the inspection and enforcement activities of Cal/OSHA. During 2001, the Committee passed an administration-sponsored measure, AB 1069 (Koretz), to allow the Labor Commissioner to reopen cases, under specified circumstances, where a worker alleges retaliation for complaining about unsafe working conditions. The measure was signed into law.

2001 Bills

AB 567 Koretz Agricultural Employees: length of hand-held tool handles

This bill would require employers to furnish and require agricultural employees to use hand-held tools with handles no less than 48 inches long while weeding, thinning, or hot capping. It is designed to close a loophole in enforcement of the law, enacted in the 1970's that banned the use of "short-handled" hoes, because such hoes cause severe back injuries to farmworkers.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1069 Koretz Labor: complaints

This bill permits the Labor Commissioner to reconsider a formerly dismissed discrimination complaint based on finding by the U.S. Department of Labor that the complaint had merit.

Status: Chapter # 134, Statutes of 2001.

AB 1343 Canciamilla Occupational Safety and Health Enforcement

Would provide that investigations, in the discretion of the division, need not include an onsite inspection by the division if the complaint concerns a non-serious violation involving an employer that is a participant in a voluntary protection program of the division, as defined by the bill.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1356 Aanestad Occupational Safety and Health: self-audits

Limits the access of the Division of Occupational Safety and Health (Division) to an employer's self-audit report, and limits the authority of the Division to issue a citation for a violation of an Occupational Safety and Health Standard (Standard) discovered during an employer's voluntary self-audit and corrected as specified.

Status: Two-year bill, failed in the Assembly Committee on Labor and Employment, reconsideration granted.

**AB 1681 Canciamilla Workers Compensation/Health & Safety
Commission**

This bill allows researchers employed by or under contract with the Commission on Health and Safety and Workers Compensation to use, as specified, individually identifiable information maintained by the Division of Workers' Compensation as necessary to carry out the commission's research.

Status: Chapter # 792, Statutes of 2001.

SB 123 Escutia Department of Industrial Relations

This bill requires members of the Cal-OSHA Standards Board to be approved by the Senate and specifies that once a member's term of office expires, the member automatically ceases to be on the board.

Status: Vetoed by Governor Gray Davis.

SB 278 Alarcon Commercial Drivers: hours of employment

Establishes a cause of action for a commercial driver against a motor carrier who requires or authorizes the driver to operate a commercial motor vehicle in excess of the maximum number of hours a driver is permitted to drive under state or federal law.

Status: Two-year bill, Assembly Inactive File.

SB 486 Speier Public Safety: working warehouses

This bill requires a working warehouse to secure merchandise stored on shelves higher than 12 feet above the sales floor.

Status: Chapter # 856, Statutes of 2001.

SB 986 Torlakson Elevators and other conveyances

This bill revises existing law relating to elevator inspections and permits, to additionally cover other conveyances including in part, escalators, platform and stairway chair lifts, dumbwaiters, material lifts, moving walks and automated people movers. This bill also extends inspection and permit requirements to these other types of conveyances, and authorizes the Occupational Safety and Health Standards Board to adopt emergency regulations to implement its provisions. This bill further requires the Division of Occupational Safety and Health (DOSH) of the Department of Industrial Relations to propose final rulemaking proposals for all conveyances by December 31, 2002.

Status: Vetoed by Governor Gray Davis.

SB 1207 Romero Occupational Safety and Health: volunteer firefighters

This bill includes volunteer firefighters within the ambit of the California Occupational Safety and Health Act.

Status: Chapter # 807, Statutes of 2001.

SB 1215 Escutia Department of Industrial Relations

This bill requires the Governor's appointments of members of the Occupational Safety and Health Standards Board (Standards Board) to be subject to approval by the Senate and limits to 60 days the time after the expiration of a term of office that a Standard Board member may hold that office. The language of the bill was revised in responses to the veto of SB 123 (Escutia), addressing the same concern, earlier in the session.

Status: Vetoed by Governor Gray Davis.

Public Works and Prevailing Wage

The Committee passed SB 588 (Burton) to provide joint labor-management committees with access to limited employee information on payroll records, and authorize such committees to bring civil actions to enforce prevailing wage laws. A similar measure was vetoed in 2000. Note: an important bill related to public works projects, SB 975 (Alarcon), which was not heard in this Committee, was passed by the Legislature and signed into law this year. That bill defines "public funds" used in "public projects" and states legislative intent that projects financed through Industrial Development Bonds issued by the California Infrastructure and Economic Development Bank must comply with existing laws pertaining to prevailing wages.

AB 1448 Maddox Prevailing Wage Laws: violations

Provides that a prime contractor is not responsible for a violation by a subcontractor on a public works project of specified duties related to certified payroll records and overtime pay. A prime contractor would become liable for such actions if two Labor Code sections are permitted to sunset on January 1, 2003. This bill repeals the sunset of those sections.

Status: Two-year bill, Assembly Appropriations Committee.

SB 588 Burton Prevailing Wages: payroll records

This bill permits federally recognized joint labor-management committees access to certified payrolls on public works projects, and permits committees to seek civil court action to remedy prevailing wage violations. Gives joint labor-management committees access to limited employee information on payroll records, and authorizes such committees to bring civil actions to enforce prevailing wage laws. This bill is similar to AB 2783 (Villaraigosa) of 2000 which was vetoed by the Governor.

Status: Chapter # 804, Statutes of 2001.

Job Training

AB 251 **Vargas** **EDD: Jobs for California Graduates Program**

This bill expands the Jobs for California Graduates (JCG) program from a regional to a statewide program and appropriates \$2,500,000 to the Employment Development Department (EDD) for this purpose.

Status: Two-year bill, held in Assembly Appropriations Committee.

AB 925 **Aroner** **Employment of Persons with Disabilities**

This bill revises and expands programs to assist persons with disabilities to become employed.

Status: Two-year bill, Senate Inactive File.

AB 1087 **Calderon** **Apprenticeships: electricians**

Requires electricians who perform high voltage work to obtain certification by January 1, 2005. Modifies the existing certification program to mandate multi-lingual materials, provide for alternative means of satisfying education requirements, and grant credit toward apprenticeship for vocational training and on-the-job experience. Provides certification cards to electricians who have met standards for training and competency. Exempts individuals handling temporary or portable electrical equipment in the motion picture and television production, theatrical, hotel, exhibition and trade show industries. Also exempts certain apprentices and trainees. Requires a report to the Legislature from the Division of Apprenticeship Standards on the status of electrician certification by January 1, 2004.

Status: Two-year bill, Senate Inactive File.

AB 1131 **Frommer** **Apprenticeship Agreements: remedies**

This bill restricts state funding of apprenticeship training programs to those programs, which have been approved by the Division of Apprenticeship Standards of the State Department of Industrial Relations.

Status: Senate Inactive File.

Miscellaneous

The Committee passed AB 1679 (Shelley) relating to the obligations of a licensed contractor with respect to employees supplied by a temporary agency or other specified entities when the employee is performing acts for which a contractor's license is required. AB 1679 provides that an employee whose work is supervised by a licensed contractor shall be deemed the employee of that contractor for purpose of specified Labor Code provisions when the employee is supplied by a temporary agency, employment referral service, labor contractor or similar entity, to perform any act or contract for which a contractor's license is required.

The Labor Code provisions, which apply to the licensed contractor with respect to such employees, are:

Part 1 of Division 2, which includes provisions related to payment of wages, assignment of wages, and privileges and perquisites including gratuities, bonds and photographs, and contracts and applications for employment.

Part 2 of Division 2, which includes provisions related to overtime, meal and rest breaks, and days of rest.

Part 4 of Division 2, which includes provisions related to wages, hours, and working conditions, minimum wages, and the employment of minors.

Part 7, Chapter 1 of Division 2, which includes provisions related to public works and the payment of prevailing wage rates.

Division 4, which includes provisions, related to workers' compensation benefits.

Division 5, which includes provisions, related to occupational safety and health.

AB 1679 also requires the licensed contractor to secure workers' compensation coverage for the employee rather than relying upon an agreement with the temporary agency, employment referral service, labor contractor or similar entity, and provide that Labor Code Section 3602(d), which permits contracting with another employer to provide such compensation, does not apply to the licensed contractor under this legislation.

Provides that these requirements do not apply to employees of a public agency performing work on a public works project.

According to the sponsor, State Building and Construction Trades Council (SBCTC), because construction is an extremely high-hazard industry, the contractor who controls the job site must be primarily responsible for the safety of these workers, including being responsible for providing workers' compensation coverage. Under the current system, contractors who can't obtain workers' compensation coverage in the market, because of terrible safety records or histories of fraud, can continue to operate by renting temporary

employees and the temp agency's workers' compensation policy. This arrangement not only exposes workers to unsafe work-sites, but also removes the only disincentive (higher premiums) for contractors who repeatedly endanger workers' safety. SBCTC also points to two decisions in May of this year by the Occupational Safety and Health Appeals Board (OSHAB), which held that temporary employment agencies are responsible for ensuring that construction job-sites, in which their employees are working, are safe and in compliance with state health and safety regulations. In its appeal, Manpower Inc. had argued that it does not possess the experience and expertise to effectively predict hazards at construction sites and to determine the safeguards necessary to protect employee at construction sites.

Opponents of this bill state that by requiring the on-site contractor to be "the employer" for a variety of purposes, AB 1679 would eliminate the joint employment doctrine and would thereby destroy much of the value contractors find in using staffing firms and their employees. This would not only severely impact staffing firms, it would deprive employees who find it beneficial to use staffing firms of their use when it comes to construction jobs. Moreover, it would hurt many construction firms, particularly smaller ones, that cannot afford to carry certain types of skilled workers as permanent employees but who need quick access to them in order to do certain jobs. By specifically requiring that the contractor rather than the staffing firm employer provide workers' compensation coverage, AB 1679 eliminates an important function provided by staffing firms and, in the process, puts injured workers in potential difficulty if they need benefits. A staffing firm will provide one of its employees to different jobs every few days or weeks, as contractors need particular skills. The staffing firm's workers' compensation policy covers the employee regardless of where the injury occurs.

2001 Bills

AB 351 La Suer Local Agency Employees

This bill requires cities, counties, and special districts, including local park agencies, to require a prospective employee or a volunteer who would work with children at a park, beach, playground, or recreational center to complete an application that asks if the person has been convicted of certain crimes, such as sexual offenses, child abuse, or domestic violence. This bill requires cities, counties, and special districts to screen any such employee for his or her criminal background.

Status: Chapter # 777, Statutes of 2001.

AB 582 Salinas Department of Industrial Relations: agricultural labor

Provides that the Department of Industrial Relations (DIR) shall conduct a review of existing programs to improve the relationship between agricultural employers and agricultural employees.

Status: Two-year bill, Assembly Inactive File.

AB 908 Maddox Building Maintenance Contractors

Would prohibit any person from acting as a building maintenance service contractor, as defined, unless currently licensed by the Labor Commissioner and prohibit any person from knowingly entering into an agreement for building maintenance services, as defined, with a contractor who is not licensed under this bill.

Status: Two-year bill, Assembly Committee on Labor and Employment.

AB 1679 Shelley Contractors: employees

See discussion above.

Status: Vetoed by Governor Gray Davis.

SB 972 Costa Farmworker Profile Study

This bill appropriates \$240,000 from the General Fund over a 4-year period for the purpose of conducting an annual farm worker profile study. Annual funding would be contingent upon a \$60,000 annual match from a non-profit university-based institute.

Status: Two-year bill, held in Assembly Appropriations Committee.

SB 1044 Kuehl Labor: international trade agreements

This bill requires the Director of Industrial Relations to review and prepare a report that assesses the impact of international trade organizations and agreements on California labor laws and regulations.

Status: Vetoed by Governor Gray Davis.

Unemployment Insurance and Workers' Compensation (Benefits)

Several important bills related to unemployment insurance benefits levels and workers' compensation were passed this year. These are noted for your information although these bills are under the jurisdiction of the Insurance Committee in the Assembly:

SB 40 (Alarcon) increases unemployment insurance benefits. It was passed by the Legislature and signed into law.

SB 71 (Burton) and **AB 1176 (Calderon)** relate to workers' compensation benefits and reforms. These were passed by the Legislature and vetoed by the Governor.

Governor's Veto's

AB 1635 (Vargas)

7/30/01

To Members of the California State Assembly:

I am returning Assembly Bill 1635 without my signature.

Under current law, employees have the right to inspect their own personnel records. This bill would permit employees to obtain a copy of those records, and would authorize employers to charge either a maximum copying fee of ten cents per page or an amount specified in an applicable collective bargaining agreement.

While it would modify existing law governing personnel records, this bill contains no provisions to protect the privacy of other individuals who may be identified in the personnel records. Without measures that ensure the privacy of those individuals and the confidentiality of a company's legitimate proprietary information, the potential for harm of this measure outweighs the possible benefits.

Sincerely,

GRAY DAVIS

AB 1679 (Shelley)

10/12/01

To Members of the California State Assembly:

I am returning Assembly Bill 1679 (Shelley) without my signature.

In no other area of the law do we relieve the temporary employer or any employer of the responsibility to their employers. I am sympathetic to reports that some temporary employers are not fully meeting their obligations and I am receptive to alternate remedies.

Sincerely,

GRAY DAVIS

AB 1680 (Committee)

10/12/01

To Members of the California State Assembly:

I am returning Assembly Bill 1680 without my signature.

This bill would require the Labor Commissioner to conduct the educational classes required for obtaining a farm labor contractor's license.

Educational classes required of farm labor contractors were mandated by legislation I previously signed. I am confident that the Department of Industrial relations will implement that measure appropriately. There is no reason to change the law.

Sincerely,

GRAY DAVIS

SB 25 (Alarcon)

10/12/01

To Members of the California State Senate:

I am returning Senate Bill 25 without my signature.

The working men and women of California and our economy would benefit from a more coordinated effort by the various state departments charged with ensuring a well-trained, healthy, safe and prosperous workforce. I believe that the Department of Industrial Relations and the Employment Development Department could provide better service by being combined within a single entity. More review, however is necessary to determine what other components of the state, if any, should be organized in this fashion.

I have asked my Director of the Department of Industrial Relations to work with the appropriate people and to make a recommendation to me by the end of the year.

Sincerely,

GRAY DAVIS

SB 123 (Escutia)

8/6/01

To Members of the California State Senate:

I am returning Senate Bill 123 without my signature.

I object to the provision in this measure that requires that at the expiration of each member's term, the member automatically ceases to serve. Public policy is better served by allowing members to serve an additional 60 days .

Sincerely,

GRAY DAVIS

SB 147 (Bowen)

10/5/01

To Members of the California State Senate:

I am returning Senate Bill 147 without my signature.

This bill would require employers, by March 1, 2002, to execute signed or electronically verifiable agreements between an employer and employees regarding the right of the employer to monitor the e-mail traffic and computer files of employees. If such agreements are not provided, the bill prohibits employers from monitoring business computers by employees to guard against inappropriate business or personal uses.

As I previously have, when considering this issue, I start from the common-sense presumption that employees in today's wired economy understand that computers provided for business purposes are company property and that their use may be monitored and controlled.

Under current law, employers are potentially liable if the employer's agents or employees use the employer's computers for improper purposes, such as sexual harassment, defamation and the like. It therefore follows that any employer has a legitimate need to monitor, either on a spot basis or at regular intervals, such company property, including e-mail traffic and computer files stored on either employer-owned hard drives, diskettes or CD ROMs.

This bill places unnecessary and complicating obligations on employers and may likely to lead to litigation by affected employees over whether the required notice was provided and whether it was read and understood by the employee. I support reasonable privacy protections for employees in the workplace and my Administration proposed amendments which would carry out the intent of the bill without imposing undue regulatory burdens and potential legal exposure to businesses for doing what any employee should assume is the employer's right when they accept employment. Senator Bowen rejected the proposed amendments. Thus, I must veto the bill a third time.

Sincerely,

GRAY DAVIS

SB 986 (Torlakson)

10/12/01

To Members of the California State Senate:

I am returning Senate Bill 986 without my signature.

This bill would substantially revise existing law, as it applies to conveyances, to cover escalators, platform and stairway chair lifts, dumbwaiters, material lifts, moving walks, and automated people movers. Among other changes it would make require that no conveyances, or part of, may be erected, constructed, installed, or changed with out a permit from the Division of Occupational Safety and Health of the Department of Industrial Relations. My administration has increased funds and hired more inspectors to improve workplace safety. This bill, however, would for the first time require government to inspect and oversee the installation of elevators in private homes.

For this reason, I must veto this bill.

Sincerely,

GRAY DAVIS

SB 1044 (Kuehl)

10/11/01

To Members of the California State Senate:

I am returning Senate Bill 1044 without my signature.

This bill would require the Department of Industrial Relations to review the impact of international trade agreements on California labor laws and regulations, and require the Department to make this report available to the Legislature, other public officials, and the general public.

While I share the author's intent that California's concerns are represented in the development of trade agreements, including the impact of those agreements on California's labor laws, this legislation does not effectively fulfill that important objective. Most critically, studying trade agreements after they are already implemented, while meritorious, has little impact on the substance of those agreements. The time to affect the contents of an agreement is during the agreement's development and negotiations.

The State of California already has and will continue to have an important voice in the development of international trade agreements, including their impact on our labor laws and regulations. California has a coveted seat on the United States Trade Representative's (USTR) Intergovernmental Policy Advisory Committee, which advises the USTR and other federal cabinet officials on trade matters. In addition, many Californians sit on the other 32 federal trade advisory committees, which include a committee specifically devoted to labor issues. To amplify California's concerns, the Technology, Trade, and Commerce Agency has, both informally and in testimony, presented trade negotiators with analyses of trade issues regarding California's unique issues.

California's U.S. Senators and Representatives, the largest delegation in Congress, also have a direct and constitutionally protected role in the development of trade agreements, and my Administration works regularly with them to ensure that the voices of California are reflected in trade agreements, and in their enforcement.

Finally, I have asked the Secretary of the Technology, Trade and Commerce Agency to work closely with the Department of Industrial Relations and the Legislature in assessing trade initiatives and negotiations and to continue State efforts to advise federal officials on the impact of trade agreements on California labor laws.

Sincerely,

GRAY DAVIS

SB 1159 (Polanco)

10/12/01

To Members of the California State Senate:

I am returning Senate Bill 1159 without my signature.

Emergency situations inherent in a hospital setting make it very difficult to guarantee regular break periods at a specified time.

Also, this bill would subject the University of California to significant unwarranted statutory penalties for failing to provide mandated rest and meal periods for certain of its health care employees. These terms and conditions of work are better created and maintained through the effective use of the collective bargaining process, which is currently in place between the University, and its health care employees' exclusive representatives.

Sincerely,

GRAY DAVIS

SB 1197 (Romero)

10/12/01

To Members of the California State Senate:

I am returning Senate Bill 1197 without my signature.

I agree employees should have a right to use one half of their paid sick leave to attend to a sick child, parent or spouse. That is why I signed those provisions into law in 1999 (AB 109 Knox).

These provisions should be given time to work.

Sincerely,

GRAY DAVIS

SB 1215 (Escutia)

10/12/01

To Members of the California State Senate:

I am returning Senate Bill 1215 without my signature.

The existing statutes regarding the composition and appointments to the Occupational Safety and Health Standards Board have been effective and should be left in tact. There is merit in allowing Board members to serve until their successors are appointed and qualified, as the current law allows. Because this bill increases the potential for vacancies on the Occupational Safety and Health Standards Board, which could compromise the Board's ability to protect the health and safety of California's workers, I cannot sign this legislation.

Sincerely,

GRAY DAVIS

Bill Index by Subject and Status

Wage and Hour

Chaptered

AB 1675	Koretz	Shepherders
SB 912	Chesbro	Minors: Agricultural Packing Plant
SB 1208	Romero	Working Hours: Overtime Exemption

Vetoed

SB 1159	Polanco	Labor Standards: Meal and Rest Periods UC
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Remaining in Legislature

AB 181	Koretz	Employment: Minimum Wage
AB 1404	Cox	Working Hours: Flexible Schedule
AB 1677	Koretz	Wages and Hours
SB 360	Machado	State Employees: Wages
SB 1027	Romero	Employment: Overtime: Healthcare Employees

Dead

AB 1456	Briggs	Minimum Wage: By County Unemployment
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Labor Standards Enforcement

Chaptered

AB 202	Corbett	Joint Enforcement Strike Force on Underground Economy
AB 423	Hertzberg	Farm Labor Contractors: Licensing
AB 856	Wesson	Horse Racing
SB 20	Alarcon	Displaced Janitors
SB 1125	Burton	Farm Labor Contractors: Licensing
SB 1198	Romero	Agricultural Employees

Vetoed

AB 1680	Committee	Farm Labor Contractor Classes
SB 25	Alarcon	Labor Agency

Remaining in Legislature

AB 638	Steinberg	Farm Labor: Written Contracts
AB 908	Maddox	Building Maintenance Contractors
AB 1459	Reyes	Farm Labor Contractors
AB 1674	Committee	DIR Coordination
AB 1676	Committee	DIR Database: Violations
AB 1678	Committee	DIR Bilingual Services

Employment Rights

Chaptered

AB 25	Migden	Domestic Partnerships
AB 276	Migden	Discrimination: Remedies
AB 800	Wesson	Employment: Workplace Language Policies
AB 1015	Wright	Employment Discrimination
AB 1025	Frommer	Lactation Accommodation
SB 504	Scott	Employment Discrimination: Nonprofit Educational Institutions

Vetoed

AB 1635	Vargas	Personnel Records
SB 147	Bowen	Employee Computer Records
SB 1197	Romero	Sick Leave

Remaining in Legislature

AB 1309	Goldberg	Employment: Reports on Gender and Ethnicity
AB 1475	Liu	Employment Harassment: Religious Exemption
AB 1649	Goldberg	Discrimination

Occupational Safety and Health

Chaptered

AB 1069	Koretz	Labor: Complaints
AB 1681	Canciamilla	Occupational Data: Individual ID Information
SB 486	Speier	Public Safety: Working Warehouses
SB 1207	Romero	Occupational Safety and Health: Volunteer Firefighters

Vetoed

SB 123	Escutia	Department of Industrial Relations
SB 986	Torlakson	Elevators and Other Conveyances
SB 1215	Escutia	Department of Industrial Relations

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AB 567	Koretz	Agricultural Employees: Hand-Held Tools
AB 1343	Canciamilla	Occupational Safety and Health Enforcement
AB 1356	Aanestad	Occupational Safety: Self-Audits
SB 278	Alarcon	Commercial Drivers: Hours of Employment

Public Works and Prevailing Wage

Chaptered

SB 588	Burton	Prevailing Wages: Payroll Records
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Remaining in Legislature

AB 1448	Maddox	Prevailing Wage
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Job Training

Remaining in Legislature

AB 251	Vargas	EDD: Jobs for California Graduates Program
AB 925	Aroner	Job Training: Disabilities
AB 1087	Calderon	Apprenticeships: Electricians
AB 1131	Frommer	Apprenticeship Agreements: Remedies

Miscellaneous

Chaptered

AB 351	La Suer	Local Agency Employees
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Vetoed

AB 1679	Shelley	Contractors: Employees
SB 1044	Kuehl	Labor: International Trade Agreements

Remaining in Legislature

AB 582	Salinas	DIR: Agricultural Labor
AB 1028	John Campbell	Legislative Employees
SB 972	Costa	Farmworker Profile Study

Benefits

Chaptered

SB 40	Alarcon	Unemployment Insurance
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Vetoed

AB 1176	Calderon	Worker's Compensation
SB 71	Burton	Worker's Compensation