

Senate Bill No. 62

Passed the Senate September 10, 2021

Secretary of the Senate

Passed the Assembly September 8, 2021

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2021, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1174.1, 2670, 2671, 2673, 2673.1, and 2675.5 of, and to add Section 2673.2 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 62, Durazo. Employment: garment manufacturing.

Existing law makes garment manufacturers liable for guaranteeing payment of wages to employees of their contractors.

This bill would expand the definition of garment manufacturing to include dyeing, altering a garment's design, and affixing a label to a garment. The bill would prohibit any employee engaged in the performance of garment manufacturing to be paid by the piece or unit, or by the piece rate, except as specified. The bill would impose compensatory damages of \$200 per employee against a garment manufacturer or contractor, payable to the employee, for each pay period in which each employee is paid by the piece rate.

This bill would define "brand guarantor" for purposes of these provisions as a person contracting for the performance of garment manufacturing, as specified, regardless of whether the person with whom they contract performs manufacturing operations or hires a contractor or subcontractor to perform manufacturing operations. This bill would specify that a garment manufacturer, contractor, or brand guarantor who contracts with another person for the performance of garment manufacturing operations shares joint and several liability with any manufacturer and contractor for the full amount of unpaid wages, and any other compensation, including interest, due to any and all employees who performed manufacturing operations for any violation, attorney's fees, and civil penalties, as specified. The bill would also make garment manufacturers and contractors liable for the full amount of damages and penalties for any violation, as specified.

This bill would create a rebuttable presumption in a claim filed with the Labor Commissioner to recover unpaid wages and associated penalties, if an employee has provided the Labor Commissioner with labels or other information that the commissioner finds credible relating to the identity of any brand

guarantor or garment manufacturer that the brand guarantor or garment manufacturer is liable with the contractor for any amounts found to be due to the employee. The bill would also give the Labor Commissioner authority to enforce these provisions by issuing a stop order or a citation.

Existing law requires every employer engaged in the business of garment manufacturing to keep certain records for 3 years, including, among other things, contract worksheets indicating the price per unit agreed to between the contractor and manufacturer.

This bill would also require every employer engaged in the business of garment manufacturing and brand guarantors to keep all contracts, invoices, purchase orders, work orders, style or cut sheets, and any other documentation pursuant to which garment manufacturing work was, or is being, performed for 4 years.

Existing law requires the commissioner to deposit \$75 of each garment manufacturer's registration fee into one separate account to be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and benefits by a garment manufacturer, contractor, or subcontractor.

This bill would instead require these funds to be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and benefits by a garment manufacturer, brand guarantor, or contractor.

Existing law precludes any employer, or other person or entity, who may be liable for a violation of any provision of the Labor Code from introducing as evidence, in an administrative proceeding contesting a citation or writ proceeding under specified provisions, books, documents, or records that are not provided pursuant to a duly served written request by the Labor Commissioner within the time the Labor Commissioner requests those books, documents, or records be produced, as specified.

This bill would expand those provisions to also preclude the introduction of records not provided to the Labor Commissioner, as specified, in an administrative proceeding under the provisions described above relating to the payment of wages for the performance of garment manufacturing.

The people of the State of California do enact as follows:

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

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

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

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

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

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

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

constantly work as quickly as possible to complete as many items as possible in a workday.

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

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

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

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

SEC. 2. Section 1174.1 of the Labor Code is amended to read:

1174.1. (a) Any employer, or other person or entity, who may be liable for a violation of any provision of this code shall be

precluded from introducing as evidence, in an administrative proceeding contesting a citation or writ proceeding under Section 558, 1197.1, 2673.1, or 2673.2, books, documents, or records, as specified in subdivision (b), that are not provided pursuant to a duly served written request by the Labor Commissioner under this section within the time the Labor Commissioner requests those books, documents, or records be produced, pursuant to either of the following:

(1) When the Labor Commissioner provides for no less than 15 days to respond, subject to the exceptions under subdivision (c), (d), (e), or (g).

(2) When the Labor Commissioner provides for less than 15 days to respond, subject to the exceptions under subdivision (c) or (e), if the Labor Commissioner, in their discretion, determines that circumstances exist that make it necessary to require a shorter period of production for the Labor Commissioner to conduct a complete investigation. In this instance, a statement indicating that determination of necessity shall be included with the written request from the Labor Commissioner.

(b) The books, documents, or records to which this section applies are payroll, time, and employment records that are required to be maintained at the place of employment or at a central location within the state by the employer, including, but not limited to, under Sections 226, 247.5, 1174, 2052, and 2673, and Section 6 or 7 (“Records”) of any order of the Industrial Welfare Commission.

(c) Subdivision (a) shall not apply in the event that the person or entity subject to the written request by the Labor Commissioner for the production of books, documents, or records opposes such a request in court, prior to the issuance of any citation under Section 558 or 1197.1, and a court determines that the books, documents, or records are not required to be produced.

(d) Paragraph (1) of subdivision (a) shall not apply to the failure to produce any books, documents, or records within the time requested by the Labor Commissioner if such failure is due to an inadvertent error, provided that such error is corrected and the books, documents, or records are produced to the Labor Commissioner no later than 20 days from the date originally requested. For purposes of this section, “inadvertent error” means

any clerical mistake causing an unintended delay in production of the requested books, documents, or records.

(e) The Labor Commissioner shall take into consideration a reasonable request from the person or entity subject to subdivision (a) for an extension on the time for production of books, documents, or records. The commissioner shall determine the reasonableness of the request and may consider, among other things, the location of the books, documents, or records and the volume of production. The Labor Commissioner, in their discretion, may admit and consider books, documents, or records that are produced beyond the time limits provided for in this section upon a finding that both of the following conditions are satisfied:

(1) The person or entity cooperated with the underlying investigation and substantially complied with the request within the time limit prescribed.

(2) The person or entity made good faith efforts to comply with the request, including discovery of the late-produced books, documents, or records.

(f) Service of a written request for books, documents, or records on a corporation or limited liability company shall be in the same manner as provided for service of a summons as described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(g) For purposes of paragraph (1) of subdivision (a) and notwithstanding subdivision (e), a person or entity that provides a timely good faith response to the Labor Commissioner that additional time is needed to gather requested books, documents, or records, shall be provided an automatic extension of 15 days.

SEC. 3. Section 2670 of the Labor Code is amended to read:

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

Several manufacturers, however, have attempted to avoid liability as a guarantor by adding layers of contracting between themselves and the employees manufacturing the garments. This undermines the purpose of Assembly Bill 633 because manufacturers have no

incentive to ensure safe conditions or the proper minimum wage and overtime payments for the workers producing their garments if they do not face guarantor liability.

This act, therefore, revises this part to make clear that a person contracting to have garments made is liable for the full amount of unpaid minimum, regular, overtime, and other premium wages, as well as reimbursement for expenses owed to the workers who manufacture those garments regardless of how many layers of contracting that person may use.

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

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

herein shall prohibit a local municipality from enacting its own protections for workers employed in the garment industry, so long as those protections are equal to, or in addition to, the protections provided herein.

SEC. 4. Section 2671 of the Labor Code is amended to read:
2671. As used in this part:

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

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

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

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

(d) “Brand guarantor” means any person contracting for the performance of garment manufacturing, including sewing, cutting,

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

(e) "Commissioner" means the Labor Commissioner.

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

SEC. 5. Section 2673 of the Labor Code is amended to read:

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

(1) The names and addresses of all garment workers directly employed by such person.

(2) The hours worked daily by employees, including the times the employees begin and end each work period.

(3) The daily production sheets, including piece rates.

(4) The wage and wage rates paid each payroll period.

(5) The contract worksheets indicating the price per unit agreed to between the contractor and manufacturer.

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

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

(8) The ages of all minor employees.

(9) Any other conditions of employment.

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

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

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

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

(c) The recordkeeping requirements in this section are in addition to the recordkeeping requirements set forth in this code, the California Code of Regulations, and in the Industrial Welfare Commission wage orders.

SEC. 6. Section 2673.1 of the Labor Code is amended to read:

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

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

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

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

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

(3) Nothing in this section shall prevent, prohibit, or limit the liability of garment manufacturers or contractors for damages and penalties owed to an employee due to violations of this section.

(b) In addition to the liability imposed pursuant to subdivision (a), garment manufacturers and contractors shall be liable for the full amount of damages and penalties, including interest, due to any and all employees, for a violation of this section. If two or more persons are performing work at the same worksite, during the same payroll period, the liability of each person shall be limited to their proportionate share, as determined by the Labor Commissioner, pursuant to paragraph (3) or (4) of subdivision (d).

(c) Employees may enforce this section solely by filing a claim with the Labor Commissioner against the contractor, the garment manufacturer, and the brand guarantor, if known, to recover unpaid wages and associated penalties. Garment manufacturers and brand guarantors whose identity or existence is unknown at the time the

claim is filed may be added to the claim pursuant to paragraph (2) of subdivision (d).

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

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

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

(3) Within 60 days of receiving a claim pursuant to subdivision (b), the Labor Commissioner shall hold a meet-and-confer conference with the employee, the contractor, and all identified manufacturers and brand guarantors to attempt to resolve the claim. Prior to the meet-and-confer conference, the Labor Commissioner shall conduct and complete an investigation of the claim, shall make an assessment of the amount of wages, damages, penalties, expenses, and other compensation owed, and shall conduct an investigation and determine liability pursuant to subdivisions (a) and (b). At that same time, the Labor Commissioner shall also investigate and determine the proportionate liability pursuant to subdivision (b). The investigation shall include, but not be limited

to, interviewing the employee and their witnesses and making an assessment of the amounts due, if any, to the employee. If an employee provides the Labor Commissioner with labels, or the equivalent thereto, from a brand guarantor or garment manufacturer, or other information that the commissioner finds credible relating to the identity of any brand guarantor or garment manufacturer for whom the employee performed garment manufacturing operations, there shall be a presumption that the brand guarantor or garment manufacturer is liable with the contractor for any amounts found to be due to the employee, as set forth in paragraph (1) of subdivision (a). An employee's claim of hours worked, and wages, damages, penalties, expenses, and other compensation due, including the claim of liability of a brand guarantor or garment manufacturer upon provision by the employee of labels or other credible information about work performed for any person, shall be presumed valid and shall be the Labor Commissioner's assessment, unless the brand guarantor, garment manufacturer, or contractor provides specific, compelling, and reliable written evidence to the contrary. That evidence from the brand guarantor, garment manufacturer, or contractor shall include accurate, complete, and contemporaneous records pursuant to Sections 226, 1174, and 2673, and the industrial commission wage order, including, but not limited to, itemized wage deduction statements, bona fide complete and accurate payroll records, evidence of the precise hours worked by the employee for each pay period during the period of the claim, and evidence, including a purchase order or invoice identifying the person or persons for whom garment manufacturing operations were performed. In the absence of the provision of that evidence, or the failure to timely respond to a subpoena pursuant to paragraph (1), a written declaration from a brand guarantor, garment manufacturer, or contractor is not sufficient to rebut the presumption of validity of the worker's claim and liability of the respective parties. If the Labor Commissioner finds falsification by the garment manufacturer or contractor of payroll records submitted for any pay period of the claim, any other payroll records submitted by the garment manufacturer or contractor shall be presumed false and disregarded.

The Labor Commissioner shall present their assessment of the amount of wages, and each contractor's or each garment

manufacturer's proportionate shares of damages and penalties, owed to the parties at the meet-and-confer conference and shall make a demand for payment of the amount of the assessment. If no resolution is reached, the Labor Commissioner shall, at the meet-and-confer conference, set the matter for hearing pursuant to paragraph (4).

(4) The hearing shall commence within 30 days of, and shall be completed within 45 days of, the date of the meet-and-confer conference. The hearing may be bifurcated, addressing first the question of wages and other compensation owed, as well as liability of the garment manufacturers, brand guarantors, and contractors, and, immediately thereafter, the proportionate responsibility of the damages and penalties for which each contractor or garment manufacturer is liable, pursuant to subdivision (b). The Labor Commissioner shall present their findings and assessments at the hearing. Any party may present evidence at the hearing to support or rebut the proposed findings and assessments. If an employee has provided the Labor Commissioner with labels, or the equivalent thereto, from a brand guarantor or garment manufacturer, or provides other information or testimony that the Labor Commissioner finds credible relating to the identity of any brand guarantor or garment manufacturer, for whom the employee performed garment manufacturing operations, there shall be a presumption that the brand guarantor or garment manufacturer is liable with the contractor for any amounts found to be due to the employee, as set forth in paragraph (1) of subdivision (a). A written declaration or testimony from a brand guarantor, garment manufacturer, or contractor is not sufficient to rebut the presumption of liability of the respective parties. If the Labor Commissioner finds falsification by the garment manufacturer or contractor of payroll records submitted for any pay period of the claim, any other payroll records submitted by the garment manufacturer or contractor shall be presumed false and disregarded. Except as provided in this paragraph, the hearing shall be held in accordance with the procedure set forth in subdivisions (b) to (h), inclusive, of Section 98. It is the intent of the Legislature that these hearings be conducted in an informal setting preserving the rights of the parties.

(5) Within 15 days of the completion of the hearing, the Labor Commissioner shall issue an order, decision, or award with respect

to the claim and shall file the order, decision, or award in accordance with Section 98.1.

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

(f) Any party shall have the right to judicial review of the order, decision, or award of the Labor Commissioner made pursuant to paragraph (5) of subdivision (c) as provided in Section 98.2. As a condition precedent to filing an appeal, the contractor, garment manufacturer, or brand guarantor, whichever appeals, shall post a bond with the Labor Commissioner in an amount equal to one and one-half times the amount of the award. No bond shall be required of an employee filing an appeal pursuant to Section 98.2. At the employee's request, the Labor Commissioner shall represent the employee in the judicial review as provided in Section 98.4.

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

(h) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provision of state or federal law. If a finding and assessment is not issued as specified and within the time limits in paragraph (3) of subdivision (c), the employee may bring a civil action for the recovery of unpaid wages pursuant to any other rights and remedies under any other provision of the laws of this state

unless, prior to the employee bringing the civil action, the garment manufacturer or brand guarantor files a petition for writ of mandate within 10 days of the date the assessment should have been issued. If findings and assessments are not made, or a hearing is not commenced or an order, decision, or award is not issued within the time limits specified in paragraphs (4) and (5) of subdivision (c), any party may file a petition for writ of mandate to compel the Labor Commissioner to issue findings and assessments, commence the hearing, or issue the order, decision, or award. All time requirements specified in this section shall be mandatory and shall be enforceable by a writ of mandate.

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

(j) Except as expressly provided in this section, this section shall not be deemed to create any new right to bring a civil action of any kind for unpaid minimum, regular, overtime, and other premium wages, reimbursement for expenses, any other compensation, damages, penalties, attorney's fees, or costs against a brand guarantor, garment manufacturer, or contractor.

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

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

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

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

SEC. 7. Section 2673.2 is added to the Labor Code, to read:

2673.2. (a) To ensure that employees are paid for all hours worked, an employee engaged in the performance of garment manufacturing shall not be paid by the piece or unit, or by the piece rate. Employees engaged in the performance of garment manufacturing shall be paid at an hourly rate not less than the applicable minimum wage.

(b) Nothing in this section shall be deemed to prohibit incentive-based bonuses.

(c) This section shall not apply to workplaces where employees are covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, and working conditions of the employees; premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage; stewards or monitors; and a process to resolve disputes concerning nonpayment of wages.

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

(e) This section may be enforced solely by filing a claim with the Labor Commissioner against the contractor or garment manufacturer, if known. Garment manufacturers or contractors whose identity or existence is unknown at the time that the claim

is filed may be added to the claim pursuant to paragraph (2) of subdivision (c) of Section 2673.1.

(f) Notwithstanding the provisions of this section, the Labor Commissioner may also bring an action to enforce this section under Section 98.3 or issue a citation against the garment manufacturer or contractors who violate this section. Those garment manufacturers or contractors shall be subject to compensatory damages of two hundred dollars (\$200) per employee paid by the piece rate per pay period. The procedure for issuing, contesting, and enforcing judgments for citations issued by the commissioner pursuant to this section shall be the same as those set forth in subdivisions (b) to (l), inclusive, of Section 1197.1.

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

SEC. 8. Section 2675.5 of the Labor Code is amended to read:

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

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

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

(3) Any disbursed funds subsequently recovered by the Labor Commissioner, pursuant to an assignment of the claim to the commissioner for recovery, including recovery from a surety under a bond pursuant to Section 2675.5, or otherwise recovered by the

Labor Commissioner from a liable party, shall be returned to the separate account.

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

Approved _____, 2021

Governor