



April 11, 2023

TO: Members, Assembly Judiciary Committee

**SUBJECT: AB 594 (MAIENSCHN) LABOR CODE: ALTERNATIVE ENFORCEMENT
OPPOSE – AS AMENDED MARCH 16, 2023**

The California Chamber of Commerce and the undersigned organizations respectfully **OPPOSE AB 594 (Maienschein)**. The bill improperly allows public prosecutors to bring claims regarding specialized issue areas, including the highly regulated separate system of workers' compensation, will lead to inconsistent enforcement, and does not protect against double recovery.

AB 594 Improperly Allows Prosecution of Several Specialized Subjects Under the Labor Code, Including Workers' Compensation and Health and Safety Laws

While some public prosecutors are allowed to enforce pieces of the Labor Code, **AB 594** expands this right significantly by giving all local prosecutors the right to enforce the entire Labor Code. That includes certain specialized topics that have their own specialized divisions within the Labor and Workforce Development Agency (LWDA): health and safety (overseen by Cal/OSHA) and workers' compensation (overseen by the Division of Workers' Compensation (DWC)).

Enforcement of both issues should remain as it is now. Specific to workers' compensation, that system is a fragile one. The "grand bargain" created an exclusive remedy for injured workers in a no-fault workers' compensation system. It is carefully crafted with its own unique laws and administrative procedures. AB 594 undermines exclusive remedy. If that is eroded, there will be reduced levels of certainty as far as who is the relevant authority on specific issues if not the Workers' Compensation Appeals Board (WCAB), statutory cost containment, and procedural clarity. Cases within the workers' compensation are not akin to typical civil actions. Any disruption in that system has the power to create significant problems for workers and employers, hence why that the system has undergone several major reforms over the years. It is important that any changes to the system be data-driven and done with input from both labor and management. Allowing elected public officials to step in as a new enforcement entity is a significant change that would have negative ramifications on the system. This is why workers' compensation was carved out of PAGA – all disputes should be handled through WCAB.

Cal/OSHA is also a specialized division with trained investigators responsible for health and safety claims. Those investigators are well versed in the unique regulations and laws governing workplace health and safety. For example, even under PAGA there is a different procedure for health and safety claims out of recognition that Cal/OSHA should be given the opportunity to investigate prior to a civil action being filed and that health and safety claims should be dealt with more quickly.

While we appreciate and support the efforts to increase state enforcement of labor laws, public prosecutors are already permitted under Labor Code section 218 to prosecute a number of wage and hour violations. Intentionally withholding wages is also already a crime for which employers can be prosecuted in a criminal action. **AB 594**'s expansion of public enforcement to the entire Labor Code sweeps up issues that belong under the umbrella of the divisions created specifically to deal with these areas of law.

AB 594 Will Create Inconsistent Enforcement

Providing this broad of authority to an array of local officials raises concerns regarding inconsistency in enforcement of the law.¹ As raised in connection with prior legislation regarding local enforcement of statewide laws, different cities and counties are likely to have significantly different enforcement. The cases they choose, their proffered interpretations of the law, the quality of investigation and prosecution, and whether they have the resources to prosecute is likely to vary significantly. Efforts to bolster enforcement should be focused on improving DLSE statewide enforcement rather than side-stepping that issue by deputizing local city and county officials.

AB 594 Does not Specify Where Recovery Goes and Does not Protect Against Double Recovery

AB 594 leaves open important questions regarding monetary recovery. For example, presumably any owed wage would go to the workers upon whose behalf the public prosecutor has sued. But there is nothing in the bill that clarifies where penalties would go – to the worker? To the city or county prosecuting? The attorney's fees provision also raises concerns regarding motivation. Because of the significant cost of litigating Labor Code claims, the vast majority of employers are likely to settle the case like they do now with private attorneys. Public prosecutors will have been spending significant taxpayer dollars to litigate the case (unlikely the DLSE, which is funded by employers' annual assessments). There are concerns then about the motivation to increase settlement values to compensate for that and to add to the city or county's own budget, an issue that does not exist regarding DLSE enforcement.

Further, the bill is silent as to its interaction with PAGA. PAGA cases have been interpreted by the court as being unique because the employee is seen as standing in the shoes of the state and are forever an aggrieved employee. Therefore, even if the employee recovers money for their individual claims or their claims have expired under the statute of limitations, they can still later serve as a PAGA plaintiff. See, e.g., *Kim v. Reins International California, Inc.*, 9 Cal. 5th 73 (2009); *Johnson v. Maxim Healthcare Services, Inc.*, 66 Cal. App. 5th 924 (2021). Similarly, here, an employee may argue that even if they were part of a settlement through city or county enforcement, they still have the right to bring a PAGA lawsuit.

For these and other reasons, we respectfully **OPPOSE AB 594**.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services (AIMS)
Allied Managed Care (AMC)

¹ Specifically regarding the arbitration provision, some arbitration agreements may not be binding on public entities. However, to the extent an agreement is enforceable, we strongly believe this provision violates the FAA and undermines existing rules of California civil procedure.

Associated Builders and Contractors of California
Associated General Contractors of California
Associated General Contractors San Diego
California Association of Joint Power Authorities (CAJPA)
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Association for Health Services at Home
California Attractions and Parks Association
California Building Industry Association (CBIA)
California Business Roundtable (CBRT)
California Chamber of Commerce
California Farm Bureau
California League of Food Producers
California Manufactures & Technology Association (CMTA)
California Restaurant Association
California Retailers Association
California Trucking Association
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Family Business Association of California
Flasher Barricade Association (FBA)
National Federation for Independent Business (NFIB)
Western Growers Association

cc: Legislative Affairs, Office of the Governor
Shanna Ezzell, Office of Assemblymember Maienschein
Consultant, Assembly Judiciary Committee
Lauren Prichard, Assembly Republican Caucus

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