

Senate Bill No. 92

CHAPTER 45

An act to amend Section 2699.5 of, and to amend, repeal, and add Section 2699.3 of, the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 2024. Filed with Secretary of State July 1, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 92, Umberg. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004 (PAGA), authorizes an aggrieved employee, as defined, to bring a civil action, on behalf of that employee and other current or former employees, to enforce a violation of any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees pursuant to certain notice and cure provisions, as prescribed.

This bill would, among other things, authorize, on or after October 1, 2024, an employer that employed fewer than 100 employees in total during the period covered by the required notice to, within 33 days of receipt of the notice submit to the agency a confidential proposal to cure one or more of the alleged violations and, upon completing the cure, provide a sworn notification to the employee and agency that the cure is completed, as prescribed.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program. The bill would require the agency to verify whether the cure is complete within 20 days of receiving the employer's notification, as specified.

This bill would also authorize an employer who employed at least 100 employees in total during the period covered by the required notice to, upon being served with a summons and complaint asserting a claim under PAGA, file a request and participate in, as prescribed, an early evaluation conference in the proceedings of the claim and a request for a stay of court proceedings before, or simultaneous with, that defendant's responsive pleading or other initial appearance in the action that includes the claim.

This bill would apply its provisions to a civil action brought on or after June 19, 2024, except as specified.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would become operative only if AB 2288 of the 2023–24 Regular Session is enacted and takes effect on or before January 1, 2025.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 2699.3 of the Labor Code is amended to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (n) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or

if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter

into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (n) of Section 2699.

(D) If the employer is not eligible for the processes in paragraph (2) or (3) or chooses not to utilize those processes, the agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to subparagraph (A), the aggrieved employee may commence a civil action pursuant to Section 2699.

(E) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified

mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to subparagraph (A). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (D) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) No employer shall avail itself of the notice and cure provisions of this section more than one time in a 12-month period for violations of the same provisions set forth in the notice, regardless of the location of the worksite or if it has been served with a prior notice pursuant to this part alleging the same violation that it did not cure.

(e) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

(f) (1) (A) Notwithstanding any other law, an employer who employed at least 100 employees in total during the period covered by the notice, upon being served with a summons and complaint asserting a claim under subdivision (a) or (f) of Section 2699, may file a request for an early evaluation conference in the proceedings of the claim and a request for a stay of court proceedings prior to or simultaneous with that defendant's

responsive pleading or other initial appearance in the action that includes the claim.

(B) The purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following, as applicable:

(i) Whether any of the alleged violations occurred and if so, whether the defendant has cured the alleged violations.

(ii) The strengths and weaknesses of the plaintiff's claims and the defendant's defenses.

(iii) Whether plaintiff's claims, including any claim for penalties or injunctive relief, can be settled in whole or in part.

(iv) Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.

(2) A request for an early evaluation conference by a defendant pursuant to paragraph (1) shall include a statement regarding whether the defendant intends to cure any or all of the alleged violations, specify the alleged violations it will cure, if applicable, and identify the allegations it disputes.

(3) Upon the filing of a request for an early evaluation conference by a defendant and, if requested, a stay of proceedings, a court shall stay the proceedings and issue an order that does the following, absent good cause for denying a defendant's request in whole or in part:

(A) Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order but in no event later than 70 days after issuance of the order.

(B) Directs a defendant that has filed a statement that it intends to cure any or all of the alleged violations to submit confidentially to the neutral evaluator and serve on the plaintiff, within 21 days after issuance of the order, the employer's proposed plan to cure those violations.

(C) Directs a defendant that is disputing any alleged violations to submit to the neutral evaluator and serve on the plaintiff a confidential statement that includes for use solely for the early evaluation conference, the basis and evidence for disputing those alleged violations.

(D) Directs the parties to appear at the time set for the conference.

(E) Directs the plaintiff to submit to the neutral evaluator and serve on the defendant no more than 21 days after service of defendant's proposed cure plan, a confidential statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, all of the following:

(i) The factual basis for each of the alleged violations.

(ii) The amount of penalties claimed for each violation if any, and the basis for that calculation.

(iii) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.

(iv) Any demand for settlement of the case in its entirety.

(v) The basis for accepting or not accepting the employer's proposed plan for curing any or all alleged violations.

(4) If the neutral evaluator accepts the employer's proposed plan for curing any or all alleged violations, the defendant shall present evidence

within 10 calendar days or such longer period as agreed by the parties or set by the neutral evaluator, demonstrating that the cure has been accomplished. If the defendant indicated it would cure any alleged violations and fails to timely submit the required evidence showing correction of the violation or violations to neutral evaluator and plaintiff, the early evaluation process and any stay may be terminated by the court.

(5) If the neutral evaluator and the parties agree that the employer has cured the alleged violations that it stated an intention to cure, the parties shall jointly submit a statement to the court setting forth the terms of their agreement.

(6) If no other alleged violations remain in dispute, the parties and the court shall treat the parties' submission as a proposed settlement pursuant to the terms and procedures set forth in subdivision (l) of Section 2699.

(7) If other alleged violations remain in dispute, the court shall have discretion to defer consideration of the parties' agreement until after further litigation proceedings.

(8) In calculating any penalties owed under this part for any violations that the employer promptly cured pursuant to this section, the court shall determine the applicability of subdivision (j), paragraph (2) of subdivision (e), paragraph (1) of subdivision (g), and paragraph (1) of subdivision (h) of Section 2699, as well as the fact that the violations were cured without the need for extended litigation.

(9) If the neutral evaluator or plaintiff does not agree that the employer has cured the alleged violations that it stated an intention to cure, the employer may file a motion to request the court to approve the cure and submit evidence showing correction of the alleged violations. The court may request further briefing and evidentiary submissions from the parties in response to that motion and evidence.

(10) All statements or evidence submitted for purposes of the early evaluation conference and all discussions at the early evaluation conference shall be subject to Section 1152 of the Evidence Code.

(11) The early evaluation process need not extend beyond 30 days unless parties mutually agree to extend time.

(12) Early evaluation conferences shall be conducted by a judge or commissioner or such other person knowledgeable about and experienced with issues arising under the code whom the court shall designate.

(13) Nothing in this subdivision affects or modifies the inadmissibility of evidence regarding offers of compromise pursuant to Section 1152 of the Evidence Code, including, but not limited to, inadmissibility to prove injury or damage.

(14) Nothing in this subdivision prohibits an employer from independently curing any violations or prevents the parties from agreeing to their own mediation process. Nor does anything in this section prohibit an employer covered by subparagraph (A) of paragraph (2) of subdivision (c) from requesting an early evaluation conference under such other terms and conditions as the court makes available to other litigants.

(15) Nothing in this subdivision shall preclude a court from ordering appropriate injunctive relief pursuant to paragraph (1) of subdivision (e) of Section 2699.

(16) Nothing in this subdivision limits the court's obligation to approve settlements under this part.

(g) (1) Except as provided in paragraph (2), the amendments made to this section by the act adding this subdivision shall apply to a civil action brought on or after June 19, 2024.

(2) The amendments made to this section by the act adding this subdivision shall not apply to a civil action with respect to which the notice required by subparagraph (A) of paragraph (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c) of this section was filed before June 19, 2024.

(h) This section shall be operative only until October 1, 2024, and as of that date is repealed.

SEC. 2. Section 2699.3 is added to the Labor Code, to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (n) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within

five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter

into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (n) of Section 2699.

(D) If the employer is not eligible for the processes in paragraphs (2) or (3) or chooses not to utilize those processes, the agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to subparagraph (A), the aggrieved employee may commence a civil action pursuant to Section 2699.

(E) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified

mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to subparagraph (A). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (D) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(2) (A) Within 33 days of receipt of the notice sent by the aggrieved employee or representative, an employer that employed fewer than 100 employees in total during the period covered by the notice may submit to the agency a confidential proposal to cure one or more of the alleged violations. The employer shall specify which of the alleged violations it proposes to cure.

(B) If the cure is facially sufficient or if a conference is necessary to determine if a sufficient cure is possible, then within 14 days after receipt of the employer's proposal, the agency may set a conference with the parties, to be conducted no more than 30 days thereafter, to determine whether the proposed cure is sufficient, what additional information may be necessary to evaluate the sufficiency of the cure, and the deadline agreed upon by the parties for the employer to complete the cure. If the cure includes the payment of unpaid wages, the agency shall also determine at the conference whether to request the employer pay the proposed cure amount, including any wages and liquidated damages due and 7 percent interest, into escrow or shall provide such other form of security as the agency deems suitable. Any such conference may be electronic, telephonic, or in person. If the agency determines that the cure is not facially sufficient or does not act upon the employer's cure proposal, the employee may proceed with a civil action under this part after 65 calendar days from sending the notice required by this subdivision, unless this time is extended by the agency, provided that such time shall not be extended to more than 120 calendar days after notice is sent. However, the employer shall be entitled to file a request for a stay and early evaluation conference as set forth in subdivision (f).

(C) On or before the agreed upon deadline to cure, but no more than 45 days after the conference, the employer shall complete the cure and provide a sworn notification to the employee and agency that the cure is completed, accompanied by a payroll audit and check register if the violation involves a payment obligation. This notification shall also include any information the parties deemed necessary to determine the sufficiency of the cure. The agency shall verify whether the cure is complete within 20 days of receiving the employer's notification. If the agency review procedure under this section extends beyond the 65-day period set forth in this section, the statute of limitation on the alleged violations shall remain tolled until that procedure has been completed.

(D) If the agency preliminarily determines that the alleged violation has been cured, it shall notify the aggrieved employee and, if requested by the aggrieved employee, shall set a hearing within 30 days of such determination. The agency shall issue an order no more than 20 days after the hearing providing a determination whether the cure is adequate and the reasons for its determination. If the agency determines that the alleged violation has been cured, the aggrieved employee may not proceed with a civil action. If the aggrieved employee disagrees with the cure determination, the aggrieved employee may appeal that determination to the superior court. Any amounts paid by the employer to the aggrieved employees exclusive of penalties under this section to cure the alleged violation shall be offset against any judgment later entered with respect to that violation, if the superior court concludes the agency abused its discretion in finding that the employer's cure was adequate.

(E) No cure or proposal to cure pursuant to this paragraph may be deemed an admission of liability by the employer that submitted the proposed cure. Any cure proposal shall be deemed a confidential settlement proposal subject to Section 1152 of the Evidence Code.

(F) Nothing in this paragraph prohibits an employer from independently remedying any violations or prevents the parties from agreeing to their own mediation process.

(3) If the only alleged violation the employer seeks to cure is a violation of Section 226, the following procedure shall apply:

(A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) If the aggrieved employee disputes that the alleged violation of Section 226 has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) No employer shall avail itself of the notice and cure provisions of this section more than one time in a 12-month period for violations of the same provisions set forth in the notice, regardless of the location of the worksite or if it has been served with a prior notice pursuant to this part alleging the same violation that it did not cure.

(e) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

(f) (1) (A) Notwithstanding any other law, an employer not covered by subparagraph (A) of paragraph (2) of subdivision (c), upon being served with a summons and complaint asserting a claim under subdivision (a) or (f) of Section 2699, may file a request for an early evaluation conference in the proceedings of the claim and a request for a stay of court proceedings prior to or simultaneous with that defendant's responsive pleading or other initial appearance in the action that includes the claim.

(B) The purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following, as applicable:

(i) Whether any of the alleged violations occurred and if so, whether the defendant has cured the alleged violations.

(ii) The strengths and weaknesses of the plaintiff's claims and the defendant's defenses.

(iii) Whether plaintiff's claims, including any claim for penalties or injunctive relief, can be settled in whole or in part.

(iv) Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.

(2) A request for an early evaluation conference by a defendant pursuant to paragraph (1) shall include a statement regarding whether the defendant intends to cure any or all of the alleged violations, specify the alleged violations it will cure, if applicable, and identify the allegations it disputes.

(3) Upon the filing of a request for an early evaluation conference by a defendant and, if requested, a stay of proceedings, a court shall stay the proceedings and issue an order that does the following, absent good cause for denying defendant's request in whole or in part:

(A) Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order but in no event later than 70 days after issuance of the order.

(B) Directs a defendant that has filed a statement that it intends to cure any or all of the alleged violations to submit confidentially to the neutral evaluator and serve on the plaintiff, within 21 days after issuance of the order, the employer's proposed plan to cure those violations.

(C) Directs a defendant that is disputing any alleged violations to submit to the neutral evaluator and serve on the plaintiff a confidential statement that includes for use solely for the early evaluation conference, the basis and evidence for disputing those alleged violations.

(D) Directs the parties to appear at the time set for the conference.

(E) Directs the plaintiff to submit to the neutral evaluator and serve on the defendant no more than 21 days after service of defendant's proposed

cure plan, a confidential statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, all of the following:

- (i) The factual basis for each of the alleged violations.
 - (ii) The amount of penalties claimed for each violation if any, and the basis for that calculation.
 - (iii) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.
 - (iv) Any demand for settlement of the case in its entirety.
 - (v) The basis for accepting or not accepting the employer's proposed plan for curing any or all alleged violations.
- (4) If the neutral evaluator accepts the employer's proposed plan for curing any or all alleged violations, the defendant shall present evidence within 10 calendar days or such longer period as agreed by the parties or set by the neutral evaluator, demonstrating that the cure has been accomplished. If the defendant indicated it would cure any alleged violations and fails to timely submit the required evidence showing correction of the violation or violations to neutral evaluator and plaintiff, the early evaluation process and any stay may be terminated by the court.
- (5) If the neutral evaluator and the parties agree that the employer has cured the alleged violations that it stated an intention to cure, the parties shall jointly submit a statement to the court setting forth the terms of their agreement.
- (6) If no other alleged violations remain in dispute, the parties and the court shall treat the parties' submission as a proposed settlement pursuant to the terms and procedures set forth in subdivision (l) of Section 2699.
- (7) If other alleged violations remain in dispute, the court shall have discretion to defer consideration of the parties' agreement until after further litigation proceedings.
- (8) In calculating any penalties owed under this part for any violations that the employer promptly cured pursuant to this section, the court shall determine the applicability of subdivision (j), paragraph (2) of subdivision (e), paragraph (1) of subdivision (g), and paragraph (1) of subdivision (h) of Section 2699, and the court shall consider that the violations were cured without the need for extended litigation.
- (9) If the neutral evaluator or plaintiff does not agree that the employer has cured the alleged violations that it stated an intention to cure, the employer may file a motion to request the court to approve the cure and submit evidence showing correction of the alleged violations. The court may request further briefing and evidentiary submissions from the parties in response to that motion and evidence.
- (10) All statements or evidence submitted for purposes of the early evaluation conference and all discussions at the early evaluation conference shall be subject to Section 1152 of the Evidence Code.
- (11) The early evaluation process shall not extend beyond 30 days unless parties mutually agree to extend time.

(12) Early evaluation conferences shall be conducted by a judge or commissioner or such other person knowledgeable about and experienced with issues arising under the code whom the court shall designate.

(13) Nothing in this subdivision affects or modifies the inadmissibility of evidence regarding offers of compromise pursuant to Section 1152 of the Evidence Code, including, but not limited to, inadmissibility to prove injury or damage.

(14) Nothing in this subdivision prohibits an employer from independently curing any violations or prevents the parties from agreeing to their own mediation process. Nor does anything in this section prohibit an employer covered by subparagraph (A) of paragraph (2) of subdivision (c) from requesting an early evaluation conference under such other terms and conditions as the court makes available to other litigants.

(15) Nothing in this subdivision shall preclude a court from ordering appropriate injunctive relief pursuant to paragraph (1) of subdivision (e) of Section 2699.

(16) Nothing in this subdivision limits the court's obligation to approve settlements under this part.

(g) This section shall become operative October 1, 2024.

SEC. 3. Section 2699.5 of the Labor Code is amended to read:

2699.5. (a) The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

(b) (1) Except as provided in paragraph (2), the amendments made to this section by the act adding this subdivision shall apply to a civil action brought on or after June 19, 2024.

(2) The amendments made to this section by the act adding this subdivision shall not apply to a civil action with respect to which the notice required by subparagraph (A) of paragraph (1) of subdivision (a), paragraph

(1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c) of Section 2699.3 was filed before June 19, 2024.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which amends Section 2699.3 of the Labor Code, and Section 2 of this act, which adds Section 2699.3 to the Labor Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Preserving the confidentiality of statements presented during settlement negotiations, neutral evaluation of claims, or assessments of attempts to cure violations pursuant to this act is necessary to facilitate early resolution of claims and encourage employers to take prompt action to make aggrieved employees whole.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act shall become operative only if Assembly Bill 2288 of the 2023–24 Regular Session is enacted and takes effect on or before January 1, 2025.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to further the purpose and intent of the Labor Code Private Attorneys General Act of 2004 to protect workers from labor violations and address a pending ballot measure, it is necessary for this statute to take effect immediately.