

AMENDED IN SENATE APRIL 8, 2021

**SENATE BILL**

**No. 62**

---

---

**Introduced by Senator Durazo**

(Principal coauthors: Assembly Members Lorena Gonzalez and Kalra)

~~(Coauthor: Senator Skinner)~~

*(Coauthors: Senators Skinner, Gonzalez, Hertzberg, and Leyva)*

~~(Coauthors: Assembly Members Carrillo and Jones-Sawyer Carrillo,  
Jones-Sawyer, and Luz Rivas)~~

December 7, 2020

---

---

An act to amend Sections 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, as amended, 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 statutory damages of \$200 against a garment manufacturer or contractor, payable to the employee, for each pay period in which the 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 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, any other compensation, damages, and penalties to any and all employees who performed manufacturing operations for any violation, liquidated damages, attorney's fees, and civil penalties, as specified.

This bill would create a rebuttable presumption in a claim filed with the Labor Commissioner to recover unpaid wages, 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 ~~three~~ 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 a 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. Existing law requires the commissioner to promulgate all regulations and rules necessary to carry out the provisions of this part. The commissioner, upon good cause, may impose, in their discretion, the terms of penalties, the revocation of registrations, and the confiscation or disposal of goods in accordance with those rules and regulations.

This bill would name the separate account into which a portion of a garment manufacturer's registration fee is deposited the Garment Manufacturers Special Account. The bill would require the Labor Commissioner to determine which claims for payment from the Garment ~~Manufacturer's~~ *Manufacturers* Special Account are accepted, and the

amount of money, if any, that is to be disbursed from the account on an accepted claim.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

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

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

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

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

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

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

1 Adding to this problem is the peculiar way in which garment  
2 workers are paid—by the piece. Not only does utilizing the piece  
3 rate enable, and even justify, subminimum wage, but it also creates  
4 unsafe working conditions, as garment workers are forced to  
5 constantly work as quickly as possible to complete as many items  
6 as possible in a workday.

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

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

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

37 Workers paid by a piece rate lose income when they take breaks,  
38 and are often reprimanded by their managers for doing so. This is  
39 especially concerning when frequent handwashing is necessary to

1 prevent the spread of COVID-19 and is a clear obstacle to workers  
2 performing this necessary health safeguard.

3 SEC. 2. Section 2670 of the Labor Code is amended to read:

4 2670. (a) It is the intent of the Legislature to restore the  
5 purpose of ~~AB~~ *Assembly Bill 633* (Chapter 554 of the Statutes of  
6 1999) (*AB 633*) to prevent wage theft against garment workers by  
7 clarifying ambiguities in the original language. AB 633 sought to  
8 ensure that persons who contracted to have garments manufactured  
9 were liable as guarantors for the unpaid wages and overtime of  
10 the workers making their garments.

11 Several manufacturers, however, have attempted to avoid liability  
12 as a guarantor by adding layers of contracting between themselves  
13 and the employees manufacturing the garments. This undermines  
14 the purpose of AB 633 because manufacturers have no incentive  
15 to ensure safe conditions or the proper minimum wage and  
16 overtime payments for the workers producing their garments if  
17 they do not face guarantor liability.

18 This act, therefore, revises this part to make clear that a person  
19 contracting to have garments made is liable for unpaid wages,  
20 damages, penalties, and other compensation owed to the workers  
21 who manufacture those garments regardless of how many layers  
22 of contracting that person may use.

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

1 (b) By restoring the original intent of this part, the Legislature  
2 will be able to more effectively establish and regulate a system of  
3 registration, penalties, confiscation, bonding requirements, and  
4 misdemeanors for the imposition of prompt and effective criminal  
5 and civil sanctions against violations of, and especially patterns  
6 and practices of violations of, any of the laws as set forth herein  
7 and regulations of this state applicable to the employment of  
8 workers in the garment industry. The civil penalties provided for  
9 in this part are in addition to any other penalty provided by law.  
10 This part shall be deemed an exercise of the police power of the  
11 state for the protection of the public welfare, prosperity, health,  
12 safety, and peace of the people of the State of California. Nothing  
13 herein shall prohibit a local municipality from enacting its own  
14 protections for workers employed in the garment industry, so long  
15 as those protections are equal to, or in addition to, the protections  
16 provided herein.

17 SEC. 3. Section 2671 of the Labor Code is amended to read:

18 2671. As used in this part:

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

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

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

34 (c) “Garment manufacturing” means sewing, cutting, making,  
35 processing, repairing, finishing, assembling, dyeing, altering a  
36 garment’s design, causing another person to alter a garment’s  
37 design, affixing a label to a garment, or otherwise preparing any  
38 garment or any article of wearing apparel or accessories designed  
39 or intended to be worn by any individual, including, but not limited  
40 to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts,

1 for sale or resale by any person or any persons contracting to have  
2 those operations performed and other operations and practices in  
3 the apparel industry as may be identified in regulations of the  
4 Department of Industrial Relations consistent with the purposes  
5 of this part. The Department of Industrial Relations, through the  
6 Labor Commissioner, shall adopt, and may from time to time  
7 amend, regulations to clarify and refine this definition to be  
8 consistent with current and future industry practices, but the  
9 regulations shall not limit the scope of garment manufacturing, as  
10 defined in this subdivision.

11 (d) “Brand guarantor” means any person contracting for the  
12 performance of garment manufacturing, including sewing, cutting,  
13 making, processing, repairing, finishing, assembling, dyeing,  
14 altering a garment’s design, causing another person to alter a  
15 garment’s design, affixing a label on a garment, or otherwise  
16 preparing any garment or any article of wearing apparel or  
17 accessories designed or intended to be worn by any individual,  
18 including, but not limited to, clothing, hats, gloves, handbags,  
19 hosiery, ties, scarfs, and belts, for sale or resale and other operations  
20 and practices in the apparel industry as may be identified in  
21 regulations of the Department of Industrial Relations consistent  
22 with the purposes of this part. Contracts for the performance of  
23 garment manufacturing include licensing of a brand or name,  
24 regardless of whether the person with whom they contract performs  
25 the manufacturing operations or hires contractors or subcontractors  
26 to perform the manufacturing operations. The Department of  
27 Industrial Relations, through the Labor Commissioner, may adopt,  
28 and may from time to time amend, regulations to clarify and refine  
29 this definition to be consistent with current and future industry  
30 practices; however, the regulations shall not limit the scope of  
31 garment manufacturing, as defined in this section.

32 (e) “Commissioner” means the Labor Commissioner.

33 (f) “Contractor” means any person who, with the assistance of  
34 employees or others, is engaged in garment manufacturing by  
35 primarily engaging in sewing, cutting, making, processing,  
36 repairing, finishing, assembling, dyeing, altering a garment’s  
37 design, causing another person to alter a garment’s design, affixing  
38 a label on a garment, or otherwise preparing any garment or any  
39 article of wearing apparel or accessories designed or intended to  
40 be worn by any individual, including, but not limited to, clothing,

1 hats, gloves, handbags, hosiery, ties, scarfs, and belts, for another  
2 person, including, but not limited to, another contractor, garment  
3 manufacturer, or brand guarantor. “Contractor” includes a  
4 subcontractor that is primarily engaged in those operations. The  
5 Department of Industrial Relations, through the Labor  
6 Commissioner, may adopt, and may from time to time amend,  
7 regulations to clarify and refine this definition to be consistent  
8 with current and future industry practices; however, the regulations  
9 shall not limit the scope of garment manufacturing, as defined in  
10 this section.

11 SEC. 4. Section 2673 of the Labor Code is amended to read:

12 2673. (a) Every employer engaged in the business of garment  
13 manufacturing shall keep accurate records for four years which  
14 show all of the following:

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

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

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

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

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

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

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

32 (8) The ages of all minor employees.

33 (9) Any other conditions of employment.

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

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

38 (2) All contracts, invoices, purchase orders, work or job orders,  
39 and style or cut sheets. This documentation shall include the



1 business names, addresses, and contract information of the  
2 contracting parties.

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

8 (c) The recordkeeping requirements in this section are in  
9 addition to the recordkeeping requirements set forth in this code  
10 and in the industrial commission wage orders.

11 SEC. 5. Section 2673.1 of the Labor Code is amended to read:

12 2673.1. (a) (1) To ensure that employees are paid for all hours  
13 worked, a garment manufacturer or brand guarantor who contracts  
14 with another person for the performance of garment manufacturing  
15 operations shall be jointly and severally liable with any  
16 manufacturer and contractor who performs those operations for  
17 the garment manufacturer or brand guarantor, for all of the  
18 following:

19 (A) The full amount of unpaid minimum, regular, overtime, and  
20 other premium wages, reimbursement for expenses, any other  
21 compensation, damages, and penalties due to any and all employees  
22 who performed the manufacturing operations for any violation of  
23 this code.

24 (B) Liquidated damages owed to any and all employees who  
25 performed the manufacturing operations pursuant to subdivision  
26 (d) of this section.

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

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

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

38 (b) Employees may enforce this section solely by filing a claim  
39 with the Labor Commissioner against the contractor, the  
40 manufacturer, and the brand guarantor or guarantors, if known, to

1 recover unpaid wages. Manufacturers and brand guarantors whose  
2 identity or existence is unknown at the time the claim is filed may  
3 be added to the claim pursuant to paragraph (2) of subdivision (c).

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

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

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

30 (3) Within 60 days of receiving a claim pursuant to subdivision  
31 (b), the Labor Commissioner shall hold a meet-and-confer  
32 conference with the employee, the contractor, and all identified  
33 manufacturers and brand guarantors to attempt to resolve the claim.  
34 Prior to the meet-and-confer conference, the Labor Commissioner  
35 shall conduct and complete an investigation of the claim, shall  
36 ~~make a finding and~~ an assessment of the amount of wages damages,  
37 penalties, expenses, and other compensation owed, and shall  
38 conduct an investigation and determine liability. The investigation  
39 shall include, but not be limited to, interviewing the employee and  
40 their witnesses and making ~~a finding and~~ an assessment of the

1 amounts due, if any, to the employee. If an employee provides the  
2 Labor Commissioner with labels, or the equivalent thereto, from  
3 a brand guarantor or garment manufacturer, or other information  
4 that the commissioner finds credible relating to the identity of any  
5 brand guarantor or garment manufacturer for whom the employee  
6 performed garment manufacturing operations, there shall be a  
7 presumption that the brand guarantor or garment manufacturer is  
8 liable with the contractor for any amounts found to be due to the  
9 employee, as set forth in paragraph (1) of subdivision (a). An  
10 employee's claim of hours worked, and wages, damages, penalties,  
11 expenses, and other compensation due, including the claim of  
12 liability of a brand guarantor or garment manufacturer upon  
13 provision by the employee of labels or other credible information  
14 about work performed for any person, shall be presumed valid and  
15 shall be the Labor Commissioner's assessment, unless the brand  
16 guarantor, garment manufacturer, or contractor provides specific,  
17 compelling, and reliable written evidence to the contrary. That  
18 evidence from the brand guarantor, garment manufacturer, or  
19 contractor shall include accurate, complete, and contemporaneous  
20 records pursuant to Sections 226, 1174, and 2673, and the industrial  
21 commission wage order, including, but not limited to, itemized  
22 wage deduction statements, bona fide complete and accurate payroll  
23 records, evidence of the precise hours worked by the employee  
24 for each pay period during the period of the claim, and evidence,  
25 including a purchase order or invoice identifying the person or  
26 persons for whom garment manufacturing operations were  
27 performed. In the absence of the provision of that evidence, or the  
28 failure to timely respond to a subpoena pursuant to paragraph (1),  
29 a written declaration from a brand guarantor, garment  
30 manufacturer, or contractor is not sufficient to rebut the  
31 presumption of validity of the worker's claim and liability of the  
32 respective parties. If the Labor Commissioner finds falsification  
33 by the garment manufacturer or contractor of payroll records  
34 submitted for any pay period of the claim, any other payroll records  
35 submitted by the garment manufacturer or contractor shall be  
36 presumed false and disregarded.

37 The Labor Commissioner shall present their ~~findings and~~  
38 assessment of the amount of wages owed to the parties at the  
39 meet-and-confer conference and shall make a demand for payment  
40 of the amount of the assessment. If no resolution is reached, the

1 Labor Commissioner shall, at the meet-and-confer conference, set  
2 the matter for hearing pursuant to paragraph (4). The Labor  
3 Commissioner's assessment, pursuant to this paragraph, of the  
4 amounts due to an employee is solely for purposes of the  
5 meet-and-confer conference and shall not be admissible or be given  
6 any weight in the hearing conducted pursuant to paragraph (4). If  
7 the Labor Commissioner has not identified any garment  
8 manufacturer or brand guarantor after investigation and the matter  
9 is not resolved at the conclusion of the meet-and-confer conference,  
10 the *Labor* Commissioner shall proceed against the contractor  
11 pursuant to Section 98.

12 (4) The hearing shall commence within 30 days of, and shall  
13 be completed within 45 days of, the date of the meet-and-confer  
14 conference. The Labor Commissioner shall present their findings  
15 ~~and assessment~~ at the hearing. Any party may present evidence at  
16 the hearing to support or rebut the proposed findings. If an  
17 employee has provided the Labor Commissioner with labels, or  
18 the equivalent thereto, from a brand guarantor or garment  
19 manufacturer, or provides other information or testimony that the  
20 Labor Commissioner finds credible relating to the identity of any  
21 brand guarantor or garment manufacturer, for whom the employee  
22 performed garment manufacturing operations, there shall be a  
23 presumption that the brand guarantor or garment manufacturer is  
24 liable with the contractor for any amounts found to be due to the  
25 employee, as set forth in paragraph (1) of subdivision (a). ~~An~~  
26 ~~employee's claim of hours worked, as well as wages, damages,~~  
27 ~~penalties, expenses, and other compensation due, including the~~  
28 ~~claim of liability of a brand guarantor or garment manufacturer~~  
29 ~~upon provision by the employee of labels or other credible~~  
30 ~~information about work performed for any person, shall be~~  
31 ~~presumed valid, and shall be the Labor Commissioner's assessment,~~  
32 ~~unless the brand guarantor, garment manufacturer, or contractor~~  
33 ~~provides specific, compelling, and reliable written evidence to the~~  
34 ~~contrary. That evidence from the brand guarantor, garment~~  
35 ~~manufacturer, or contractor shall include, accurate, complete, and~~  
36 ~~contemporaneous records, pursuant to Sections 226, 1174, and~~  
37 ~~2673, and the industrial commission wage orders, including, but~~  
38 ~~not limited to, itemized wage deduction statements, bona fide~~  
39 ~~complete and accurate payroll records, evidence of the precise~~  
40 ~~hours worked by the employee for each pay period during the~~

1 ~~period of the claim, and evidence, including, but not limited to, a~~  
2 ~~purchase order or invoice identifying the person or persons for~~  
3 ~~whom garment manufacturing operations were performed. In the~~  
4 ~~absence of the provision of that evidence, or the failure to timely~~  
5 ~~respond to a subpoena pursuant to paragraph (1), a~~ A written  
6 declaration or testimony from a brand guarantor, garment  
7 manufacturer, or contractor is not sufficient to rebut the  
8 presumption of ~~validity of the worker's claim and~~ liability of the  
9 respective parties. If the Labor Commissioner finds falsification  
10 by the garment manufacturer or contractor of payroll records  
11 submitted for any pay period of the claim, any other payroll records  
12 submitted by the garment manufacturer or contractor shall be  
13 presumed false and disregarded. Except as provided in this  
14 paragraph, the hearing shall be held in accordance with the  
15 procedure set forth in subdivisions (b) to (h), inclusive, of Section  
16 98. It is the intent of the Legislature that these hearings be  
17 conducted in an informal setting preserving the rights of the parties.

18 (5) Within 15 days of the completion of the hearing, the Labor  
19 Commissioner shall issue an order, decision, or award with respect  
20 to the claim and shall file the order, decision, or award in  
21 accordance with Section 98.1.

22 (d) An employee shall be entitled to recover liquidated damages  
23 in an amount equal to the wages unlawfully withheld, as set forth  
24 in Section 1194.2, and liquidated damages in an amount equal to  
25 unpaid overtime compensation due. A garment manufacturer or  
26 brand guarantor under subdivision (a) shall be liable for those  
27 liquidated damages if the garment manufacturer or brand guarantor  
28 has acted in bad faith, including, but not limited to, failure to pay  
29 or unreasonably delaying payment to the contractor, unreasonably  
30 reducing payment to its contractor where it is established that the  
31 garment manufacturer or brand guarantor knew or reasonably  
32 should have known that the price set for the work was insufficient  
33 to cover the wages owed by the contractor, asserting frivolous  
34 defenses, or unreasonably delaying or impeding the Labor  
35 Commissioner's investigation of the claim.

36 (e) If either the contractor, garment manufacturer, or brand  
37 guarantor refuses to pay the assessment, and the employee prevails  
38 at the hearing, the party that refuses to pay shall pay the employee's  
39 reasonable attorney's fees and costs. If the employee rejects the  
40 assessment of the Labor Commissioner and prevails at the hearing,

1 the contractor shall pay the employee's reasonable attorney's fees  
2 and costs. The garment manufacturer and brand guarantor shall  
3 be jointly and severally liable with the contractor for the attorney's  
4 fees and costs awarded to an employee.

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

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

27 (h) The rights and remedies provided by this section do not  
28 preclude an employee from pursuing any other rights and remedies  
29 under any other provision of state or federal law. If a finding and  
30 assessment is not issued as specified and within the time limits in  
31 paragraph (3) of subdivision (c), the employee may bring a civil  
32 action for the recovery of unpaid wages pursuant to any other rights  
33 and remedies under any other provision of the laws of this state  
34 unless, prior to the employee bringing the civil action, the garment  
35 manufacturer or brand guarantor files a petition for writ of mandate  
36 within 10 days of the date the assessment should have been issued.  
37 If findings and assessments are not made, or a hearing is not  
38 commenced or an order, decision, or award is not issued within  
39 the time limits specified in paragraphs (4) and (5) of subdivision  
40 (c), any party may file a petition for writ of mandate to compel the

1 Labor Commissioner to issue findings and assessments, commence  
2 the hearing, or issue the order, decision, or award. All time  
3 requirements specified in this section shall be mandatory and shall  
4 be enforceable by a writ of mandate.

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

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

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

34 (l) The Labor Commissioner may, in their discretion, revoke  
35 the registration under this part of any registrant that fails to pay,  
36 on a timely basis, any wages awarded pursuant to this section, after  
37 the award has become final.

38 (m) The Labor Commissioner may also enforce this section by  
39 issuing stop orders or citations. The procedures for issuing,  
40 contesting, and enforcing judgments for citations issued by the

1 Labor Commissioner under this section shall be the same as those  
2 set forth in subdivisions (b) ~~through~~ to (k), inclusive, of Section  
3 1197.1.

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

7 SEC. 6. Section 2673.2 is added to the Labor Code, to read:

8 2673.2. (a) To ensure that employees are paid for all hours  
9 worked, an employee engaged in the performance of garment  
10 manufacturing shall not be paid by the piece or unit, or by the piece  
11 rate. Nothing in this section shall be deemed to prohibit  
12 incentive-based bonuses. This section shall not apply to workplaces  
13 where employees are covered by a bona fide collective bargaining  
14 agreement, if the agreement expressly provides for wages, hours  
15 of work, and working conditions of the employees; premium wage  
16 rates for all overtime hours worked and a regular hourly rate of  
17 pay for those employees of not less than 30 percent more than the  
18 state minimum wage; stewards or monitors; and a process to  
19 resolve disputes concerning nonpayment of wages.

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

25 (c) This section may be enforced solely by filing a claim with  
26 the Labor Commissioner against the contractor, manufacturer, and  
27 the brand guarantor or guarantors, if known. Manufacturers and  
28 brand guarantors whose identity or existence is unknown at the  
29 time that the claim is filed may be added to the claim pursuant to  
30 paragraph (2) of subdivision (c) of *Section 2673.1*.

31 (d) The Labor Commissioner may also bring an action to enforce  
32 this section under Section 98.3 or issue a citation against the  
33 garment manufacturer or contractors who violate this section. The  
34 procedure for issuing, contesting, and enforcing judgments for  
35 citations issued by the commissioner pursuant to this section shall  
36 be the same as those set forth in subdivisions (b) to (l), inclusive,  
37 of Section 1197.1.

38 ~~(d)~~

39 (e) Any statutory damages or penalties recovered or assessed  
40 in an action brought under, or a citation issued by the Labor



1 Commissioner pursuant to, this section or Section 98.3, shall be  
2 payable to the employee.

3 SEC. 7. Section 2675.5 of the Labor Code is amended to read:

4 2675.5. (a) The commissioner shall deposit seventy-five dollars  
5 (\$75) of each registrant's annual registration fee, required pursuant  
6 to paragraph (5) of subdivision (a) of Section 2675, into a separate  
7 account known as the Garment Manufacturers Special Account.  
8 Funds from the Garment Manufacturers Special Account shall be  
9 disbursed by the commissioner only to persons determined by the  
10 commissioner to have been damaged by the failure to pay wages,  
11 damages, penalties, expenses, and other compensation and benefits  
12 by any garment manufacturer, brand guarantor, or contractor.

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

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

24 (3) Before receiving any payment from the fund, an employee  
25 shall assign to the Labor Commissioner all of the employee's  
26 claims and judgments to be paid from the fund; however, the  
27 assignment shall not be required until the employee's claim is  
28 determined by the Labor Commissioner to be valid and payment  
29 is ready to be issued from the fund. Any disbursed funds  
30 subsequently recovered by the Labor Commissioner, pursuant to  
31 an assignment of the claim to the commissioner for recovery,  
32 including recovery from a surety under a bond pursuant to Section  
33 2675, or otherwise recovered by the Labor Commissioner from a  
34 liable party, shall be returned to the Garment Manufacturers Special  
35 Account.

36 (b) The remainder of each registrant's annual registration fee  
37 not deposited into the Garment Manufacturers Special Account to  
38 subdivision (a) shall be deposited in a subaccount and applied to  
39 costs incurred by the commissioner in administering the provisions

1 of Section 2673.1, Section 2675, and this section, upon  
2 appropriation by the Legislature.

3 (c) (1) The Labor Commissioner shall determine whether a  
4 claim is accepted, and the amount of money, if any, that is to be  
5 disbursed from the Garment Manufacturers Special Account on  
6 an accepted claim.

7 (2) If the amount due to the employee has already been  
8 established by a final judgment from any court or a final citation  
9 or award issued by the Labor Commissioner, the Labor  
10 Commissioner shall pay from the fund that amount, less any  
11 amounts already recovered by the claimant, along with interest  
12 accrued by law after the date of the determination. Under these  
13 circumstances, the Labor Commissioner's determinations regarding  
14 the fund application shall be limited to determining the authenticity  
15 of documents supporting the claim, the amount of any payments  
16 already recovered by the employee, and whether the claim arises  
17 from the failure to pay wages and benefits by a contractor, garment  
18 manufacturer, or brand guarantor.

19 (3) If the employee has not obtained final judgment against the  
20 employer and the Labor Commissioner has not issued a final award  
21 or citation, the claimant shall submit evidence supporting the  
22 validity and amount of the claim. If the Labor Commissioner is  
23 able to locate and serve the employer, and proceedings against the  
24 employer are not stayed by operation of the law, the Labor  
25 Commissioner may set a hearing on the claims pursuant to Section  
26 ~~2673.1 or 98: 98 or 2673.1.~~

27 (d) If the Labor Commissioner determines that the evidence  
28 provided by the employee with their claim is insufficient to show  
29 that they are entitled to payment of the amount sought from the  
30 fund, the Labor Commissioner shall set a hearing to investigate  
31 the claim pursuant to subdivision (e).

32 (e) (1) The Labor Commissioner shall have the authority to  
33 order an investigatory hearing to determine the validity of a claim  
34 seeking recovery from the Garment Manufacturers Special  
35 Account, including the amount of any damages actually suffered  
36 by the employee, if any. The employee shall be provided notice  
37 of the hearing and shall have the right to appear and to present  
38 evidence and argument supporting their claim. Although the  
39 employer may be subpoenaed as a witness at the hearing, notice  
40 of the hearing does not need to be served on the employer and the

1 employer shall not have standing to appear as a party at the hearing.  
2 The Labor Commissioner shall issue, serve, and enforce any  
3 necessary subpoenas.

4 (2) The hearing shall be conducted by a deputy labor  
5 commissioner and may be held in the Division of Labor Standards  
6 Enforcement's district office having jurisdiction of the geographic  
7 location where the nonpayment of wages allegedly occurred, or  
8 the Labor Commissioner may designate any other venue they deem  
9 appropriate.

10 (f) Notwithstanding any other provision of this section, if the  
11 Labor Commissioner believes that the claims made to the fund  
12 may exceed the ability of the fund to pay all current and anticipated  
13 future claims over the following 12 months, the Labor  
14 Commissioner may exercise discretion to determine the order of  
15 payment of claims and may pay existing claims in part or pro rata  
16 in order to maintain the solvency of the fund. Any claims that have  
17 been paid in part or pro rata shall be deemed to be pending with  
18 the Labor Commissioner until the claims are paid in full. In  
19 exercising this discretion, the Labor Commissioner may consider  
20 the nature of the violations, the economic need of the claimant,  
21 the age of the claim, the likelihood of recovery from other sources  
22 besides the fund, and any other factors as may be required by  
23 principles of justice and equity.