

**STATEMENT OF GLENN MARSHALL, PRESIDENT, CARPENTER'S LOCAL 210, IN FAVOR OF
RAISED BILL 1039, AAC GENERAL CONTRACTOR LIABILITY FOR WAGES AND WORKERS
COMPENSATION**

Members of the Committee, my name is Glenn Marshall, and I am the President of Carpenter's Local 210, which is affiliated with the New England Regional Council of Carpenters representing more than 20,000 carpenters throughout New England. I am here today to testify in favor of Raised Bill 1039, An Act Concerning General Contractor Liability for Wages and Worker's Compensation.

The intent of the proposal is to address the issue of unscrupulous contractors who win work by misclassifying their employees and fail to pay worker's compensation insurance and the appropriate state and federal taxes. Attached are several articles from The Stamford Advocate and The Hartford Business Journal regarding the problems our industry faces from rogue contractors and subcontractors—many from out of state--- who illegally win work by committing tax and insurance fraud.

Currently, most reputable general contractors will check their subcontractors for worker's compensation. Unfortunately, there are unscrupulous general contractors who attempt to cut costs by using subcontractors who aren't properly insured or subcontractors who fail to pay workers wages they are owed. As someone who served on the Worker's Compensation Advisory Board, I have seen first-hand the impact of this practice on Connecticut's 2nd Injury Fund and legitimate Connecticut businesses who lose jobs.

The practice is costing Connecticut taxpayers hundreds of millions of dollars, according to estimates done by University of Connecticut Economist Dr. William Alpert.

I would just make one suggestion to delete Section 1 (2) and replace with the following:

(2) the worker's compensation premiums for such subcontractor while the subcontractor was serving at the direction of such general contractor.

Thank you for your time. I will be happy to answer any questions.

Connecticut fines Apple Store contractors

ASSOCIATED PRESS • | JUNE 4, 2014 | 2:57 PM

WEST HARTFORD, Conn. (AP) — The Connecticut Department of Labor is fining three out-of-state contractors working at an Apple Store in West Hartford for not having worker's compensation insurance coverage for their employees.

The case has prompted the state agency to inspect other Apple Stores to see if contractors have the required coverage.

Gary Pechie, the agency's director of wage and workplace standards, said the department posted "stop work" posters on Tuesday at the Westfarms Mall store. But Pechie said DOL learned Wednesday from mall security that the contractors "put plywood over our posters and continued to work."

He said each firm on Wednesday was assessed a \$1,000-a-day fine for the violation.

A message was left seeking comment with the California-based general contractor, Dickinson Cameron.

Pechie said DOL was meeting with Apple officials on Wednesday.

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State broadens efforts to eradicate CT's underground economy

BY GREG BORDONARO

11/10/2014



PHOTOS | STEVE LASCHLVER

Resa Spaziani's cool mien belies the powerful enforcement punch that she and fellow state Labor Department investigators wield against violators of Connecticut's wage and workplace rules. Theirs is a potentially dangerous but invaluable task to ensure a fair and even playing field for taxpayers, workers and their employers.

It was around 9:30 a.m. on Oct. 20 when Resa Spaziani entered a bodega on Albany Avenue accompanied by Hartford police officers, who were on a mission that morning to inspect several small storefronts suspected of illegal activity.

The city, according to Hartford Deputy Police Chief Brian Foley, has a number of neighborhood markets that operate outside legitimate means violating liquor laws, peddling stolen goods, or even selling drugs.

Spaziani was clad in a bulletproof vest, but she's not a cop; she's a member of the state Department of Labor's Division of Wage and Workplace Standards. The city police force asked Spaziani, and her Spanish interpreter co-worker Ariel Morales, to join their inspections because she has power they lack: the ability to shut down businesses that violate state labor laws.

The strategy paid off. That morning Spaziani issued stop work orders on three separate bodegas — two on Albany Avenue and a third on Bellevue Avenue — for failing to pay wages and paying under the minimum wage. Each market was closed and faces thousands of dollars in fines.

In recent years, state labor officials have ramped up efforts to crack down on unscrupulous employers that skirt labor laws by misclassifying workers as independent contractors, not reporting workers on their payroll, or failing to

pay workers' compensation insurance or minimum wage, among other violations.

Not only have the number of stop work orders increased, but inspections and fines are also up. More significantly, state labor officials have broadened their investigative scope. Traditionally, inspections were focused on the construction industry, but other businesses — ranging from restaurants, nail salons, small merchants, and even hospitals — are audited these days.

The goal, according to Gary Pechie, head of DOL's Division of Wage and Workplace Standards, is to eradicate Connecticut's underground economy, which costs the state untold millions in uncollected tax revenue each year, and creates significant competitive advantages for businesses that break the law.

"What's happening is that we are really starting to make an impact on this," Pechie said. "We thought our efforts were mostly going to focus on construction, but it has evolved into other areas. We've been asked to go inspect places we never thought we would."

Efforts ramp up

Connecticut's crackdown efforts ramped up about three years ago, when the state signed a pact with the U.S. Labor Department and Internal Revenue Service, to share resources and jointly go after unscrupulous employers. Since then, the state Department of Labor has forged other alliances with state agencies, including the Department of Revenue Services and Department of Energy & Environmental Protection, as well as local police departments and building inspectors, among others.

Investigators have found that if an employer is breaking one law, it most likely is skirting other laws as well. That's what spurred the recent joint investigation by the labor department and Hartford Police, which eventually led to one of the three bodegas re-opening after complying with the law.

By sharing intel and resources, Pechie said, they've been able to track and go after more law breakers.

In 2011, for example, the state issued 245 stop work orders and levied \$201,150 in fines, up significantly from the 160 stop work orders and \$93,400 in fines handed out a year earlier.

Since July 1, 2013, the state has issued an additional 208 stop work orders and \$301,600 in fines.

Meanwhile, in the last four years the state labor department's Unemployment Insurance Tax Division has performed 8,554 audits and discovered 16,787 workers who were misclassified as independent contractors. That accounted for \$244 million in gross wages that were underreported for unemployment tax insurance purposes.

Pechie said when employers underreport their payroll or don't pay workers compensation insurance, other businesses and taxpayers are left to foot the bill if misclassified employees receive unemployment benefits or get injured on the job.

Increasingly, employers, too, are being more vigilant about labor laws, knowing that when a competitor isn't playing by the rules, they are put at competitive disadvantage. Tips from business owners are a significant portion of the nearly 5,000 complaints the state DOL handles each year, Pechie said.

More work to be done

Connecticut's efforts to eviscerate the underground economy dates back about seven years, when lawmakers gave labor officials the ability to issue stop work orders and fine companies that violate employment laws. In Connecticut, employers face a \$300 fine each day they improperly classify workers as independent contractors.

Enforcement efforts started slowly but ramped after the Great Recession, which had a dramatic impact on Connecticut's labor market.

The downturn significantly increased the number of laid-off workers who applied for unemployment benefits, and gave some employers more incentive to cut costs by cheating the system. Originally, Spaziani said, the labor department's focus was on the construction industry, where misclassification of workers as independent contractors was widespread. Lately, the bigger issue has been employers leaving workers completely off the books, so they can avoid payroll taxes.

That, along with tighter partnerships with local, state, and federal agencies and a greater volume of complaints from workers and employers alike, got DOL to broaden its investigations into more industries.

Effort recovers \$6.5M in unpaid wages

In the fiscal year that ended June 30, the state paid hundreds of Connecticut workers a total of \$6.5 million owed them by their employers.

So between July 1 of last year and June 30 of this year, Connecticut employers cheated workers out of \$6.5 million in wages.

And that's just the amount the state knows about.

The money was recovered from unscrupulous employers by the Department of Labor's Wage & Workplace Standards Division, which investigates workers' complaints.

A significant portion of the complaints — nearly 2,800 of them, accounting for \$3 million — were from workers reporting that they were not paid at all. Another \$1.2 million was distributed to workers who were not paid minimum wage or overtime as required by law. And more than \$2 million was distributed to construction workers who were paid less than the state's

"We are trying to level the playing field so law-abiding contractors can compete, and employees get the wages they are entitled to."

Gary Pechie, director of the Wage & Workplace Standards Division

prevailing wage for government projects.

The Wage & Workplace Standards Division gets about 4,000 complaints a year, said the director, Gary Pechie. Most are from workers in the construction industry, service industries such as hotels and restaurants, and the transportation industry employing taxi, limo and tractor-trailer drivers, Pechie said.

"I don't think people understand how tremendously workplaces have changed since the recession," Pechie said. "There's a lot of shenanigans going on."

After the recession hit hard in 2008, many workers lost jobs, had their hours or pay cut, and relinquished raises, bonuses and promotions.

Unscrupulous employers took advantage of workers' fears for their livelihoods. They also took advantage of the law.

Workers get \$6.5M bosses didn't pay them

Continued from A1

reports of employers not only underpaying or failing to pay workers, but paying them in cash to avoid income taxes and Social Security, Medicare and Social Security, Medicare and unemployment insurance; classifying employees as independent contractors to avoid paying workers' compensation insurance; using unlicensed trade workers; exploiting undocumented workers; and ignoring safety regulations.

In fiscal 2013-14, for example, the Wage & Workplace Standards Division found 392 cases in which employers violated labor laws by improperly handling personnel files, allowing minors to work night shifts in manufacturing plants, employing minors in hazardous jobs, and more.

Consequences extend beyond the workplace. If a trucking company, for example, fails to pay workers' compensation insurance and a trucker is injured on the job, state taxpayers must cover his medical expenses. If a hotel owner, for example, fails to pay unemployment insurance for a maid and the maid is laid off, taxpayers still must cover her unemployment checks.

Consequences have been

particularly significant in the construction industry. Take the Alabama company hired by the state to build a dormitory complex for 1,000 students at the University of Connecticut campus in Storrs. Officials found elevated levels of deadly carbon monoxide, electrical cables that overheated, and defective plumbing, stairwells, sprinklers and lighting. It cost taxpayers \$25.5 million to fix all the problems, but the state was able to recover only \$15 million from the Alabama contractor.

Worse things can happen. In Stamford in 2011, Javier Salinas died after falling 50 feet from a roof during construction of Chelsea Piers on Blachley Road. Salinas, new on the job, was not trained, and was not wearing a safety harness, and was owed back pay by his employer, American Building Group of Trumbull.

Pechie's Stop Fraud Unit, in fact, has been to many Stamford construction sites in the last four years. They come to break what Pechie calls "the new business model" - cheating workers and violating labor laws.

"Some contractors want to cut labor costs by any means to outbid the competition. We are trying to

level the playing field so law-abiding contractors can compete, and employees get the wages they are entitled to," Pechie said.

Pechie's unit continuously investigates work sites at Harbor Point, the 80-acre, \$3.5 billion remake of Stamford's South End by developer Building and Land Technology. In an unprecedented move last year, state and federal labor officials swept three Harbor Point construction sites, plus an apartment complex at Washington and Tresser boulevards by developer Greenfield Partners. They were looking for payroll fraud.

The unit found 22 out of 40 workers for a Texas rebar company at the Greenfield site who had no Social Security numbers, were not U.S. citizens and were paid in cash.

A few months before that, a licensed plumber from Stamford named Tom Iacovacci, who has nearly three decades in the trade, told The Advocate of watching all the building going on in Stamford while he collected unemployment checks.

"Something more than a recession was going on, Iacovacci said.

"The contractors I work for can't get bids for these jobs," he said. "

"... They pay their workers half of what we work for. Those workers take that money home. They don't spend it in Connecticut. ... On these jobs they have tile guys doing plumbing. They have electricians doing tiling. ... We don't know if they are licensed and trained. ... if they are paying taxes."

It's still going on, but a little less, Pechie said. "We now work together with the state's attorney, the Department of Revenue Services, the Department of Consumer Protection, federal agencies," Pechie said. "We were able to hand out \$6.5 million to workers who were owed that pay. That money went back into the Connecticut economy."

Two years ago the National Employment Law Project estimated that, each year, unscrupulous employers cost Connecticut \$65 million in lost income tax revenue, \$57 million in workers' compensation insurance and \$17 million in unemployment insurance.

"I think we've been able to bring that down," Pechie said. "I think we're making a dent."

angela.carella@scrib.com; 203-964-2296; stamfordadvocate.com/angelacarella

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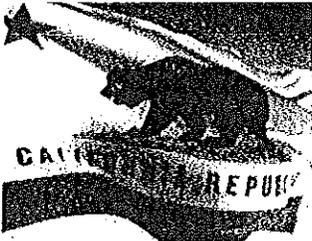
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California

California Temp Worker Protection Bill
Signed, Seen as Model for Other States



By Stephen Lee

Sept. 29 — California Gov. Jerry Brown (D) signed a bill Sept. 28 that now stands as the toughest temporary worker protection law in the nation, and the bill's sponsor told Bloomberg BNA the next day that he's already working to promote similar legislation in other states and at the federal level.

Under the bill, Protecting Workers in the New Subcontracted Economy (A.B. 1897), California employers will be held legally responsible for any workers' compensation coverage and wage violations committed by the labor suppliers they contract with.

Employers with fewer than 25 employees are exempt, as are those with five or fewer temporary workers. Also exempt are public employers, trucking companies, and cable and communications employers.

Illinois is the only other state that has tried to legislate in this area, but its law just covers day laborers and temp agencies, Cathy Ruckelshaus, general counsel of the National Employment Law Project, told Bloomberg BNA Sept. 29.

Toughest Law in Nation

Federal labor law includes many provisions similar to the California bill requirements, but they impose threshold tests to determine whether prime contractors and/or subcontractors qualify as employers, Ruckelshaus said. By contrast, the California law automatically assumes that both the prime contractor and the subcontractor on a work site are responsible.

Assemblyman Roger Hernandez (D), who sponsored the bill, told Bloomberg BNA Sept. 29 that Democratic members of the Illinois and New York legislatures have asked to see the text of the legislation.

Hernandez also said he plans to meet with members of Congress in Washington, D.C., and in California to lobby for his bill at the national level.



California
LEGISLATIVE INFORMATION

AB-1897 Labor contracting: client liability. (2013-2014)

Assembly Bill No. 1897

CHAPTER 728

An act to add Section 2810.3 to the Labor Code, relating to private employment.

[Approved by Governor September 28, 2014. Filed with Secretary of State
September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, Roger Hernández. Labor contracting: client liability.

Existing law regulates the terms and conditions of employment and establishes specified obligations of employers to employees. Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided.

This bill would require a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage. The bill would prohibit a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. The bill would define a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor, except as specified. The bill would define a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business. The bill would except from the definition of labor contractor specified nonprofit, labor, and motion picture payroll services organizations and 3rd parties engaged in an employee leasing arrangement, as specified. The bill would specify that it does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies for violations of its provisions by the other party. The bill would require a client employer or labor contractor to provide to a requesting enforcement agency or department, and make available for copying, information within its possession, custody, or control required to verify compliance with applicable state laws. The bill would authorize the Labor Commissioner, the Division of Occupational Safety and Health, and the Employment Development Department to adopt necessary regulations and rules to administer and enforce the bill's provisions. The bill would provide that waiver of its provisions is contrary to public policy, void, and unenforceable. The bill would prohibit its provisions from being interpreted to impose liability in specified circumstances.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2810.3 is added to the Labor Code, to read:

2810.3. (a) As used in this section:

(1) (A) "Client employer" means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.

(B) "Client employer" does not include any of the following:

(i) A business entity with a workforce of less than 25 workers, including those hired directly by the client employer and those obtained from, or provided by, any labor contractor.

(ii) A business entity with five or fewer workers supplied by a labor contractor or labor contractors to the client employer at any given time.

(iii) ~~The state or any political subdivision of the state, including any city, county, city and county, or special district.~~

(2) "Labor" has the same meaning provided by Section 200.

(3) "Labor contractor" means an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business. "Labor contractor" does not include any of the following:

(A) A bona fide nonprofit, community-based organization that provides services to workers.

(B) A bona fide labor organization or apprenticeship program or hiring hall operated pursuant to a collective bargaining agreement.

(C) A motion picture payroll services company as defined in subparagraph (A) of paragraph (4) of subdivision (f) of Section 679 of the Unemployment Insurance Code.

(D) A third party who is a party to an employee leasing arrangement, as defined by Rule 4 of Section V of the California Workers' Compensation Experience Rating Plan-1995 (Section 2353.1 of Title 10 of the California Code of Regulations), as it read on January 1, 2014, except those arrangements described in subrule d of Rule 4 of Section V, if the employee leasing arrangement contractually obligates the client employer to assume all civil legal responsibility and civil liability under this act.

(4) "Wages" has the same meaning provided by Section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

(5) "Worker" does not include an employee who is exempt from the payment of an overtime rate of compensation for executive, administrative, and professional employees pursuant to wage orders by the Industrial Welfare Commission described in Section 515.

(6) "Usual course of business" means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.

(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

(1) The payment of wages.

(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

(c) A client employer shall not shift to the labor contractor any legal duties or liabilities under the provisions of Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

(e) Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action.

(f) The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

(g) This section does not prohibit a client employer from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a labor contractor for liability created by acts of a labor contractor.

(h) This section does not prohibit a labor contractor from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a client employer for liability created by acts of a client employer.

(i) Upon request by a state enforcement agency or department, a client employer or a labor contractor shall provide to the agency or department any information within its possession, custody, or control required to verify compliance with applicable state laws. Upon request, these records shall be made available promptly for inspection, and the state agency or department shall be permitted to copy them. This subdivision does not require the disclosure of information that is not otherwise required to be disclosed by employers upon request by a state enforcement agency or department.

(j) The Labor Commissioner may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under his or her jurisdiction.

(k) The Division of Occupational Safety and Health may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (c) and (i) that are under its jurisdiction.

(l) The Employment Development Department may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under its jurisdiction.

(m) A waiver of this section is contrary to public policy, and is void and unenforceable.

(n) This section shall not be interpreted to impose individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home.

(o) This section shall not be interpreted to impose liability on a client employer for the use of an independent contractor other than a labor contractor or to change the definition of independent contractor.

(p) This section shall not be interpreted to impose liability on the following:

(1) A client employer that is not a motor carrier of property based solely on the employer's use of a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight.

(2) A client employer that is a motor carrier of property subcontracting with, or otherwise engaging, another motor carrier of property to provide transportation services using its own employees and commercial motor vehicles, as defined in Section 34601 of the Vehicle Code.

(3) A client employer that is a cable operator as defined by Section 5830 of the Public Utilities Code, a direct-to-home satellite service provider, or a telephone corporation as defined by Section 234 of the Public Utilities Code, based upon its contracting with a company to build, install, maintain, or perform repair work utilizing the employees and vehicles of the contractor if the name of the contractor is visible on employee uniforms and vehicles.

(4) A motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code when it contracts with third parties to provide motor club services utilizing the employees and vehicles of the third-party contractor if the name of the contractor is visible on the contractor's vehicles.