

Assembly Bill No. 1701

CHAPTER 804

An act to add Section 218.7 to the Labor Code, relating to employment.

[Approved by Governor October 14, 2017. Filed with
Secretary of State October 14, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1701, Thurmond. Labor-related liabilities: original contractor.

Under existing law, an action may be brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would, for all contracts entered into on or after January 1, 2018, require a direct contractor, as defined, making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, specified debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. The bill would authorize the Labor Commissioner to bring an action under specified statutes or in a civil action to enforce this liability, as provided. The bill would also authorize a third party owed fringe or other benefits or a joint labor-management cooperation committee, as defined, to bring a civil action to enforce the liability against a direct contractor under these provisions, as specified. The bill would provide that it does not apply to any work being done by an employee of the state or any political subdivision of the state. The bill would require a subcontractor, upon request from the direct contractor, to provide specified information regarding the subcontractor's and third party's work on the project and would provide that the direct contractor could withhold disputed sums upon the subcontractor's failure to provide the requested information, as specified. The bill would provide that these obligations and remedies are in addition to any other remedy provided by law. The bill would provide that its provisions are severable.

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

SECTION 1. Section 218.7 is added to the Labor Code, to read:

218.7. (a) (1) For contracts entered into on or after January 1, 2018, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, shall assume, and is liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's

performance of labor included in the subject of the contract between the direct contractor and the owner.

(2) The direct contractor's liability under this section shall extend only to any unpaid wage, fringe or other benefit payment or contribution, including interest owed but shall not extend to penalties or liquidated damages.

(3) A direct contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by the nonpayment of wages, fringe or other benefit payments, or contributions by that subcontractor or by a subcontractor at any tier working under that subcontractor.

(b) (1) The Labor Commissioner may enforce against a direct contractor the liability for unpaid wages created by subdivision (a) pursuant to Section 98 or 1197.1, or through a civil action. The direct contractor's liability shall be limited to unpaid wages, including any interest owed.

(2) A third party owed fringe or other benefit payments or contributions on a wage claimant's behalf may bring a civil action against a direct contractor to enforce the liability created by subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.

(3) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier for unpaid wages owed to a wage claimant by the direct contractor or subcontractor for the performance of private work, including unpaid wages owed by the direct contractor, pursuant to subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees. Prior to commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the committee shall provide the direct contractor and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice need only describe the general nature of the claim and shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor.

(4) No other party may bring an action against a direct contractor to enforce the liability created by subdivision (a).

(c) Unless otherwise provided by law, property of the direct contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.

(d) An action brought pursuant to this section shall be filed within one year of the earliest of the following:

(1) Recordation of the notice of completion of the direct contract, pursuant to Section 8182 of the Civil Code.

(2) Recordation of a notice of cessation of the work covered by the direct contract, pursuant to Section 8188 of the Civil Code.

(3) Actual completion of the work covered by the direct contract.

(e) This section does not apply to work performed by an employee of the state, a special district, a city, a county, a city and county, or any political subdivision of the state.

(f) (1) Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide payroll records, which, at a minimum, contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174, of its employees who are providing labor on a private work, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. The payroll records must contain information sufficient to apprise the requesting party of the subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf.

(2) Upon request of a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the direct contractor award information that includes the project name, name and address of the subcontractor, contractor with whom the subcontractor is under contract, anticipated start date, duration, and estimated journeymen and apprentice hours, and contact information for its subcontractors on the project.

(3) A subcontractor's failure to comply with this subdivision shall not relieve a direct contractor from any of the obligations contained in this section.

(g) For purposes of this section, "direct contractor" and "subcontractor" have the same meanings as provided in Sections 8018 and 8046, respectively, of the Civil Code.

(h) The obligations and remedies provided in this section shall be in addition to any obligations and remedies otherwise provided by law, except that nothing in this section shall be construed to impose liability on a direct contractor for anything other than unpaid wages and fringe or other benefit payments or contributions including interest owed.

(i) Nothing in this section shall alter the owner's obligation to timely pay a direct contractor as set forth in Sections 8800 and 8812 of the Civil Code, or a direct contractor's obligation to timely pay a subcontractor as set forth in Section 7108.5 of the Business and Professions Code and Section 8814 of the Civil Code, or the penalties for failing to do so as set forth in Sections 8800 and 8818 of the Civil Code and Section 7108.5 of the Business and Professions Code, except that the direct contractor may withhold as "disputed" all sums owed if a subcontractor does not timely provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.