



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

**SB-422 Unemployment compensation: motion picture industry: loan-out companies.** (2023-2024)

SHARE THIS:



Date Published: 09/30/2024 09:00 PM

**Senate Bill No. 422**

**CHAPTER 1011**

An act to amend Section 679 of, and to add Section 1088.9 to, the Unemployment Insurance Code, relating to unemployment insurance.

[ Approved by Governor September 30, 2024. Filed with Secretary of State September 30, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 422, Portantino. Unemployment compensation: motion picture industry: loan-out companies.

Existing law establishes the Employment Development Department, administered by the Director of Employment Development who is vested with certain duties relating to unemployment compensation. Existing unemployment insurance law requires any employing unit that is a motion picture payroll services company, as defined, to be treated as an employer of a motion picture production worker, as defined, and to file a statement of intent with the Employment Development Department. Existing law makes specified violations of unemployment insurance law a misdemeanor.

This bill would specify that a loan-out company is the employer of its employee-owners or members who are engaged to provide services to a motion picture production company or to an allied motion picture services company for purposes of remitting employment taxes and related obligations, as specified. The bill would prohibit a loan-out company or an individual whose services are provided by a loan-out company from being considered an employee of a motion picture payroll services company. The bill would require a motion picture payroll services company to file a quarterly report with the Director of Employment Development relating to payments made to a loan-out company, as specified. The bill would define "loan-out company" for these purposes. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

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.

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

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

**SECTION 1.** The Legislature finds and declares that unemployment benefits are a fundamental protection for California workers who are unemployed through no fault of their own. This protection is all the more important for workers in industries like the entertainment industry, in which work is often sporadic and unpredictable. With this act, the Legislature intends to eliminate ambiguities and clarify, in particular situations, the party bearing responsibility for the employer share of payroll taxes that support the unemployment and disability insurance systems and other worker-protective benefits. It is the intent of the Legislature to recognize the role of loan-out companies and clarify their obligations to remit employment taxes under the Unemployment

Insurance Code. This act is not intended to alter or modify any other laws with regard to loan-out companies or their employees. It is not the intent of the Legislature to limit, in any way, eligibility for unemployment benefits or to abrogate the analysis of California court decisions, including in *Cooperman v. Unemployment Ins. Appeals Bd.* (1975) 49 Cal.App.3d 1, affirming the importance of those benefits to workers. The Legislature finds and declares that the amendments to Section 679 of the Unemployment Insurance Code made by this act are declaratory of, and not a change in, existing law.

**SEC. 2.** Section 679 of the Unemployment Insurance Code is amended to read:

**679.** (a) (1) Notwithstanding Sections 606.5 and 678, for the purposes of this code, “employer” means any employing unit that is a motion picture payroll services company that pays and controls the payment of wages of a motion picture production worker for services either to a motion picture production company or to an allied motion picture services company, and files a timely statement of its intent to be the employer of motion picture production workers pursuant to subdivision (b).

(2) Notwithstanding Sections 606.5 and 678 and paragraph (1), solely for the purpose of remitting employment taxes under this code, and any related obligations arising therefrom under this code, including, but not limited to, this division and Division 6 (commencing with Section 13000), a loan-out company is the employer of the employee-owners or members who are engaged by the loan-out company to provide services to a motion picture production company or an allied motion picture services company.

(3) For purposes of this code, and consistent with paragraph (2), neither a loan-out company nor an individual whose services are provided by a loan-out company shall be considered an employee of the motion picture payroll services company.

(b) (1) Any employing unit meeting the requirements of a motion picture payroll services company that intends to be treated as an employer of motion picture production workers pursuant to subdivision (a) shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, within 15 days after first paying wages to the workers. The statement shall include identification of each affiliated entity.

(2) Any employing unit operating as a motion picture payroll services company as of January 1, 2007, that intends to be treated as an employer of motion picture production workers pursuant to this section, shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, by January 15, 2007. The statement shall include identification of each affiliated entity.

(3) Any motion picture payroll company that quits business shall:

(A) Within 10 days of quitting business:

(i) File with the director a final return and report of wages of its workers, as required by Section 1116.

(ii) File all statements required by this subdivision.

(B) Forty-five days in advance of quitting business, notify each motion picture production company and allied motion picture services company, with respect to which they have been treated as the employer of the motion picture production workers, of its intent to quit business.

(4) The director may prevent a motion picture payroll services company that fails to file a timely statement from being treated as an employer of motion picture production workers, for a period not to exceed the period for which the statement is required.

(5) Any statement filed by a motion picture payroll services company pursuant to this subdivision shall be applied to each affiliated entity of the motion picture payroll services company in existence at the time the statement is filed.

(c) For each rating period beginning on or after January 1, 2007, in which an employer operating as a motion picture payroll services company obtains or attempts to obtain a more favorable rate of contributions under this section in a manner that is due to deliberate ignorance, reckless disregard, fraud, intent to evade, misrepresentation, or willful nondisclosure, the director shall assign the maximum contribution rate plus 2 percent for each applicable rating period, the current rating period, and the subsequent rating period. Contributions paid in excess of the maximum rate under this section shall not be credited to the employing unit’s reserve account.

(d) (1) On and after January 1, 2007, whenever a motion picture payroll services company creates or acquires a motion picture payroll services company, or acquires substantially all of the assets of a motion picture payroll services company, the created or acquired motion picture payroll services company shall:

(A) Constitute a separate employing unit, notwithstanding Sections 135.1 and 135.2.

(B) Have its reserve account and rate of contributions determined in accordance with subdivision (e).

(C) Notify the department of the entity being created or acquired and the nature of its affiliation to that entity.

(2) The department may promulgate regulations requiring a motion picture payroll services company, prior to the creation or acquisition of a motion picture payroll services company that will be an affiliated entity, to seek the approval of the department to apply this section to the created or acquired entity.

(e) When a motion picture payroll services company transfers all or part of its business or payroll to another motion picture payroll services company the reserve account attributable to the transferor shall be transferred to the transferee motion picture payroll services company, and the transferee's rate of contribution shall be determined in accordance with Section 1052. The transferee shall notify the department within 15 days of the transfer of the business or payroll.

(f) For purposes of this section:

(1) "Affiliated entity" means any one or more motion picture payroll services company or companies that are united by factors of common ownership, management, or control as prescribed by Section 1061.

(2) "Allied motion picture services company" means any person engaged in an industry closely allied with, and whose work is integral to, a motion picture production company in the development, production, or postproduction of a motion picture, excluding the distribution of the completed motion picture and any activity occurring thereafter, and who hires from the same pool of craft and guild or union workers, actors, or extras as a motion picture production company.

(3) "Loan-out company" means a corporation, or limited liability company that is classified as a corporation for federal income tax purposes, the principal activity of which is the performance of personal services for a motion picture production company or allied motion picture services company, provided that those services are substantially performed by an employee of the corporation who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the corporation.

(4) "Motion picture" means a motion picture of any type, including, but not limited to, a theatrical motion picture, a television production, a television commercial, or a music video, regardless of its theme or the technology used in its production or distribution.

(5) (A) "Motion picture payroll services company" means any employing unit that directly or through its affiliated entities meets all of the following criteria:

(i) Contractually provides the services of motion picture production workers to a motion picture production company or to an allied motion picture services company, or provides payments to a loan-out company as directed by a motion picture production company or an allied motion picture services company.

(ii) Is a signatory to a collective bargaining agreement for one or more of its clients.

(iii) Controls the payment of wages to the motion picture production workers and pays those wages from its own account or accounts.

(iv) Is contractually obligated to pay wages to the motion picture production workers without regard to payment or reimbursement by the motion picture production company or allied motion picture services company.

(v) At least 80 percent of the wages paid by the motion picture payroll services company each calendar year are paid to workers associated between contracts with motion picture production companies and motion picture payroll services companies.

(B) If the director determines that any employing unit is operating as a motion picture payroll services company but is failing to comply with any of the provisions of subparagraph (A) of paragraph (4), the employing unit is subject to determination of the employer-employee relationship pursuant to this code. When the director's ruling becomes final, the director may preclude the employing unit from being classified as a motion picture payroll services company pursuant to this section for up to three years from the date of the determination.

(6) "Motion picture production company" means any employing unit engaged in the development, production, and postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter.

(7) "Motion picture production worker" means an individual who provides services to a motion picture production company or allied motion picture services company and who, with regard to those services, is reported under this part as an employee by the motion picture payroll services company. An individual who has been reported as an employee by the motion picture payroll services company, without regard to the individual's status as an employee or independent contractor, shall be the employee of

the motion picture payroll services company for the purposes of this code throughout the contractual period with the motion picture payroll services company.

(8) "Wages" shall have the same meaning given the term in Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1, and shall include residual payments.

(g) If the director determines that an entity does not meet any requirement of this section, the director shall give notice of its determination to that entity pursuant to Section 1206. The notice shall contain a statement of the facts and circumstances upon which the determination was made. The entity so noticed shall have the right to petition for review of the director's determination within 30 days of the notice, as provided in Section 1222.

(h) The director shall prescribe the form and manner of the statements and information required to be filed or reported by this section.

**SEC. 3.** Section 1088.9 is added to the Unemployment Insurance Code, to read:

**1088.9.** (a) Commencing with the first calendar quarter of calendar year 2026, a motion picture payroll services company shall file with the director, within the same time required by subdivision (a) of Section 1110 for payment of employer contributions, a report of payments made to a loan-out company pursuant to subdivision (b).

(b) The report shall include all of the following information:

(1) The total amount of payments made to the loan-out company.

(2) The business name, address, and telephone number of the loan-out company.

(3) The federal employer identification number, California employer account number, or other identifying number of the loan-out corporation, as required by the Employment Development Department, in consultation with the Franchise Tax Board.

(4) The full name, address, and social security number of any individual whose services were provided through the loan-out company.

(5) The name, address, and federal employer identification number, California employer account number, or other identifying number of the motion picture payroll services company, as required by the Employment Development Department, in consultation with the Franchise Tax Board.

(6) Any other information as the director shall prescribe.

(c) The Franchise Tax Board may access the information filed with the department pursuant to this section.

(d) A lack of access to the information required to be reported under this section does not relieve any obligation on a motion picture payroll services company to continue to timely pay a loan-out company all payments due.

(e) (1) For each failure to fully comply with subdivisions (a), (b), and (d), unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars (\$24), or, if the failure is willful or fraudulent, the department may assess a penalty of four hundred ninety dollars (\$490).

(2) A failure to fully comply with subdivisions (a) and (b) shall be deemed to be for good cause pursuant to paragraph (1) if a motion picture payroll services company has requested that a loan-out company provide information required by subdivision (b) and the loan-out company does not provide the requested information, or provides incorrect or incomplete information.

(f) For purposes of this section, the definitions in Section 679 shall apply, as applicable.

**SEC. 4.** 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.