

Date of Hearing: August 20, 2025

# ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

SB 597 (Cortese) – As Amended July 10, 2025

Policy Committee:	Labor and Employment	Vote:	7 - 0
	Judiciary		12 - 0

Urgency: No      State Mandated Local Program: No      Reimbursable: No

## SUMMARY:

This bill revises existing state law that imposes joint liability on a direct contractor for unpaid wages owed by a subcontractor in order to avoid preemption under federal law.

Specifically, this bill:

- 1) Limits the applicability of Labor Code Section 218.8, which imposes joint liability on a direct contractor for labor incurred by a subcontractor at any level, to contracts entered into before January 1, 2026.
- 2) Imposes, for contracts entered into on or after January 1, 2026, joint liability on a direct contractor similar to the provisions of Labor Code Section 218.8, but modifies certain provisions. Notably, a contractor is liable for indebtedness for the performance of labor as described in a cross-reference to the definition of “laborer” in Civil Code Section 8024, instead of liable for debt owed to a wage claimant or third party on the wage claimant’s behalf, including an unpaid wage, fringe, or other benefit payment or contribution. Additionally, a laborer, instead of 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.
- 3) Prohibits a direct contractor from being held liable for a subcontractor’s failure to make fringe or other benefit payments or contributions if the contractor issues a joint check payable to the subcontractor and the trust, plan, fund or program administering such benefits.

## FISCAL EFFECT:

- 1) Absorbable costs to the LC to enforce the liability against a direct contractor through an administrative or civil action.
- 2) Annual cost pressures (General Fund (GF) or Trial Court Trust Fund (TCTF)) of an unknown, but potentially significant amount, to the courts in additional workload by allowing the LC or a laborer to file a civil action to enforce the liability against a direct contractor. It is unclear how many new civil actions may be filed statewide under this revised statutory remedy, but the estimated workload cost of one hour of court time is \$1,000. Although courts are not funded on the basis of workload, increased pressure on staff and the TCTF may create a demand for increased court funding from the GF to perform existing duties. The Budget Act of 2025 provides \$82 million ongoing GF to the TCTF for court operations.

**COMMENTS:****1) Purpose.** According to the author:

Since 2022 the courts have received countless wage theft cases, but amendments to Labor code unintentionally left workers underpaid and discouraged from speaking out against their employers for fear of retaliation. SB 597 bolsters statutory remedies against general contractors to eliminate [federal Employee Retirement Income Security Act (ERISA)] preemption and incentivizes general contractors to monitor their subcontractors' compliance.

This bill is sponsored by the Western States Council of Sheet Metal Workers, and supported by other labor organizations and the California Building Industry Association.

**2) Background. Joint Liability.** AB 1701 (Thurmond), Chapter 804, Statutes of 2017, made a direct contractor in the construction industry liable for any unpaid wages and interest owed to a subcontractor's employees, and authorized the LC, a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf, and a joint labor management committee to enforce the liability. SB 727 (Leyva), Chapter 338, Statutes of 2021, expanded a direct contractor's liability to include related penalties and liquidated damages incurred by the subcontractor, but also created a "safe harbor" from this expanded liability if the contractor meets certain due diligence requirements.

**Federal Preemption.** The federal ERISA regulates most voluntary retirement and health plans for private employers and grants plan beneficiaries the right to sue for benefits. Over the years, the courts have struck down a number of state laws attempting to regulate voluntary benefit plans, finding such laws preempted by ERISA.

In 2024, a superior court ruled in a lawsuit brought by a trust fund against a general contractor to recover unpaid benefit contributions owed by a subcontractor that the remedies created by AB 1701 and SB 727 are preempted by ERISA. This bill revises the preempted liability and enforcement provisions to adhere more closely to the drafting of mechanic's lien laws. As explained in the Assembly Judiciary Committee's analysis of this bill:

By referencing [Civil Code] Section 8024, SB 597 incorporates the definition of both laborers and any entity to whom the owner or contractor owes a portion of the payment for purposes of fulfilling a contractual obligation, including payments to pensions or health plans, without directly referencing such obligations. This language brings the section in alignment with the state's existing mechanic's lien statute. As the California Supreme Court has already held that the state's mechanic's lien statutes is *not* preempted by ERISA, it is possible this new approach likewise withstands the same challenge.

This bill also creates a new "safe harbor" to shield a direct contractor from being held liable for a subcontractor's failure to make benefit contributions if the contractor issues a joint check payable to the subcontractor and the entity administering the benefits. A joint check requires both parties to whom the check is payable to sign the check before the check may be cashed, making it difficult for one party to fail to remit the owed portion to the other.

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