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Code Sections Affected

Labor Code §§ 1102.6, 1102.7; 1102.8 (new), §§ 1102.5, 1106 (amended).
SB 777 (Escutia); 2003 STAT. Ch. 484.

> *Workers inside corporations are our first line of defense to safeguard investors, consumers and the economy from corporate fraud when companies corporateer—prioritize the bottom line over individual and society interests.*[1]

I. INTRODUCTION

Corporate America has been a hot topic lately, and for good reason. Enron's infamous corporate malfeasance and massive accounting irregularities are a few examples that show the price society pays for wrongdoing on Wall Street. After collapsing into bankruptcy in "December 2001 amid revelations of billions in hidden debt, inflated profits and shady accounting[,] [t]housands of employees lost their jobs and stock that once traded as high as $90 per share became worthless."[2] As a result of reorganization under bankruptcy, Enron's creditors will only receive about 14.4 cents to 18.3 cents for every dollar of the $67 billion they are owed.[3] If it were not for the action of Sherron Watkins, "the woman who blew the whistle on the accounting scandal at Enron,"[4] perhaps these frightening numbers could be even worse than they are.

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1. Doug Heller, *Whistleblower Protection, Corporate Accountability Plan, Passes Key Committee*, Foundation for Taxpayer and Consumer Rights, *at* http://www.consumerwatchdog.org/corporate/pr/pr003415.php3 (last visited Feb. 28, 2004) (copy on file with the *McGeorge Law Review*).

2. *Enron's Creditors to End Up With Peanuts* (Mar. 1, 2000), *available at* http://www.foxnews.com/ (last visited July 11, 2003) (copy on file with the *McGeorge Law Review*).

3. *Id.*

4. Therese Poletti, *Enron Whistleblower Reflects on What Happened*, SAN JOSE MERCURY NEWS, Jan. 31, 2003, at 1.

In response to what many believe is a growing epidemic, "cleaning up corporate America has become a rallying cry in Congress."[5] Congress responded by enacting the Sarbanes-Oxley Act of 2002, which addressed corporate accountability and financial reporting issues and increased criminal penalties for wrongful conduct by corporate officers.[6] More relevant to this article, however, the Sarbanes-Oxley Act also broadened federal protections for whistleblowers[7] with the intent of encouraging employees to be more willing to approach their superiors with complaints about their company's financial handlings.[8]

Despite these federal changes, the California Legislature recently showed by the enactment of Chapter 484 that it believes Congress failed to do enough to address the important role whistleblowers play in preventing the damage that corporate fraud continues to inflict on shareholders, investors, employees, and the market.[9]

Both Congress and the California Legislature recognize the importance that whistleblowers play in helping uncover corporate scandals. However, Congress's enactment of the Sarbanes-Oxley Act, and the California Legislature's passage of Chapter 484, leave open two important questions. First, did we really need Chapter 484, given the Sarbanes-Oxley Act of 2002? And second, will California be able to afford the potential consequences of Chapter 484.

II. SETTING THE STAGE: PRIOR AND EXISTING LAW ON WHISTLEBLOWER PROTECTIONS

A. *California's Approach: The "Whistleblower Protection Statute"*

In 1984, the California Legislature enacted what is commonly referred to as the "Whistleblower Protection Statute" ("WPS").[10] This law prohibits employers from preventing employees from disclosing to the state or federal government information of a suspected violation of a state or federal law.[11] In other words, employers cannot prevent employees from "blowing the whistle" on suspected employer wrongdoing. Furthermore, the WPS prohibits employers from retaliating against a whistleblower employee by demoting, discharging or suspending him or her.[12]

5. Heather Fleming Phillips, *Congress Takes Aim at Cleaning Up Corporate America*, SAN JOSE MERCURY NEWS, July 3, 2002, at 1.

6. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 3 (Apr. 8, 2003).

7. *See* BLACK'S LAW DICTIONARY 1590 (7th ed. 1999) (defining "whistleblower" as "[a]n employee who reports employer illegality to a governmental or law-enforcement agency").

8. Amanda Bronstad, *Companies Rush to Adjust to New Whistleblower Rules*, L.A. BUS. J., Feb. 24, 2003, at 2.

9. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 7 (Apr. 8, 2003).

10. *Id.* at 8.

11. CAL. LAB. CODE § 1102.5(a) (amended by Ch. 484).

12. *Id.* § 1102.5(b).

An employer that violates the WPS could face both criminal and civil sanctions.[13] A violating employer will be guilty of a misdemeanor,[14] but the degree of punishment depends on whether the employer is a corporation or an otherwise individual. A corporate employer could be liable for a fine up to $5,000,[15] while an violating individual-employer could face a smaller fine of up to $1,000, but also a possible one-year sentence in county jail.[16]

An employee who believes that he or she has suffered injury as a result of an employer's violation of the WPS also has the recourse of filing a civil lawsuit to recover compensatory damages.[17] An employee must establish a prima facie case of retaliation by showing that "the employee engaged in a protected activity, that the employee was thereafter subjected to adverse employment action by the employer, and there was a casual link between the two,"[18] which requires that the employee show by "preponderance of the evidence that the action taken by the employer was one proscribed by the WPS.[19] Once a prima facie case is established, the burden is shifted to the employer to show a preponderance of the evidence[20] that the alleged retaliatory action would have occurred regardless of whether or not the employee had engaged in activities protected by the WPS.[21] The plaintiff then has the opportunity to prove that "this reason was a pretext to mask an illegal motive."[22]

B. The Federal Approach: The Sarbanes-Oxley Act of 2002

Pursuant to the Sarbanes-Oxley Act of 2002, no publicly traded company may discriminate against an employee who (1) has provided information of corporate wrongdoing to Congress,[23] a federal regulatory or law enforcement

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13. *See id.* § 1103 (West 1989) (listing criminal sanctions).

14. *Id.* §§ 1103, 1105.

15. *Id.*

16. *Id.*

17. *Id.* § 1105.

18. *See, e.g.*, Morgan v. Regents of the Univ. of Cal., 105 Cal. Rptr. 2d 652, 665, 88 Cal. App. 4th 52, 69 (2000) (stating that in order to overcome a defendant's motion for summary judgment in an employment discrimination action, three steps must be completed to favor the plaintiff, the first of which is the establishment of a prima facie case of retaliation by the employer against the employee); *see also id.* at 666, 88 Cal. App. 4th at 69 (defining a "prima facie case" of retaliation as one where the plaintiff shows that he or she was engaged in statutorily protected activity, he or she was then subjected to adverse employment action by the employer, and a causal link existed between the two actions).

19. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 5 (Apr. 8, 2003).

20. *Id.*

21. *See, e.g.*, *Morgan*, 105 Cal. Rptr. 2d at 665, 88 Cal. App. 4th at 68 (stating that once the "employee establishes a prima facie case, the employer is required to offer a legitimate, nondiscriminatory reason for the adverse employment action" if the employer intends on overcoming the allegations).

22. *Id.* at 665.

23. 18 U.S.C.A. § 1514A(a)(1)(B) (West Supp. 2003) (stating that a disclosure to Congress includes a disclosure to any member of Congress or any committee of Congress).

agency,[24] or to the company's internal supervisory authority;[25] or (2) has assisted in any federal investigation or legal proceeding[26] regarding alleged violations of applicable federal law.[27]

Similar to the WPS, Sarbanes-Oxley provides a whistleblower with the legal recourse against his or her employer if the whistleblower feels that he or she has been unlawfully retaliated against.[28] Unlike the WPS, however, the burden of proof required under Sarbanes-Oxley for the employer to overcome the allegation is "clear and convincing evidence."[29] Remedies for a prevailing employee include reinstatement with the same seniority status that the employee would have had but for the adverse treatment, back pay with interest, and other "special damages"[30] resulting from the retaliation.[31]

III. THE REASON BEHIND THE DEBATE: CHAPTER 484

Simply put, Chapter 484 does two things: it enhances whistleblower protections under the WPS[32] and creates a "whistleblower hotline,"[33] both of which attempt to fight employer wrongdoing through the use of employees.

A. *Expansion of Protections for Whistleblowers*

Chapter 484 makes several changes and additions to the WPS. First, it expands the WPS to protect employees who report suspected violations of state and federal *rules*, not just statutes and regulations.[34] Second, Chapter 484 broadens the WPS's authority to prohibit from retaliation in three ways: (1) Chapter 484 prohibits employers from discriminating against employees who refuse to participate in *any* activity that would result in a violation of a state or

24. *Id.* § 1514A(a)(1)(A).

25. *Id.* § 1514A(a)(1)(C).

26. *Id.* § 1514A(a)(2) (including one that has already been filed or is about to be filed).

27. *Id.* (including 18 U.S.C. §§ 1341, 1343, 1344, or 1348, or any rule or regulation of the U.S. Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders).

28. *Id.* § 1514A(b)(1)(A)-(B) (stating that an employee alleging retaliation must first file a complaint with the Secretary of Labor, and if a final decision has not been rendered within 180 days of the filing, then the employee can bring an action at law or equity in the appropriate federal district court).

29. 49 U.S.C.A. § 42121(b)(2)(B)(ii) (West Supp. 2003).

30. *See* 18 U.S.C.A. § 1514A(c)(2)(C) (litigation costs, expert witness fees, and reasonable attorney fees).

31. *Id.* § 1514A(c)(2).

32. CAL. LAB. CODE § 1102.5(a)-(b) (amended by Chapter 484); *id.* § 1102.5(c)-(f) (enacted by Chapter 484); *id.* § 1102.6; *id.* § 1102.8.

33. *Id.* § 1102.7(a).

34. *Id.* § 1102.5(a)-(b) (amended by Chapter 484); *see* BLACK'S LAW DICTIONARY 1330 (7th ed. 1999) (defining "rule" as a "regulation governing . . . an agency's internal procedures"); *id.* at 1420 (defining "statute" as a "law passed by a legislative body"); *id.* at 1289 (defining "regulation" as a "rule or order, having legal force, issued by an administrative agency or a local government").

federal statute, regulation or rule;[35] (2) it prohibits an employer from retaliating against an employee for having exercised his or her whistleblower rights in any *former* employment;[36] and (3) it establishes that a government employee's report against his or her employer is sufficient to secure WPS protections.[37]

Third, Chapter 484 heightens the burden of proof required for an employer to overcome a prima facie case of retaliation to "clear and convincing evidence."[38] Fourth, Chapter 484 requires employers to conspicuously display the rights and responsibilities afforded to employees under the WPS, as well as the telephone number to the Whistleblower Hotline (see below).[39] And fifth, while the criminal penalties under the WPS remain unchanged, Chapter 484 imposes a civil penalty of up to $10,000 for each violation of the WPS by a corporation or LLC.[40] To enforce this penalty, a plaintiff must prove his or her case by a preponderance of the evidence.[41]

B. Creation of a Whistleblower Hotline

In addition to enhancing whistleblower protections under the WPS, Chapter 484 requires the California Attorney General ("AG") to create and maintain a "whistleblower hotline" ("Hotline").[42] The Hotline allows anyone to make a telephone call to the AG's office to report suspected violations of state or federal statutes, rules or regulations by California businesses, or to report suspected violations of fiduciary responsibilities to shareholders, investors or employees of corporations or LLCs.[43]

Chapter 484 gives the AG discretion to refer any report made to the Hotline to another government agency for further review and possible investigation.[44] Chapter 484 also requires that all information disclosed by a call remain in confidence during its initial review, including the identity of the caller as well as the company against whom the allegation is made.[45]

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35. CAL. LAB. CODE § 1102.5(c) (enacted by Chapter 484).

36. *Id.* § 1102.5(d).

37. *id.* § 1102.5(e) (codifying *Gardenhire v. Housing Authority*, 101 Cal. Rptr. 2d 893, 85 Cal. App. 4th 236 (2000), which held that a report made by an employee of a government agency to her employer regarding that agency's wrongdoing was a sufficient disclosure as required by the WPS for her to be protected as a whistleblower).

38. *Id.* § 1102.6.

39. *See id.* § 1102.8 (stating that the display shall be in lettering larger than font size 14 pica type).

40. *Id.* § 1102.5(f) (enacted by Chapter 484).

41. *See* CAL. EVID. CODE § 115 (West 1995) (stating that, unless otherwise provided, the burden of proof required is a "preponderance of the evidence").

42. CAL. LAB. CODE § 1102.7(a) (enacted by Chapter 484).

43. *Id.*

44. *Id.* § 1102.7(b).

45. *Id.* § 1102.7(c).

IV. LET THE DEBATE BEGIN: AN ANALYSIS OF CHAPTER 484

Opponents of Chapter 484 argue that it is not only unnecessary, but could also prove to be detrimental.[46] First, Chapter 484 is unnecessary because it overlaps with existing federal whistleblower regulations recently enacted under Sarbanes-Oxley.[47] Second, Chapter 484 could be detrimental because of the possibility of unintended consequences that California cannot afford.[48] This second reason arguably carries more weight at a time when California has a record-breaking budget deficit of $38 billion, not only the largest state shortfall in American history, but also a deficit larger than the individual *budgets* of forty-eight other states.[49]

In rebuttal, advocates argue that Sarbanes-Oxley is not strong enough to protect the California workers and investors because it does not sufficiently recognize the important role played by whistleblowers in detecting employer wrongdoing.[50] Proponents argue that because Chapter 484 does address this concern, it gives California the strongest whistleblower protection law in the nation,[51] which will help prevent corporate fraud and serve as a defense shield for the California economy.[52]

A. *Is Chapter 484 Merely a Duplication of Federal Law, or Does It Fill in the Gaps Left by Sarbanes-Oxley?*

Opponents argue that Chapter 484 is unnecessary because it "[a]dds unnecessarily more whistleblower protection provisions . . . [when] sufficient safeguard[s] [for whistleblowers] already exist."[53]

However, proponents contend that Chapter 484's whistleblower protection is greater than the protection available under Sarbanes-Oxley.[54] For example, the federal protections for whistleblowers exist only for disclosures in limited circumstances:[55] disclosure to Congress, a federal agency, or an internal-supervising authority, or disclosure made in connection with an investigation by a Congressional committee or federal agency.[56] Chapter 484, on the other hand,

46. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 777, at 3 (June 17, 2003).
47. *Id.* at 9.
48. ASSEMBLY COMMITTEE ON JUDICIARY, ASSEMBLY REPUBLICAN ANALYSIS OF SB 777, at 3 (June 5, 2003).
49. Terry McCarthy, *Can the Terminator Save California?*, TIME, July 14, 2003, at 38.
50. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 7 (Apr. 8, 2003).
51. *Id.*
52. Heller, *supra* note 1.
53. ASSEMBLY COMMITTEE ON JUDICIARY, ASSEMBLY REPUBLICAN ANALYSIS OF SB 777, at 3 (June 25, 2003).
54. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 17 (Apr. 8, 2003).
55. *Id.*
56. *Id.*

provides protections that are much broader in scope. Chapter 484 creates a whistleblower hotline to report financial fraud directly to the AG;[57] it requires employers to post employees' whistleblower rights;[58] it provides that initial information provided to the Hotline will be held in confidence;[59] it "protects employees who refuse to perform illegal acts" that would result in violations of either federal or state law;[60] and it protects employees "who were whistleblowers in former employment."[61]

B. Costs vs. Benefits: Can California Really Afford Chapter 484?

1. The Benefits of Chapter 484: Proponents' Arguments

Supporters argue that Chapter 484 was needed "to provide for early detection of corporate fraud and [to] protect the public from financial deception and other violations of the public trust."[62] Chapter 484 will give California an "early warning system" to "effectively preempt the devastation that comes with corporate fraud."[63] Proponents give several examples in support of this argument.

First, Chapter 484's clarification that public employees do not first have to report suspected wrongdoing to an outside government agency before securing whistleblower protections arguably means that the WPS will not be left open to differing judicial interpretations.[64] Without such a clarification, some government-employed whistleblowers could be left unprotected from retaliation as compared to privately-employed whistleblowers. Thus, as an added plus, this provision of Chapter 484 could actually help fight *governmental* wrongdoing.

Second, prior to the enactment of Chapter 484, one of the problems of retaliation actions brought by whistleblowers was the "preponderance of the evidence" burden of proof that employers had to satisfy to overcome such claims.[65] Proponents contend that this minimal evidentiary standard made it almost impossible for whistleblowers to win a lawsuit against their employers.[66] Arguably, this in turn created a chilling effect that dissuaded other whistleblowers that were retaliated against from filing suit. However, with the heightened "clear and convincing evidence" standard that employers must now

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57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.* at 18.
61. *Id.*
62. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 777, at 4 (June 17, 2003).
63. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 9 (Apr. 8, 2003).
64. *See id.* at 9 (noting by example that a government employees' "report of inappropriate activities at the [employee's] department, . . . to his or her superior at the department would be deemed to be a protected whistleblower activity").
65. *Id.* at 10.
66. *Id.*

satisfy, proponents argue that Chapter 484 will help foster the early detection of financial misdoings because whistleblowers have a safer haven of protection.[67]

Third, because of its mandate that employers post a conspicuous notice containing both the rights of employees under the WPS and the number of the Hotline, Chapter 484 will alert employees to legal avenues of reporting their suspicions; will encourage them to report wrongdoing, and will reduce their fears of retaliation.[68]

Fourth, because the burden of proof required to enforce Chapter 484's civil penalty of up to $10,000 for each violation of the WPS is merely a "preponderance of the evidence," this provision adds a measure of deterrence against retaliation by California companies.[69]

Fifth, proponents contend that the Hotline will serve as an "early warning system" that will help detect employer wrongdoing before it becomes too devastating.[70] In support of this argument, proponents cite several e-mails[71] that were posted to the Enron Message Board revealing numerous problems at Enron before it filed for bankruptcy ("e-mails").[72] Because of the anonymity of these e-mails and the privacy of the Message Board, it was "unlikely that a government agency with oversight responsibility over corporate reporting and disclosures could have ever discovered these warnings and initiated any investigation or review."[73] If, however, there had been a "whistleblower hotline" available at the time of these postings, the authors of these e-mails could have instead reported their suspicions with a simple telephone call, which would have been reciprocated with an assurance that their identity would have been protected.[74]

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67. *Id.*

68. *Id.* at 11.

69. *Id.* at 9.

70. *Id.* at 11.

71. *See* Posting of Unknown Author, Yahoo! ID "enron is a scam," to Enron Message Board, *at* http://www.consumerwatchdog.org/utilities/rp/rp002435.pdf (Apr. 12, 2001) (copy on file with the *McGeorge Law Review*) (stating:

> It will soon be revealed that Enron is nothing more than a house of cards that will implode before anyone realizes what happened. Enron has been cooking the books with smoke and mirrors. The Enron executives have been operating an elaborate con scheme that has fooled even the most sophisticated analysts. When the truth is uncovered, those analysts and ENE investors will feel like a raped school girl.)

Posting of Unknown Author, Yahoo! ID "JanisJoplin298", to Enron Message Board, *at* http://www.consumerwatchdog.org/utilities/rp/rp002435.pdf (June 17, 1998) (copy on file with the *McGeorge Law Review*) (stating: "ENE the virtual company. Profits for 10 years forward being taken in current years. When you shake it down what do you have? The paper mache company."); Posting of Unknown Author, Yahoo! ID "arthur86plz", to Enron Message Board, *at* http://www.consumerwatchdog.org/utilities/rp/rp002435.pdf (Mar. 1, 2000) (copy on file with the *McGeorge Law Review*) (stating: "Dig deep behind the Enron financials and you'll see a growing mountain of off-balance sheet debt which will eventually swallow this company. There's a reason they layer so many subsidiaries and affiliates. Be careful.").

72. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 12 (Apr. 8, 2003).

73. *Id.* at 12-13.

74. *Id.*

2. *The Costs of Chapter 484 Outweigh Its Benefits: Opponents' Arguments*

Opponents argue that Chapter 484's enactment will result in at least two unintended consequences that could have detrimental effects on the California economy.[75] First, Chapter 484 opens the door for more litigation and abuse of California businesses.[76] Second, Chapter 484 creates a compliance nightmare for California companies that will ultimately make it harder for the State to attract more business and industry.[77]

a. *Chapter 484 Could Lead to More Litigation and Abuse of California Industry*

Opponents to Chapter 484 argue that it "[a]uthorizes trial lawyers to further abuse California industry and to extort further settlements from California businesses."[78] Prior to the enactment of Chapter 484, more whistleblower suits were filed in California than any other state because of the protections given by the WPS.[79] Because Chapter 484 has broadened the WPS's protections of whistleblowers, logic dictates that now even more lawsuits will likely be filed by aggrieved employees. Several supporters give arguments in support of this conclusion.

First, while proponents contend that Chapter 484's expansion of whistleblower protection helps create a safer haven for whistleblowers,[80] it is arguable that Chapter 484 merely expands the "protected class" under the WPS. For example, because Chapter 484 broadens protections for employees who acted as whistleblowers in former employment,[81] it is self-evident that the "protected class" of whistleblowers is larger than what it used to be. Additionally, under Chapter 484 one does not even have to be a "whistleblower" to be protected by the WPS, as all that is required to secure its protection is for the employee to have simply refused to participate in *any* improper activities at his or her place of employment.[82] Thus, it is arguable that expanding the "protected class" of whistleblowers could lead to more litigation against California businesses, because now more opportunities exist for an aggrieved employee to file suit.[83]

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75. ASSEMBLY COMMITTEE ON JUDICIARY, ASSEMBLY REPUBLICAN ANALYSIS OF SB 777, at 3 (June 25, 2003).

76. *Id.*

77. *Id.*

78. *Id.*

79. Bronstad, *supra* note 8, at 2.

80. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 777, at 10 (Apr. 8, 2003).

81. CAL. LAB. CODE § 1102.5(d) (enacted by Chapter 484).

82. SENATE JUDICIARY COMMITTEE, SENATE COMMITTEE ANALYSIS OF SB 777, at 9 (Apr. 8, 2003).

83. ASSEMBLY COMMITTEE ON JUDICIARY, ASSEMBLY REPUBLICAN ANALYSIS OF SB 777, at 3 (June 25, 2003).

Second, opponents argue that there was no need to raise the burden of proof for employers to beat a retaliation claim.[84] The "preponderance of evidence" standard already provided enough protection for aggrieved employees,[85] as well as a fairer balance of rights between employees and employers. Prior to the enactment of Chapter 484, employees and employers were treated equally with regard to the amount of proof needed to be victorious in an action alleging retaliation.[86] However, with the heightened burden now required for businesses to overcome such allegations, aggrieved employees are given an upper hand in court since employers will arguably have a more difficult time meeting the burden. If an aggrieved employee's allegations are founded on mere spite and disapproval of the employer's potentially justifiable actions (e.g., demotion or suspension), the heightened burden of proof may open the door for disgruntled employees to file more lawsuits and to extort settlements from California businesses.[87]

Third, opponents argue that the establishment of the Hotline could also lead to more litigation and abuse of California companies.[88] For example, if a person is able to report suspected employer wrongdoing based merely on his or her subjective belief that some applicable law has been or is about to be broken, the opportunity exists for potential abuse by disgruntled employees as well as those engaged in organized efforts to harass particular companies.[89] This in turn could lead to unnecessary intrusions by the government into the affairs of law-abiding California businesses. The California Manufacturers and Technology Association ("CMTA"), in opposition to substantially similar legislation vetoed by the Governor in 2002, framed this argument best when it stated that "no individual should be given free reins at passing judgment on the actions or potential actions of their employer, especially on such a broad spectrum of rules and regulations with no accountability."[90]

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84. *Id.*

85. *Id.*

86. *See supra* Part II.A (stating that both employees and employers had to satisfy their burdens in a civil action through a "preponderance of the evidence").

87. ASSEMBLY COMMITTEE ON JUDICIARY, ASSEMBLY REPUBLICAN ANALYSIS OF SB 777, at 3 (June 25, 2003).

88. *Id.*

89. *Id.*

90. *Id.*

b. Chapter 484's Compliance Nightmare Could Harm the California Economy

In addition to the expansion of restrictions on businesses, Chapter 484 creates affirmative duties for California companies. For example, all employers must conspicuously post employee whistleblower rights as well as the telephone number to the Hotline.[91] Failure to comply with this provision could result in the imposition of a fine.[92]

Opponents argue that these notice provisions create a compliance nightmare that ultimately "makes it harder for California to attract more business and industry[,] contrary to stimulating the state's slumping economy and current multibillion dollar deficit."[93] Additionally, and perhaps even more threatening to the economy, existing California companies may find these new burdens too demanding, intrusive, or costly, and thus in turn could leave in pursuit of more business-friendly states.

V. CONCLUSION

Chapter 484 is argued to be the strongest whistleblower protection law in the nation.[94] But did California really need it? More importantly, will California be able to afford it?

Some say Chapter 484 was unnecessary not only because Sarbanes-Oxley already provides sufficient protections for whistleblowers,[95] but also because California's businesses should not be burdened.[96] However, others argue not only that Chapter 484 is significantly different from Sarbanes-Oxley,[97] but also that it is significantly better.[98]

But better for whom? It is clear that Chapter 484 broadens the protections for whistleblowers. In this sense, the new law is better for whistleblowers. However, is Chapter 484 truly better for consumers, investors and the California economy? The answer to this question is still being debated. While proponents/supporters

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91. *See supra* Part III.A (discussing the duty of employers to post the rights of their employees under the WPS as well as the telephone number to the Whistleblower Hotline).

92. *See supra* Part III.A (stating that a violation of the WPS, e.g., failure of a corporation or LLC to satisfy its affirmative duty to post the telephone number to the Whistleblower Hotline, could result in a $10,000 fine).

93. ASSEMBLY COMMITTEE ON JUDICIARY, ASSEMBLY REPUBLICAN ANALYSIS OF SB 777, at 3 (June 25, 2003).

94. SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 777, at 7 (Apr. 8, 2003).

95. *See supra* Part IV.A (discussing opponents' arguments that Chapter 484 merely duplicates the protections already afforded under Sarbanes-Oxley).

96. *See supra* Part IV.B.2 (discussing opponents' arguments that the costs of Chapter 484 outweigh its benefits).

97. *See supra* Part IV.A (discussing proponents' arguments that Chapter 484 is *not* a mere duplication of the protections already afforded under Sarbanes-Oxley).

98. *See supra* Part IV.B.1 (discussing proponents' arguments that the benefits of Chapter 484 outweigh its costs).

believe Chapter 484 was needed as a defense shield for the economy,[99] opponents argue that Chapter 484 closes the door to companies interested in coming to the State and encourages existing California businesses to leave.[100] In the end, however, only time will tell if enacting Chapter 484 was the right thing to do or if it was the result of another poor assessment of what needs to be done to keep California's economy among the strongest in the world.

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99. Heller, *supra* note 1.

100. *See supra* Part IV.B.2 (discussing the possibility that Chapter 484's compliance nightmare could lead to harmful effects on the California economy by way of discouraging out-of-state companies from coming to California and encouraging existing California companies to leave the state).