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AB-2529 Structural pest control. (2015-2016)

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Assembly Bill No. 2529

CHAPTER 359

An act to amend Sections 8506.1 and 8616.9 of the Business and Professions Code, relating to structural pest control.

[Approved by Governor September 14, 2016. Filed with Secretary of State September 14, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2529, Linder. Structural pest control.

Existing law defines, licenses, and regulates structural pest control operators and creates the Structural Pest Control Board in the Department of Consumers Affairs to administer these provisions. Existing law defines a registered company to be any of specified types of business organizations registered with the board to engage in the practice of structural pest control and defines operators, field representatives, and applicators as specified classes of individuals licensed by the board to practice structural pest control. Existing law prescribes 3 different classifications of structural pest control licenses based on the types of pest control work permitted, which are termed branches. Existing law makes a violation of these provisions a misdemeanor, punishable by a fine of not less than \$100 and not more \$1,000, or 6 months in jail, or both.

Existing law authorizes a company registered with the board to engage in the practice of structural pest control to hire or employ individuals who are unlicensed to perform contracts covering wood destroying organisms only after an operator or field representative completes the negotiation or signing of the contract covering the job.

This bill would specify that the registered company may hire or employ unlicensed individuals to perform work on contracts or service agreements, as defined, covering Branch 1, 2, or 3, or combinations thereof.

Existing law designates the county agricultural commissioner as the lead agency for inspections and routine investigations of pesticide use by the board licensees and registered companies. Existing law prescribes the circumstances under which an employer may be cited by the commissioner if, during an inspection or investigation, an employee is found not wearing personal protective clothing required by regulation.

The bill would recast these provisions to permit referral for statewide disciplinary action against the employer, suspension of the employer, the assessment of an administrative fine against both the employer and the employee not to exceed \$5,000 if the employee is found to not wear personal protective equipment required by label or regulation. The bill would, if disciplinary action is not taken against the employer and the employer is not assessed an administrative fine, permit an administrative fine to be assessed against the employee if an employer provides evidence of specified employer practices and would also include, in this regard, the requirement that the employer has not been disciplined or assessed an administrative fine for a violation of the requirement for the previous 2 years.

By expanding the definition of a 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. Section 8506.1 of the Business and Professions Code is amended to read:

8506.1. (a) A "registered company" is any sole proprietorship, partnership, corporation, or other organization or any combination thereof that is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

(b) A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may employ licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work. A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts covering Branch 1, 2, or 3, or any combination of branches, only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

(c) This section shall not be construed to authorize an unlicensed individual to perform work that requires a license pursuant to this chapter.

SEC. 2. Section 8616.9 of the Business and Professions Code is amended to read:

8616.9. (a) If an employee is found during an inspection or investigation not wearing personal protective equipment required by label or regulation, the commissioner may refer the violation by the employer for statewide disciplinary action by the board or suspend the right of the employer to work in the county for up to three working days. If the commissioner does neither, the commissioner may assess an administrative fine against both the employer and the employee. If the commissioner takes no action against the employer for this violation, the commissioner may assess an administrative fine against the employee if the employer provides evidence of all of the following:

(1) The employer has a written training program, has provided training to the employee, and has maintained a record of training as required by label or regulation.

(2) The employer provided personal protective equipment required by label or regulation, the equipment was available at the site when the employee was handling the pesticide or pesticides, and the equipment was properly maintained and in good working order.

(3) The employer is in compliance with regulations relating to the workplace and supervision of employees.

(4) The employer has documented implementation and adheres to a written company policy of disciplinary action for employees who violate company policy or state or local laws or regulations.

(5) The employer has not been disciplined or assessed an administrative fine for a violation of the personal protective equipment requirement for the previous two years.

(b) (1) An administrative fine assessed against an employer pursuant to this section shall not be less than seven hundred dollars (\$700) nor more than five thousand dollars (\$5,000). An administrative fine assessed against an employee pursuant to this section shall not be less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

(2) In assessing an administrative fine pursuant to this section, the board or commissioner shall consider the appropriateness of the amount of the fine to the gravity of the violation, the good faith of the licensee, and the history of prior violations.

(c) Nothing in this section is intended to limit the authority of the commissioner to take action against the employee pursuant to Section 8617, including suspension of the employee's license or referral of the violation for statewide disciplinary action by the board pursuant to Section 8620.

SEC. 3. 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.

