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SB-295 Farm labor contractors: sexual harassment prevention. (2017-2018)

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Senate Bill No. 295

CHAPTER 424

An act to amend Section 1684 of, and to add Section 1697.5 to, the Labor Code, relating to employment.

[Approved by Governor October 02, 2017. Filed with Secretary of State October 02, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 295, Monning. Farm labor contractors: sexual harassment prevention.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. A violation of those laws is a crime.

Existing law prohibits the issuance of a farm labor contractor license unless the applicant attests in writing that certain employees have received sexual harassment prevention and reporting training in accordance with prescribed requirements relating to the substance, administration, and record of the training.

This bill would additionally require that training for each agricultural employee be in the language understood by that employee. The bill would require a licensee, as part of his or her application for license renewal, to provide the commissioner with a complete list of all materials or resources utilized to provide sexual harassment prevention training to his or her agricultural employees in the calendar year prior to the month the renewal application is submitted. The bill would also require a licensee, as part of that application for license renewal, to provide to the commissioner the total number of agricultural employees trained in sexual harassment prevention in the calendar year prior to the month the renewal application is submitted. The bill would require the commissioner to aggregate the data provided by licensees regarding the number of employees trained and publish on his or her Internet Web site the total number of agricultural employees trained in the previous calendar year.

The bill would make it a violation of existing laws relating to farm labor contractors to fail to comply with specific existing provisions relating to the training requirements or the bill's requirement to provide the training in the language understood by the employee. The bill would authorize the commissioner to issue citations and assess civil penalties of \$100 for each violation, as prescribed. Because a violation of the new provisions would be a crime, the 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 1684 of the Labor Code is amended to read:

1684. (a) The Labor Commissioner shall not issue to any person a license to act as a farm labor contractor, nor shall the Labor Commissioner renew that license, until all of the following conditions are satisfied:

(1) The person has executed a written application in a form prescribed by the Labor Commissioner, subscribed and sworn to by the person, and containing all of the following:

(A) A statement by the person of all facts required by the Labor Commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the person proposes to conduct operations as a farm labor contractor if the license is issued.

(B) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the proposed operation as a farm labor contractor, together with the amount of their respective interests.

(C) A declaration consenting to the designation by a court of the Labor Commissioner as an agent available to accept service of summons in any action against the licensee if the licensee has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

(D) The names and addresses of all persons who in the previous calendar year performed any services described in subdivision (b) of Section 1682 within the scope of his or her employment by the licensee on whose behalf he or she was acting, unless the person was employed as an independent contractor.

(2) The Labor Commissioner, after investigation, is satisfied as to the character, competency, and responsibility of the person.

(3) (A) The person has deposited with the Labor Commissioner a surety bond in an amount based on the size of the person's annual payroll for all employees, as follows:

(i) For payrolls up to five hundred thousand dollars (\$500,000), a twenty-five-thousand-dollar (\$25,000) bond.

(ii) For payrolls of five hundred thousand dollars (\$500,000) to two million dollars (\$2,000,000), a fifty-thousand-dollar (\$50,000) bond.

(iii) For payrolls greater than two million dollars (\$2,000,000), a seventy-five-thousand-dollar (\$75,000) bond.

(B) For purposes of this paragraph, the Labor Commissioner shall require documentation of the size of the person's annual payroll, which may include, but is not limited to, information provided by the person to the Employment Development Department, the Franchise Tax Board, the Division of Workers' Compensation, the insurer providing the licensee's workers' compensation insurance, or the Internal Revenue Service.

(C) If the contractor has been the subject of a final judgment in a year in an amount equal to or greater than the amount of the bond required, he or she shall be required to deposit an additional bond within 60 days.

(D) All bonds required under this chapter shall be payable to the people of the State of California and shall be conditioned upon the farm labor contractor's compliance with all the terms and provisions of this chapter and subdivisions (j) and (k) of Section 12940 of, and Sections 12950 and 12950.1 of, the Government Code, and payment of all damages occasioned to any person by failure to do so, or by any violation of this chapter or of subdivision (j) or (k) of Section 12940 of, or of Section 12950 or 12950.1 of, the Government Code, or any violation of Title VII of the Civil Rights Act of 1964 (Public Law 88-352), or false statements or misrepresentations made in the procurement of the license. The bond shall also be payable for interest on wages and for any damages arising from violation of orders of the Industrial Welfare Commission, and for any other monetary relief awarded to an agricultural worker as a result of a violation of this code or of subdivision (j) or (k) of Section 12940 of, or Section 12950 or 12950.1 of, the Government Code, or any violation of Title VII of the Civil Rights Act of 1964 (Public Law 88-352).

(4) The person has paid to the Labor Commissioner a license fee of five hundred dollars (\$500) plus a filing fee of ten dollars (\$10). However, when a timely application for renewal is filed, the ten-dollar (\$10) filing fee is not required. The license fee shall increase by one hundred dollars (\$100), to six hundred dollars (\$600), on January 1, 2015. The amount attributable to this increase shall be expended by the Labor Commissioner to fund the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit. The Labor Commissioner shall deposit one hundred fifty dollars (\$150) of each licensee's annual license fee into the Farmworker Remedial Account. Funds from this account shall be disbursed by the Labor Commissioner only to persons determined by the Labor Commissioner to have been damaged by any licensee or to persons determined by the Labor Commissioner to have been damaged by an unlicensed farm labor contractor.

(A) In making these determinations, the Labor Commissioner shall disburse funds from the Farmworker Remedial Account to satisfy claims against farm labor contractors or unlicensed farm labor contractors, which shall include unpaid wages,

interest on wages, and any damages or other monetary relief arising from the violation of orders of the Industrial Welfare Commission or from a violation of this code, including statutory penalties recoverable by an employee determined to be due to an agricultural worker and for all damages arising from any violation of subdivision (j) or (k) of Section 12940 of, or of Section 12950 or 12950.1 of, the Government Code, or any violation of Title VII of the Civil Rights Act of 1964 (Public Law 88-352).

(B) Any disbursement shall be made pursuant to a claim for recovery from the account in accordance with procedures prescribed by the Labor Commissioner.

(C) Any disbursed funds subsequently recovered from a liable party by the Labor Commissioner pursuant to Section 1693, or otherwise, shall be returned to the Farmworker Remedial Account.

(5) The person has taken a written examination that demonstrates an essential degree of knowledge of the current laws and administrative regulations concerning farm labor contractors as the Labor Commissioner deems necessary for the safety and protection of farmers, farmworkers, and the public, including the identification and prevention of sexual harassment in the workplace. To successfully complete the examinations, the person must correctly answer at least 85 percent of the questions posed. The examination period shall not exceed four hours. The examination may only be taken a maximum of three times in a calendar year. The examinations shall include a demonstration of knowledge of the current laws and regulations regarding wages, hours, and working conditions, penalties, employee housing and transportation, collective bargaining, field sanitation, and safe work practices related to pesticide use, including all of the following subjects:

(A) Field reentry regulations.

(B) Worker pesticide safety training.

(C) Employer responsibility for safe working conditions.

(D) Symptoms and appropriate treatment of pesticide poisoning.

(6) The person has registered as a farm labor contractor pursuant to the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801 et seq.), when registration is required pursuant to federal law, and that information is provided by the person to the Labor Commissioner.

(7) Each of the person's employees has registered as a farm labor contractor employee pursuant to the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801 et seq.) if that registration is required pursuant to federal law, and that information is provided by the person to the Labor Commissioner.

(8) (A) The person has executed a written statement, that has been provided to the Labor Commissioner, attesting that the person's supervisorial employees, including any supervisor, crewleader, mayordomo, foreperson, or other employee whose duties include the supervision, direction, or control of agricultural employees, have been trained at least once for at least two hours each calendar year in the prevention of sexual harassment in the workplace, and that all new nonsupervisorial employees, including agricultural employees, have been trained at the time of hire, and that all nonsupervisorial employees, including agricultural employees, have been trained at least once every two years in identifying, preventing, and reporting sexual harassment in the workplace.

(B) Sexual harassment prevention training shall consist of training administered by a licensee or appropriate designee of the licensee. Sexual harassment training for each agricultural employee shall be in the language understood by that employee. The person may comply with this language requirement either by providing the training in that language or by having the training interpreted for the employee in the language that he or she understands.

(C) Sexual harassment prevention training shall include, at a minimum, components of the following as consistent with Section 12950 of the Government Code:

(i) The illegality of sexual harassment.

(ii) The definition of sexual harassment under applicable state and federal law.

(iii) A description of sexual harassment, utilizing examples.

(iv) The internal complaint process of the employer available to the employee.

(v) The legal remedies and complaint process available through the Department of Fair Employment and Housing.

(vi) Directions for how to contact the Department of Fair Employment and Housing.

(vii) The protection against retaliation provided under current law.

(D) (i) The trainer may use the text of the Department of Fair Employment and Housing's pamphlet DFEH-185, "Sexual Harassment" as a guide to training, or may use other written material or other training resources covering the information required in subparagraph (C).

(ii) As part of his or her application for license renewal, in order to establish that training is occurring, a licensee shall provide the Labor Commissioner with a complete list of all materials or resources utilized to provide sexual harassment prevention training to his or her agricultural employees in the calendar year prior to the month the renewal application is submitted.

(E) At the conclusion of the training, the trainer shall provide the employee with a copy of the Department of Fair Employment and Housing's pamphlet DFEH-185, and a record of the training on a form provided by the Labor Commissioner that includes the name of the trainer and the date of the training.

(F) The licensee shall keep a record with the names of all employees who have received sexual harassment training for a period of three years.

(G) (i) As part of his or her application for license renewal, the licensee shall provide to the Labor Commissioner the total number of agricultural employees trained in sexual harassment prevention in the calendar year prior to the month the renewal application is submitted.

(ii) The Labor Commissioner shall annually aggregate the data provided under this subparagraph by licensees and publish on the Internet Web site of the Labor Commissioner the total number of agricultural employees trained in sexual harassment prevention in the previous calendar year.

(b) The Labor Commissioner shall consult with the Director of Pesticide Regulation, the Department of the California Highway Patrol, the Department of Housing and Community Development, the Employment Development Department, the Department of Fair Employment and Housing, the Department of Food and Agriculture, the Department of Motor Vehicles, and the Division of Occupational Safety and Health in preparing the examination required by paragraph (5) of subdivision (a) and the appropriate educational materials pertaining to the matters included in the examination, and may charge a fee of not more than two hundred dollars (\$200) to cover the cost of administration of the examination.

(c) The person shall also enroll and participate in at least nine hours of relevant educational classes each year. The classes shall include at least one hour of sexual harassment prevention training. The classes shall be chosen from a list of approved classes prepared by the Labor Commissioner, in consultation with the persons and entities listed in subdivision (b) and county agricultural commissioners.

(d) The Labor Commissioner may renew a license without requiring the applicant for renewal to take the examination specified in paragraph (5) of subdivision (a) if the Labor Commissioner finds that the applicant meets all of the following criteria:

(1) Has satisfactorily completed the examination during the immediately preceding two years.

(2) Has not during the preceding year been found to be in violation of any applicable laws or regulations including, but not limited to, Division 7 (commencing with Section 12501) of the Food and Agricultural Code, subdivisions (j) and (k) of Section 12940 of, and Section 12950 or 12950.1 of, the Government Code, Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code, Division 2 (commencing with Section 200), Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300) of this code, and Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code.

(3) Has, for each year since the license was obtained, enrolled and participated in at least eight hours of relevant, educational classes, chosen from a list of approved classes prepared by the Labor Commissioner.

(4) Has complied with all other requirements of this section.

SEC. 2. Section 1697.5 is added to the Labor Code, to read:

1697.5. (a) It is a violation of this chapter for a licensee to do any of the following:

(1) Fail to train an agricultural employee at the time of hire, as required by subparagraph (A) of paragraph (8) of subdivision (a) of Section 1684.

(2) Fail to provide training in a language understood by the agricultural employee, as required by subparagraph (B) of paragraph (8) of subdivision (a) of Section 1684.

(3) Fail to provide an agricultural employee with at least the minimum training, as required by subparagraph (C) of paragraph (8) of subdivision (a) of Section 1684.

(4) Fail to provide an agricultural employee either (A) with a record of his or her training, or (B) a copy of the specified Department of Fair Employment and Housing sexual harassment pamphlet, as required by subparagraph (E) of paragraph (8) of subdivision (a) of Section 1684.

(5) Provide an agricultural employee with a false record of completion of his or her training, as required by subparagraph (E) of paragraph (8) of subdivision (a) of Section 1684, when he or she has, in fact, received no training.

(6) Fail to keep a record of training for each agricultural employee who has received training, as required by subparagraph (F) of paragraph (8) of subdivision (a) of Section 1684.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a violation of any of the provisions listed in subdivision (a) has occurred, the Labor Commissioner may issue a citation and assess a civil penalty in the amount of one hundred dollars (\$100) for each violation. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

(c) The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of this section shall be the same as those set forth in Section 1197.1.

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.