

Senate Bill No. 728

CHAPTER 359

An act to amend Section 43845 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 728, Lowenthal. Air pollution: parking cash-out program.

Existing law requires an employer of 50 persons or more who provides a parking subsidy to employees and who is in an air basin that is designated as a nonattainment area in terms of air quality to offer a parking cash-out program, defined as an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

This bill would authorize the State Air Resources Board to impose a civil penalty for a violation of this requirement. The bill would also authorize a city, county, and air pollution control district or air quality management district to adopt a penalty or other mechanism to ensure compliance. The bill would authorize the imposition of a penalty by the state board or the local agency, but not both.

This bill would incorporate additional changes in Section 43845 of the Health and Safety Code proposed by AB 1186 of the 2009–10 Regular Session that would become operative only if AB 1186 and this bill are both enacted and become effective before January 1, 2010, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 43845 of the Health and Safety Code is amended to read:

43845. (a) In any air basin designated as a nonattainment area pursuant to Section 39608, each employer of 50 persons or more who provides a parking subsidy to employees, shall offer a parking cash-out program. "Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

(b) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the

employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(c) As used in this section, the following terms have the following meanings:

(1) “Employee” means an employee of an employer subject to this section.

(2) “Parking subsidy” means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

(d) Subdivision (a) does not apply to any employer who, on or before January 1, 1993, has leased employee parking, until the expiration of that lease or unless the lease permits the employer to reduce, without penalty, the number of parking spaces subject to the lease.

(e) It is the intent of the Legislature, in enacting this section, that the cash-out requirements apply only to employers who can reduce, without penalty, the number of paid parking spaces they maintain for the use of their employees and instead provide their employees the cash-out option described in this section.

(f) (1) The state board may impose the civil penalty described in Section 43016 for a violation of this section.

(2) (A) A city, county, or air district may also adopt, by ordinance or resolution, a penalty or other mechanism to ensure that an employer within the jurisdiction of that city, county, or air district is in compliance with this section.

(B) If a city, county, or air district establishes a penalty, the governing body shall also establish procedures for providing notice to employers that are in violation of this section and for appeal by the employer of any penalty imposed.

(C) If a city, county, or air district establishes a penalty pursuant to this paragraph, a penalty may be imposed on an employer pursuant to paragraph (1) or this paragraph, but not both. If a penalty is imposed on an employer pursuant to both paragraph (1) and this paragraph, only the penalty imposed by the state board shall apply.

SEC. 1.5. Section 43845 of the Health and Safety Code is amended to read:

43845. (a) In any air basin designated as a nonattainment area pursuant to Section 39608, each employer shall offer a parking cash-out program.

(b) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(c) (1) A lessor shall do either of the following for any lease, entered into or renewed on or after January 1, 2011, with a lessee who is an employer subject to subdivision (a), that offers parking to the employer:

(A) List the amount of parking costs as a separate line item in the lease.

(B) Provide a list of parking costs to the lessee within 30 days after the lease is entered into or renewed.

(2) Paragraph (1) does not create a right for an employee to access, review, or challenge a lease, or a proposed lease, entered into between an employer and a lessor. Upon the request of an employee, an employer shall give to that employee the parking cost information received from the lessor pursuant to paragraph (1).

(d) As used in this section, the following terms have the following meanings:

(1) “Employee” means an employee of an employer subject to this section.

(2) “Employer” means an employer of 50 persons or more who provides a parking subsidy to employees.

(3) “Parking cash-out program” means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

(4) “Parking subsidy” means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

(e) Subdivision (a) does not apply to any employer who, on or before January 1, 1993, has leased employee parking, until the expiration of that lease or unless the lease permits the employer to reduce, without penalty, the number of parking spaces subject to the lease.

(f) It is the intent of the Legislature, in enacting this section, that the cash-out requirements apply only to employers who can reduce, without penalty, the number of paid parking spaces they maintain for the use of their employees and instead provide their employees the cash-out option described in this section.

(g) (1) The state board may impose the civil penalty described in Section 43016 for a violation of this section.

(2) (A) A city, county, or air district may also adopt, by ordinance or resolution, a penalty or other mechanism to ensure that an employer within the jurisdiction of that city, county, or air district is in compliance with this section.

(B) If a city, county, or air district establishes a penalty, the governing body shall also establish procedures for providing notice to employers that are in violation of this section and for appeal by the employer of any penalty imposed.

(C) If a city, county, or air district establishes a penalty pursuant to this paragraph, a penalty may be imposed on an employer pursuant to paragraph (1) or this paragraph, but not both. If a penalty is imposed on an employer pursuant to both paragraph (1) and this paragraph, only the penalty imposed by the state board shall apply.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 43845 of the Health and Safety Code proposed by both this bill and AB 1186 of the 2009–10 Regular Session. It shall only become operative if (1)

both bills are enacted and become effective on or before January 1, 2010, (2) each bill amends Section 43845 of the Health and Safety Code, and (3) this bill is enacted after AB 1186 of the 2009–10 Regular Session, in which case Section 1 of this bill shall not become operative.

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