

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1398

Introduced by ~~Committee on Labor and Employment (Swanson (Chair), Alejo, Allen, Furutani, and Yamada)~~ Assembly Member Chesbro

February 28, 2011

An act to amend Section ~~351~~ 1393.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1398, as amended, ~~Committee on Labor and Employment Chesbro. Compensation: gratuities~~ *Employment of minors: agricultural packing plants.*

Existing law prescribes limits on the hours of employment of minors, but authorizes the Labor Commissioner to grant an exemption to employers operating agricultural packing plants for the employment of minors 16 and 17 years of age for up to 10 hours on days when school is not in session, during the peak harvest season.

Existing law provides an exception to those provisions relating to Lake County by limiting the employer exemption that may be issued by the Labor Commissioner to the employment of minors, 16 or 17 years of age, who reside in Lake County, and only on days when school is not in session, for up to 10 hours a day, as well as for more than 48 hours but not more than 60 hours in a week, upon prior written approval of the Lake County Office of Education.

Existing law also requires the Labor Commissioner, prior to issuing the Lake County exemption or renewing an exemption, to inspect an affected agricultural packing plant, and to file a written report with the

Legislature on or before March 1 of each year describing the general working conditions of minors employed in the agricultural packing industry during the past year, as specified. Existing law further requires an affected employer, on or before March 1 of each year, as a condition of receiving that exemption or a renewal of that exemption, to file a written report to the Labor Commissioner, as specified. These provisions are set to expire on January 1, 2012.

This bill would extend the operation of the exceptions pertaining to the employment of minors in Lake County until January 1, 2017.

~~Existing law prohibits an employer or agent from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Existing law declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 1393.5 of the Labor Code is amended to
- 2 read:
- 3 1393.5. (a) Notwithstanding any other provision of this article
- 4 or Article 2 (commencing with Section 49110) of Chapter 7 of
- 5 Part 27 of *Division 4 of Title 2 of the Education Code*, an exemption
- 6 issued pursuant to Section 1393 may authorize the employment
- 7 during the peak harvest season of a minor, 16 or 17 years of age
- 8 who resides in Lake County, during any day in which school is
- 9 not in session for up to 10 hours per day and more than 48 hours
- 10 but not more than 60 hours in any one week, only upon the prior
- 11 written approval of the Lake County Office of Education.
- 12 (b) Each year, the Labor Commissioner, prior to issuing or
- 13 renewing an exemption under this section, shall inspect the affected
- 14 agricultural packing plant.
- 15 (c) As a condition of receiving an exemption or a renewal of an
- 16 exemption under this section, an affected employer shall, on or
- 17 before March 1 of each year, file a written report to the Labor

1 Commissioner that contains the following employment information
2 regarding the employer's prior year's payroll:

- 3 (1) The number of minors employed by that employer.
- 4 (2) A list of the age and hours worked on a weekly basis of each
5 minor employed.

6 (d) Notwithstanding Chapter 24 (commencing with Section
7 7550) of Division 7 of Title 1 of the Government Code, the Labor
8 Commissioner shall submit a written report to the Legislature, on
9 or before March 1 of each year, that describes the general working
10 conditions of minors employed in the agricultural packing industry
11 during the past year, and that includes all of the following
12 information:

- 13 (1) The number of minors employed in the agricultural packing
14 industry.
- 15 (2) The number of exemptions issued, renewed, or denied
16 pursuant to this section.
- 17 (3) A summary of the inspections conducted by the Labor
18 Commissioner pursuant to this section.
- 19 (4) The number of workplace injuries that occurred to minors
20 at agricultural packing plants.
- 21 (5) The number of violations of labor laws and regulations that
22 occurred at agricultural packing plants.

23 (e) This section shall remain in effect only until January 1, 2012
24 2017, and as of that date is repealed.

25 ~~SECTION 1. Section 351 of the Labor Code is amended to~~
26 ~~read:~~

27 ~~351. An employer or agent shall not collect, take, or receive~~
28 ~~any gratuity or a part thereof that is paid, given to, or left for an~~
29 ~~employee by a patron, or deduct any amount from wages due an~~
30 ~~employee on account of a gratuity, or require an employee to credit~~
31 ~~the amount, or any part thereof, of a gratuity against and as a part~~
32 ~~of the wages due the employee from the employer. Every gratuity~~
33 ~~is hereby declared to be the sole property of the employee or~~
34 ~~employees to whom it was paid, given, or left for. An employer~~
35 ~~that permits patrons to pay gratuities by credit card shall pay the~~
36 ~~employee the full amount of the gratuity that the patron indicated~~
37 ~~on the credit card slip, without any deductions for any credit card~~
38 ~~payment processing fees or costs that may be charged to the~~
39 ~~employer by the credit card company. Payment of gratuities made~~
40 ~~by patrons using credit cards shall be made to the employee not~~

1 ~~later than the next regular payday following the date the patron~~
2 ~~authorized the credit card payment.~~

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5 **CORRECTIONS:**

6 **Title—Page 1.**

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