

AMENDED IN ASSEMBLY MARCH 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1576

Introduced by Assembly Member Hall

January 30, 2014

An act to ~~add Section 6720 to~~ amend Sections 6319.3 and 6401.7 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1576, as amended, Hall. Occupational safety and health: adult films.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

Existing law requires every employer to establish, implement, and maintain an effective injury prevention program. Existing law requires the program to be written, except as specified, and to include certain elements, such as the employer's system for identifying and evaluating workplace hazards and the employer's system for communicating with employees on occupational health and safety matters.

Existing regulations require each employer having an employee with occupational exposure, defined as reasonably anticipated specified contact with blood or other potentially infectious materials that may result from the performance of an employee's duties, to establish, implement, and maintain an effective exposure control plan designed to eliminate or minimize employee exposure. Existing regulations require, under specified circumstances, the employer to provide, at no cost to the employee, appropriate personal protective equipment that

does not permit blood or other potentially infectious materials to pass through to or to reach the employee, as specified.

This bill would additionally require an adult film employer’s injury prevention program to include documentation that each time an employee performing in an adult film engaged in vaginal or anal intercourse, a protective barrier was used to protect the employee from exposure to bloodborne pathogens and each employee performing in an adult film was tested for sexually transmitted infections not less than 14 days prior to filming any scene in which the employee engaged in vaginal or anal intercourse and that the employer paid for the test. Because a violation of the act would be a crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.

~~This bill would require an employer engaged in the production of an adult film to adopt prescribed practices and procedures to protect employees from exposure to, and infection by, sexually transmitted diseases, including engineering and work practice controls, an exposure control plan, hepatitis B vaccinations, medical monitoring, and information and training on health and safety. The bill would define terms for those purposes. Because a violation of the act would be a crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.~~

~~This bill would provide that its provisions are severable.~~

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.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 6319.3 of the Labor Code is amended to
- 2 read:
- 3 6319.3. (a) Except as provided in subdivision (b) of this section
- 4 and subdivision-(j) (k) of Section 6401.7, no civil penalty shall be
- 5 assessed against any new employer in the state for a violation of
- 6 any standard developed pursuant to subdivision (a) of Section

1 6401.7 for a period of one year after the date the new employer
2 establishes a business in the state.

3 (b) Subdivision (a) shall only apply to an employer who has
4 made a good faith effort to comply with any standard developed
5 pursuant to subdivision (a) of Section 6401.7, but shall not apply
6 if the employer is found to have committed a serious, willful, or
7 repeated violation of that standard, or fails to abate the violation
8 and is assessed a penalty pursuant to Section 6430.

9 *SEC. 2. Section 6401.7 of the Labor Code is amended to read:*

10 6401.7. (a) Every employer shall establish, implement, and
11 maintain an effective injury prevention program. The program
12 shall be written, except as provided in subdivision (e), and shall
13 include, but not be limited to, the following elements:

14 (1) Identification of the person or persons responsible for
15 implementing the program.

16 (2) The employer's system for identifying and evaluating
17 workplace hazards, including scheduled periodic inspections to
18 identify unsafe conditions and work practices.

19 (3) The employer's methods and procedures for correcting
20 unsafe or unhealthy conditions and work practices in a timely
21 manner.

22 (4) An occupational health and safety training program designed
23 to instruct employees in general safe and healthy work practices
24 and to provide specific instruction with respect to hazards specific
25 to each employee's job assignment.

26 (5) The employer's system for communicating with employees
27 on occupational health and safety matters, including provisions
28 designed to encourage employees to inform the employer of
29 hazards at the worksite without fear of reprisal.

30 (6) The employer's system for ensuring that employees comply
31 with safe and healthy work practices, which may include
32 disciplinary action.

33 (b) The employer shall correct unsafe and unhealthy conditions
34 and work practices in a timely manner based on the severity of the
35 hazard.

36 (c) The employer shall train all employees when the training
37 program is first established, all new employees, and all employees
38 given a new job assignment, and shall train employees whenever
39 new substances, processes, procedures, or equipment are introduced
40 to the workplace and represent a new hazard, and whenever the

1 employer receives notification of a new or previously unrecognized
2 hazard. An employer in the construction industry who is required
3 to be licensed under Chapter 9 (commencing with Section 7000)
4 of Division 3 of the Business and Professions Code may use
5 employee training provided to the employer's employees under a
6 construction industry occupational safety and health training
7 program approved by the division to comply with the requirements
8 of subdivision (a) relating to employee training, and shall only be
9 required to provide training on hazards specific to an employee's
10 job duties.

11 (d) The employer shall keep appropriate records of steps taken
12 to implement and maintain the program. An employer in the
13 construction industry who is required to be licensed under Chapter
14 9 (commencing with Section 7000) of Division 3 of the Business
15 and Professions Code may use records relating to employee training
16 provided to the employer in connection with an occupational safety
17 and health training program approved by the division to comply
18 with this subdivision, and shall only be required to keep records
19 of those steps taken to implement and maintain the program with
20 respect to hazards specific to an employee's job duties.

21 (e) (1) The standards board shall adopt a standard setting forth
22 the employer's duties under this section, on or before January 1,
23 1991, consistent with the requirements specified in subdivisions
24 (a), (b), (c), and (d). The standards board, in adopting the standard,
25 shall include substantial compliance criteria for use in evaluating
26 an employer's injury prevention program. The board may adopt
27 less stringent criteria for employers with few employees and for
28 employers in industries with insignificant occupational safety or
29 health hazards.

30 (2) Notwithstanding subdivision (a), for employers with fewer
31 than 20 employees who are in industries that are not on a
32 designated list of high hazard industries and who have a workers'
33 compensation experience modification rate of 1.1 or less, and for
34 any employers with fewer than 20 employees who are in industries
35 that are on a designated list of low hazard industries, the board
36 shall adopt a standard setting forth the employer's duties under
37 this section consistent with the requirements specified in
38 subdivisions (a), (b), and (c), except that the standard shall only
39 require written documentation to the extent of documenting the
40 person or persons responsible for implementing the program

1 pursuant to paragraph (1) of subdivision (a), keeping a record of
2 periodic inspections pursuant to paragraph (2) of subdivision (a),
3 and keeping a record of employee training pursuant to paragraph
4 (4) of subdivision (a). To any extent beyond the specifications of
5 this subdivision, the standard shall not require the employer to
6 keep the records specified in subdivision (d).

7 (3) (A) The division shall establish a list of high hazard
8 industries using the methods prescribed in Section 6314.1 for
9 identifying and targeting employers in high hazard industries. For
10 purposes of this subdivision, the “designated list of high hazard
11 industries” shall be the list established pursuant to this paragraph.

12 (B) For the purpose of implementing this subdivision, the
13 Department of Industrial Relations shall periodically review, and
14 as necessary revise, the list.

15 (4) For the purpose of implementing this subdivision, the
16 Department of Industrial Relations shall also establish a list of low
17 hazard industries, and shall periodically review, and as necessary
18 revise, that list.

19 (f) The standard adopted pursuant to subdivision (e) shall
20 specifically permit employer and employee occupational safety
21 and health committees to be included in the employer’s injury
22 prevention program. The board shall establish criteria for use in
23 evaluating employer and employee occupational safety and health
24 committees. The criteria shall include minimum duties, including
25 the following:

26 (1) Review of the employer’s periodic, scheduled worksite
27 inspections; investigation of causes of incidents resulting in injury,
28 illness, or exposure to hazardous substances; and investigation of
29 any alleged hazardous condition brought to the attention of any
30 committee member. When determined necessary by the committee,
31 the committee may conduct its own inspections and investigations.

32 (2) (A) Upon request from the division, verification of
33 abatement action taken by the employer as specified in division
34 citations.

35 (B) If an employer’s occupational safety and health committee
36 meets the criteria established by the board, it shall be presumed to
37 be in substantial compliance with paragraph (5) of subdivision (a).

38 (g) The division shall adopt regulations specifying the
39 procedures for selecting employee representatives for
40 employer-employee occupational health and safety committees

1 when these procedures are not specified in an applicable collective
2 bargaining agreement. No employee or employee organization
3 shall be held liable for any act or omission in connection with a
4 health and safety committee.

5 (h) The employer's injury prevention program, as required by
6 this section, shall cover all of the employer's employees and all
7 other workers who the employer controls or directs and directly
8 supervises on the job to the extent these workers are exposed to
9 worksite and job assignment specific hazards. Nothing in this
10 subdivision shall affect the obligations of a contractor or other
11 employer that controls or directs and directly supervises its own
12 employees on the job.

13 (i) (1) *An adult film employer's injury prevention program shall*
14 *include documentation that:*

15 (A) *Each time an employee performing in an adult film engaged*
16 *in vaginal or anal intercourse, a condom or other protective*
17 *barrier was used to protect the employee from exposure to*
18 *bloodborne pathogens. This paragraph shall not be construed to*
19 *require that the condom or other protective barrier be visible to*
20 *the consumer in the finished film.*

21 (B) *Each employee performing in an adult film was tested for*
22 *sexually transmitted infections, including, but not limited to, HIV,*
23 *not less than 14 days prior to filming any scene in which the*
24 *employee engaged in vaginal or anal intercourse and that the*
25 *employer paid for the test.*

26 (2) *For the purposes of this subdivision, "adult film" means*
27 *any commercial film, video, multimedia, or other recorded*
28 *representation during the production of which performers actually*
29 *engage in sexual intercourse, including oral, vaginal, or anal*
30 *penetration.*

31 (i)

32 (j) When a contractor supplies its employee to a state agency
33 employer on a temporary basis, the state agency employer may
34 assess a fee upon the contractor to reimburse the state agency for
35 the additional costs, if any, of including the contract employee
36 within the state agency's injury prevention program.

37 (j)

38 (k) (1) The division shall prepare a Model Injury and Illness
39 Prevention Program for Non-High-Hazard Employment, and shall
40 make copies of the model program prepared pursuant to this

1 subdivision available to employers, upon request, for posting in
2 the workplace. An employer who adopts and implements the model
3 program prepared by the division pursuant to this paragraph in
4 good faith shall not be assessed a civil penalty for the first citation
5 for a violation of this section issued after the employer's adoption
6 and implementation of the model program.

7 (2) For purposes of this subdivision, the division shall establish
8 a list of non-high-hazard industries in California. These industries,
9 identified by their Standard Industrial Classification Codes, as
10 published by the United States Office of Management and Budget
11 in the Manual of Standard Industrial Classification Codes, 1987
12 Edition, are apparel and accessory stores (Code 56), eating and
13 drinking places (Code 58), miscellaneous retail (Code 59), finance,
14 insurance, and real estate (Codes 60–67), personal services (Code
15 72), business services (Code 73), motion pictures (Code 78) except
16 motion picture production and allied services (Code 781), legal
17 services (Code 81), educational services (Code 82), social services
18 (Code 83), museums, art galleries, and botanical and zoological
19 gardens (Code 84), membership organizations (Code 86),
20 engineering, accounting, research, management, and related
21 services (Code 87), private households (Code 88), and
22 miscellaneous services (Code 89). To further identify industries
23 that may be included on the list, the division shall also consider
24 data from a rating organization, as defined in Section 11750.1 of
25 the Insurance Code, and all other appropriate information. The list
26 shall be established by June 30, 1994, and shall be reviewed, and
27 as necessary revised, biennially.

28 (3) The division shall prepare a Model Injury and Illness
29 Prevention Program for Employers in Industries with Intermittent
30 Employment, and shall determine which industries have historically
31 utilized seasonal or intermittent employees. An employer in an
32 industry determined by the division to have historically utilized
33 seasonal or intermittent employees shall be deemed to have
34 complied with the requirements of subdivision (a) with respect to
35 a written injury prevention program if the employer adopts the
36 model program prepared by the division pursuant to this paragraph
37 and complies with any instructions relating thereto.

38 ~~(k)~~

39 (l) With respect to any county, city, city and county, or district,
40 or any public or quasi-public corporation or public agency therein,

1 including any public entity, other than a state agency, that is a
 2 member of, or created by, a joint powers agreement, subdivision
 3 (d) shall not apply.

4 ~~(t)~~

5 (m) Every workers' compensation insurer shall conduct a review,
 6 including a written report as specified below, of the injury and
 7 illness prevention program (IIPP) of each of its insureds with an
 8 experience modification of 2.0 or greater within six months of the
 9 commencement of the initial insurance policy term. The review
 10 shall determine whether the insured has implemented all of the
 11 required components of the IIPP, and evaluate their effectiveness.
 12 The training component of the IIPP shall be evaluated to determine
 13 whether training is provided to line employees, supervisors, and
 14 upper level management, and effectively imparts the information
 15 and skills each of these groups needs to ensure that all of the
 16 insured's specific health and safety issues are fully addressed by
 17 the insured. The reviewer shall prepare a detailed written report
 18 specifying the findings of the review and all recommended changes
 19 deemed necessary to make the IIPP effective. The reviewer shall
 20 be or work under the direction of a licensed California professional
 21 engineer, certified safety professional, or a certified industrial
 22 hygienist.

23 SECTION 1. Section 6720 is added to the Labor Code, to read:

24 ~~6720. (a) The Legislature finds and declares that the protection~~
 25 ~~of workers in the adult film industry is the responsibility of multiple~~
 26 ~~layers of government, with the department being responsible for~~
 27 ~~worker safety and the county being responsible for protecting the~~
 28 ~~public health. Therefore, this section shall not be construed to~~
 29 ~~prohibit a city, county, or city and county from implementing a~~
 30 ~~local ordinance regulating the adult film industry, provided that~~
 31 ~~nothing in the local ordinance contradicts any provision of this~~
 32 ~~section.~~

33 ~~(b) For purposes of this section, the following definitions shall~~
 34 ~~apply:~~

35 ~~(1) "Adult film" means any commercial film, video, multimedia,~~
 36 ~~or other recorded representation during the production of which~~
 37 ~~performers actually engage in sexual intercourse, including oral,~~
 38 ~~vaginal, or anal penetration.~~

39 ~~(2) "Employee" means a person who is an employee or~~
 40 ~~independent contractor, regardless of whether the person is shown~~

1 in the adult film, who, during the production of the adult film,
2 performs sexual intercourse, including oral, vaginal, or anal
3 penetration.

4 (3) “Employer” means a company, partnership, corporation, or
5 individual engaged in the production of an adult film. There shall
6 be a rebuttable presumption that the name on the material for
7 commercial distribution is the employer unless there is evidence
8 to the contrary as demonstrated through contractual or employment
9 records.

10 (4) “Sexually transmitted disease” or “STD” means any infection
11 commonly spread by sexual conduct, including, but not limited
12 to, HIV/AIDS, gonorrhea, syphilis, chlamydia, hepatitis, genital
13 human papillomavirus infection, and genital herpes.

14 (e) An employer shall maintain engineering and work practice
15 controls sufficient to protect employees from exposure to blood
16 and any potentially infectious materials, in accordance with Section
17 5193 of Title 8 of the California Code of Regulations. Engineering
18 and work practice controls shall include, but are not limited to, the
19 following:

20 (1) Simulation of sex acts using acting, production, and
21 postproduction techniques.

22 (2) Provision of and required use of condoms and other
23 protective barriers whenever acts of vaginal or anal intercourse
24 are filmed.

25 (3) The provision of condom-safe water-based or silicone-based
26 lubricants to facilitate the use of condoms.

27 (4) Plastic and other disposable materials to clean up sets.

28 (5) Sharps containers for disposal of contaminated sharps,
29 including, but not limited to, any blades, wires, or broken glass.

30 (d) An employer shall maintain an exposure control plan in
31 accordance with Section 5193 of Title 8 of the California Code of
32 Regulations. An employer shall not be required to comply with
33 any provision related to establishing and maintaining a sharps
34 injury log, or any provision regarding regulated waste.

35 (e) An employer shall make available the hepatitis B vaccination
36 and all medical followup required by Section 5193 of Title 8 of
37 the California Code of Regulations, for any employee engaged in
38 the production of adult films, at the employer’s expense.

1 (f) ~~An employer shall designate a custodian of records for~~
2 ~~purposes of this section. A copy of the original production shall~~
3 ~~be retained by the custodian of records.~~

4 (g) ~~An employer shall pay the costs of required medical~~
5 ~~monitoring, such as STD testing, and keep confidential employee~~
6 ~~records.~~

7 (h) ~~(1) An employer shall adopt, implement, maintain, and~~
8 ~~update, as required, a written health and safety program that meets~~
9 ~~the requirements of the Injury and Illness Prevention Program and~~
10 ~~the bloodborne pathogens standard, described, respectively, in~~
11 ~~Sections 3203 and 5193 of Title 8 of the California Code of~~
12 ~~Regulations.~~

13 ~~(2) An employer shall provide a training program in accordance~~
14 ~~with Section 5193 of Title 8 of the California Code of Regulations.~~
15 ~~The training requirements of this subdivision may be satisfied by~~
16 ~~proof that the employee has received appropriate training at another~~
17 ~~workplace or from an appropriate third party approved by the~~
18 ~~department in the prior 12 months.~~

19 (i) ~~This section shall not be construed to require condoms,~~
20 ~~barriers, or other personal protective equipment to be visible in~~
21 ~~the final product of an adult film.~~

22 (j) ~~The Legislature finds and declares that screening for STDs~~
23 ~~is a critical public health measure and should be employed~~
24 ~~wherever possible, including the adult film industry. Therefore,~~
25 ~~this section shall not be construed to impede or replace STD~~
26 ~~screening of all employees, as defined in paragraph (2) of~~
27 ~~subdivision (b), pursuant to STD screening protocols established~~
28 ~~by the federal Centers for Disease Control and Prevention, the~~
29 ~~State Department of Public Health, and the public health~~
30 ~~department in the county where the filming occurs.~~

31 SEC. 2. ~~The provisions of this act are severable. If any~~
32 ~~provision of this act or its application is held invalid, that invalidity~~
33 ~~shall not affect other provisions or applications that can be given~~
34 ~~effect without the invalid provision or application.~~

35 SEC. 3 ~~No reimbursement is required by this act pursuant to~~
36 ~~Section 6 of Article XIII B of the California Constitution because~~
37 ~~the only costs that may be incurred by a local agency or school~~
38 ~~district will be incurred because this act creates a new crime or~~
39 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
40 ~~for a crime or infraction, within the meaning of Section 17556 of~~

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

O